

**Agreement**

**between**

THE SECRETARY OF STATE FOR DEFENCE

DE&S Abbey Wood

Yew 1b #1114

BS34 8JH

and

BOEING DEFENCE UK LIMITED

**for the provision of Interim Facilities Management Requirements for  
the P-8A Poseidon Maritime Patrol Aircraft Infrastructure**

**THIS AGREEMENT** is made

**BETWEEN**

- (1) **THE SECRETARY OF STATE FOR DEFENCE** (the "**Client**"); and
- (2) **BOEING DEFENCE UK LIMITED** (Company Number 01290439) whose registered office is at 25 Victoria Street, London SW1H 0EX (the "**Contractor**").

**BACKGROUND**

- A. The *Client* entered into an Engineering and Construction Contract with the *Contractor* for the design, construction and completion of the Maritime Patrol Aircraft (P-8A Poseidon) infrastructure at RAF Lossiemouth (the "**Infrastructure**") dated 7 February 2018 (the "**Infrastructure Contract**").
- B. The *Client* now requires maintenance services to be carried for an interim period prior to a long term arrangement being placed.
- C. The *Client* has therefore selected the *Contractor* to Provide the Service.
- D. The *Contractor* has agreed to Provide the Service in accordance with this contract.

**ARTICLES**

**IT IS AGREED AS FOLLOWS:** in consideration of the payment of one pound (£1.00) by the *Client* to the *Contractor* receipt of which the *Contractor* acknowledges:

1. The *Client* pays the *Contractor* the amount due and carries out his duties in accordance with the *conditions of contract* identified in the Contract Data.
2. The *Contractor* undertakes to Provide the Service and to fulfil its other obligations arising out of this contract in accordance with the whole terms and conditions of this contract, which comprises:
  - 2.1 this Agreement;
  - 2.2 Z clauses set out in the Contract Data;
  - 2.3 the *conditions of contract* (NEC4 Term Service Contract, Main Option A, June 2017);
  - 2.4 dispute resolution Option W2 and secondary Options, X2, X11, X18, X20 and Y(UK)2;
  - 2.5 the Contract Data part one set out at Annex A;
  - 2.6 the *Client's* Scope as set out at Annex B;

2.7 the *price list* is at Annex C;

2.8 the Contract Data part two as set out at Annex A;

2.9 the *Contractor's Scope* as set out at Annex B;

and in the event of a conflict between the requirements of Articles 2.1 to 2.9, the requirements have precedence in numerical order in this Article 2. The requirements within the Scope and documents therein provided by the *Client* and/or the *Contractor*, as regards the scope or extent of the *service*, are where possible to be interpreted as complementary but in the event of a conflict the fullest and/or most detailed description of the *service* takes precedence unless otherwise instructed by the *Service Manager*. An instruction under this Article 2 by the *Service Manager* shall not be a compensation event and shall not give rise to any entitlement to additional time or money on the part of the *Contractor*.

3. The Contract Date (the date when this contract came into existence) is **17<sup>th</sup> September 2020**.

**THIS DOCUMENT** is executed as a deed in duplicate and delivered on the date stated at the beginning of this Deed.

Signed as a deed by )

**Executed as a Deed** by affixing )  
the )  
Common Seal of **THE** )  
**SECRETARY OF STATE FOR** )  
**DEFENCE** )

.....  
Signature of Authorised Signatory

)  
the corporate seal of the )  
Secretary of State for Defence )  
hereunto )  
affixed is hereby authenticated by:

.....  
Name of Authorised Signatory

Signed as a deed by )

**BOEING DEFENCE UK LIMITED** )

acting by two directors or )

one director and its secretary )

Signature of director

Signature of director/secretary

**Annex A**

**CONTRACT DATA**

**PART ONE – DATA PROVIDED BY THE *CLIENT***

## 1 General

The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Term Service Contract June 2017

Main Option A

Option for resolving and avoiding disputes W2

Secondary Options:-

X2: Changes in the law

X11: Termination by the *Client*

X18: Limitation of Liability

X20: Key Performance Indicators

Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996

Z: *Additional Conditions of Contract*

The *service* is **the provision of interim facilities management services to the *Client* as necessary to maintain the Infrastructure so that it is safe, secure and compliant with all legal requirements, as more particularly described in the Scope.**

The *Client* is **defined in the Agreement.**

The *Service Manager* is:

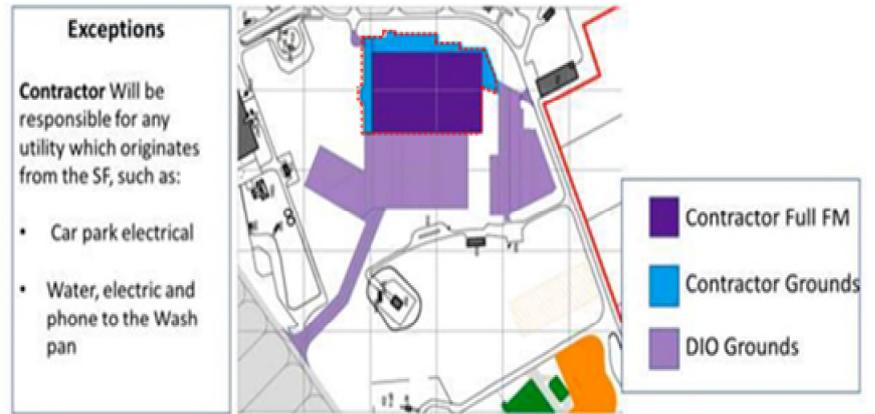
Name: **[REDACTED]**

Address: **P-8A Delivery Team – Commercial, MOD Abbey Wood, #1114 Yew 1a, Bristol, BS34 8JH**

Address for electronic communications

**[REDACTED]**

The Affected Property is: **The Strategic Facility at RAF Lossiemouth**



The affected property is represented by the red dotted boundary line illustrated above which includes the Strategic Facility building and adjoining exterior areas, Services, and Assets supplied by the Strategic Facility utilities.

The Scope is in **Annex B**

The *shared services* which may be carried out outside the Service Area are **not applicable**

The *language of this contract* is **English**.

The law of the contract is **the law of England**.

The *period for reply* is:

<b>Replies requiring DE&amp;S input only</b>	<b>2 weeks</b>
<b>Replies requiring input from other MOD stakeholders not within DE&amp;S</b>	<b>3 weeks</b>
<b>Replies requiring US Government input</b>	<b>4 weeks</b>

The following matters will be included in the early warning register:  
**Not Applicable**

Early warning meetings are to be held at intervals no longer than **four weeks**.

## 2 The *Contractor's* main responsibilities

### 3 Time

The *starting date* is the date of **Completion of the whole of the works (as originally defined in the Infrastructure Contract i.e. completion of the design and construction of the Maritime Patrol Aircraft (P-8A Poseidon) infrastructure as described in the Scope) under the Infrastructure Contract.**

The *service period* is from the *starting date* until **30<sup>th</sup> June 2021**.

The *Contractor* submits revised plans at intervals of no longer than **four weeks**.

The period within which the *Contractor* is to submit a Task Order programme for acceptance is **two weeks**.

If no plan is identified in part two of the Contract Data

The period for the Contract Date within which the *Contractor* is to submit a first plan for acceptance is **two weeks**.

### 4 Quality Management

The period after the Contract Date within which the Contractor is to submit a quality policy statement and quality plan is **two weeks**

### 5 Payment

The currency of the contract is **GBP (pounds sterling)**.

The *assessment interval* is **monthly**.

The *interest rate* is **4% per annum above the base rate of the Bank of England for the time being in force**.

The *Bill Paying Branch* is **Defence Business Services, Walker House, Exchange Flags, Liverpool, L2 3YL**

If the period for certifying a final assessment is not 14 weeks

The period for certifying a final assessment is **four weeks**.

## 6 Compensation events

If there are additional compensation events

These are additional compensation events:

### 1. A Force Majeure event, where:

If an event or circumstance occurs which is:

(a) beyond the control of the Party seeking to found upon it

(b) not caused by the act, omission, breach or negligence of the Party seeking to found upon it;

(c) not a matter for which the Party seeking to found upon it has accepted responsibility or the risk under this contract; and

(d) which makes it impossible or illegal for that Party to perform its obligations under or in relation to this contract:

- I. the Commercial Officer gives an instruction to the Contractor stating how he is to deal with the event or circumstance; and
- II. subject to clause 61.3, neither the Employer nor the Contractor shall be liable for any delay or for the consequences of any delay in the performance of any of their respective obligations so affected under this contract due to the event or circumstance.

(e) a Pandemic Trigger Event occurs, where:

- I. **'COVID-19'** means the strain of coronavirus known as 'Corona Virus Disease 2019';
- II. **'Pandemic-Related Health Event'** means any epidemic, pandemic, or other national or regional public health issue including without limitation any localised or widespread occurrence of an infectious disease caused by any pathogen, whether bacterial, viral, or
- III. any other biological or natural agent (including those which result, directly or indirectly, from COVID-19 and/or SARS-CoV-2, including any mutations of COVID-19 and/or SARS-CoV-2 recognised as the same by the World Health Organization);
- IV. **'Pandemic Trigger Event'** means all time and cost consequences arising from any of the following events if

caused or contributed to by the occurrence of a Pandemic-Related Health Event:

- a) a change in statutory requirements; a new requirement to comply with any existing statutory requirements; or existing statutory requirements ceasing to apply;
- b) any guidance and/or recommendations issued by any local or public authority (including without limitation, the national government, bodies governed by public law and central government authorities) in relation to a Pandemic-Related Health Event, and any measures taken by the Contractor (and/or the Contractor's supply chain) in accordance with such guidance and/or recommendations;
- c) in any jurisdiction, the imposition of, or a change to, opening hours of the Site (whether directly or indirectly) by any local or public authority (including without limitation, the national government, bodies governed by public law and central government authorities) or by agreement with the Employer;
- d) a change in the programming of the supply chain of any materials or components used by the Contractor to provide the Works or any products which are to be incorporated into the Works and/or any delay or disruption, and any shortage of goods or materials or labour, affecting the Contractor's supply chain;
- e) the loss of, a change to or the imposition of a new requirement for any licence or consent required by the Contractor to provide the Works;
- f) a change to the business or economic environment in which the Contractor operates which is not caused by one of the other Pandemic Trigger Events in this definition;
- g) an emergency requisitioning of any materials and/or of all or part of the Site before completion of the Works; and/or
- h) any non-availability of plant and materials, equipment, goods, labour or workpeople engaged upon or in connection with the Works either on and/or adjacent to the Site or directly employed by the Contractor (and/or by any subcontractor) who are engaged upon the production of design, plant and materials and/or goods for use in and/or in connection with the works and who

operate neither on nor adjacent to the Site, caused by COVID-19 or SARSCoV-2; and

V. **'SARS-CoV-2'** means the causative virus known as severe acute respiratory syndrome coronavirus 2.]

**2. Changes to the MDAL, where:**

a) The Commercial Officer gives an instruction changing an Assumption, and or Dependency, and or Exclusion set out within the MDAL, Reference (DBDU-PA00155 Interim FM MDAL v2.0)

**3. Changes to the SoR, where:**

a) The Commercial Officer gives an instruction changing a requirement set out within the SoR, Reference (20200914\_Interim\_FM-Requirements\_v2.0\_OSC)

b) The Commercial Officer requests/identifies additional requirements that are not set out within the SoR, Reference (20200914\_Interim\_FM-Requirements\_v2.0\_OSC)

**8 Liabilities and insurance<sup>1</sup>**

If there are additional *Client's* liabilities

These are the additional Client's liabilities

(1) **Not Applicable**

**Insurances:** The insurances to be provided by the *Contractor* are the following:

- **Third Party Liability Insurance**
- **Airside Third Party Liability Insurance**
- **Airside Motor Third Party Liability Insurance**
- **Insurance as required by Law**

**As further detailed in clause 83**

If the *Client* is to provide Plant and Materials

The insurance against loss of or damage to Plant and Materials and Equipment is to include cover for Plant and Materials provided by the *Client* for an amount of **not applicable**

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<sup>1</sup> Subject to Willis Review

If the Client is to provide any of the insurances stated in the Insurance Table	<p>The Client provides these insurances from the Insurance Table</p> <p>(1) Insurance against <b>n/a</b></p> <p>Minimum amount of cover is <b>n/a</b></p> <p>The deductibles are <b>n/a</b></p>
If additional insurances are to be provided	<p>The <i>Client</i> provides these additional insurances</p> <p>(1) Insurance against <b>n/a</b></p> <p>Minimum amount of cover is <b>n/a</b></p> <p>The deductibles are <b>n/a</b></p>

### Resolving and avoiding disputes

The *tribunal* is **arbitration**.

- The *arbitration procedure* is the **latest version of the Institution of Civil Engineers Arbitration Procedure or any amendment or modification to it in force when the arbitrator is appointed**
- The seat of the arbitration is **England and Wales** and the place where arbitration is to be held is **Bristol**
- The person or organisation who will choose an arbitrator
  - if the Parties cannot agree a choice or
  - if the arbitration procedure does not state who selects an arbitrator is

**see *arbitration procedure***

### X18: Limitation of Liability

- The *Contractor's* liability to the *Client* for indirect or consequential loss is limited to £NIL pounds
- For any one event, the *Contractor's* liability to the *Client* for loss of or damage to the *Client's* property is limited to FIFTY MILLION POUNDS (£50,000,000)
- The *Contractor's* liability for Defects due to its design of an item of Equipment is limited to £NIL
- The *Contractor's* total liability to the *Client* for all matters arising under or in connection with this contract, other than excluded matters, is limited to FIFTY MILLION POUNDS (£50,000,000)
- The *end of liability date* is 2 years after the end of the Service Period.

**X20: Key Performance Indicators**

Fully detailed within the table in Annex D

**Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996**

If Y(UK)2 is used and the date on which a payment is due is not fourteen weeks after the end of the accounting period or Subcontract Service Period      The period is **four weeks**.

If Y(UK)2 is used and the final date for payment is not fourteen days after the date on which payment becomes due      The period for payment is **set out at Y(UK) 2.2**

**Z: Additional conditions of contract**

The following are the additional conditions of contract comprised in Option Z (additional conditions of contract) and amends the NEC4 Term Service Contract (the “**NEC4**”). In the event of any ambiguity or conflict or divergence or discrepancy between the provisions of this Option Z and the other provisions of the unamended NEC4 standard form, the provisions of this Option Z shall prevail and take precedence over the NEC4 standard form provisions.

**Option Z- the *additional conditions of contract* are:**

**Z1** Notwithstanding any other provisions of this contract to the contrary, the *conditions of contract* (including the Main Option A; the dispute resolution option and the *Secondary Option* clauses) shall be amended, modified and supplemented by the following which in the event of any conflict or inconsistency shall take precedence over such *conditions of contract*.

**0. GENERAL****11. Identified and defined terms*****At the end of Clause 11.2 insert the following:***

“(22) Applicable Law means (i) any statute, law, order, regulation, bylaw, statutory instrument, decision, rule, consent or delegated or subordinate legislation or any legislative act of the United Kingdom, or Scottish Parliaments, Council of the European Union or the European Commission or of any public body, authority or regulatory body which (without further enactment) has legal effect with regard to this contract, the *service*, the Affected Property or the Parties’ rights and obligations hereunder or any modification, supplement, amendment or replacement of any of the foregoing having

the force of law; and (ii) the statutory, regulatory and other consents, warrants, licences, permissions, permits, authorisations or other approvals (including in each case any conditions attached thereto) obtained and to be obtained to implement the *service* including all Regulatory Requirements. All references in the contract to “applicable laws” shall be to the Applicable Laws.

(23) Boeing Entity means Boeing and any other entity: (1) that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with Boeing or with the *Contractor*; (2) that trades as Boeing; (3) in which Boeing owns an interest; and/or (4) is otherwise connected with Boeing, whether or not in each instance such entity was in existence at the Contract Date. For the purposes of this definition, the concept of "control," when used with respect to any specified party, shall signify the possession of the power to direct the management and policies of such party, whether through the ownership of voting securities or partnership or other ownership interests.

(24) Boeing means The Boeing Company, a corporation incorporated in the state of Delaware, United States of America and having its registered office at 2711 Centerville Road, Suite 400, in the city of Wilmington, County of New Castle.

(25) Calendar Days are all days in a month, including weekends and holidays.

(26) CDM Regulations are the Construction (Design and Management) Regulations 2015, together with any guidance or codes of practice issued thereon by the Health and Safety Executive.

(27) Cyber Risk Level means the level of cyber risk relating to this contract or any Subcontract assessed in accordance with the Cyber Security Model.

(28) Cyber Security Implementation Plan means the plan referred to in Clause Z33.2 including but not limited to any risk-balance case and mitigation measures required by the *Client*.

(29) Cyber Security Incident means an event, act or omission which gives rise or may give rise to:

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

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

(c) destruction, damage, deletion or the change of 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.

(30) Cyber Security Instructions means DEFSTAN 05-138, together with any relevant ISN and specific security instructions relating to this contract issued by the *Client* to the Contractor.

(31) Cyber Security Model and “CSM” mean the process by which the *Client* ensures that MOD Identifiable Information is adequately protected from Cyber Incident and includes the CSM Risk Assessment Process.

(32) 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 Subcontract.

(33) CSM Supplier Assurance Questionnaire means the supplier assessment questionnaire which forms part of the Cyber Security Model and is to be used by the *Contractor* to demonstrate compliance with clause Z33.

(34) 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.

(35) Degraded means that the operational capability of the Affected Property is adversely affected including any impact on the Typhoon QRA Operations (as defined in the Infrastructure Contract);

(36) DEFSTAN 05-138 means the Defence Standard 05-138 as amended or replaced from time to time

(37) DOTAS means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to:

- i. Tell HM Revenue & Customs of any specified notifiable arrangements or proposals; and
- ii. Provide prescribed information on those arrangements or proposals within set time limits as:
  1. 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
  2. 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.

(38) EIR means the Environmental Information Regulations 2004 and any subordinate legislation made under this Act as the same may be revised and replaced from time to time together with any guidance and/ or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

(39) 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.

(40) FOIA means the Freedom of Information Act 2000 and any subordinate legislation made under this Act as the same may be revised and replaced from time to time together with any guidance and/ or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

(41) Fraud is any offence under the law creating offences in respect of fraudulent acts.

(42) Fraud Awareness Training is training delivered to the *Contractor* by the *Client* on Fraud awareness.

(43) GDPR means the General Data Protection Regulations 2018

(44) General Anti-Abuse Rule means:

- i. The legislation in Part 5 of the Finance Act 2013; and
- ii. Any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.

(45) Good Industry Practice means the standards, practices, methods and procedures conforming to all Applicable Law and the degree of skill, care prudence and foresight which would reasonably be expected from a skilled and experienced person undertaking all or part of the *service* as the case may be, under the same or similar circumstances;

(46) Government Establishments mean any UK Government site visited by the *Contractor* during the duration of and in connection with this contract.

(47) Halifax Abuse Principle means the principle explained in the CJEU Case C-255/02 Halifax and others.

(48) Information has the meaning given under Section 84 of the FOIA.

(49) Intellectual Property (IP) Materials means any guidance, specifications, instructions, manuals, toolkits, plans, data, drawings, databases, patents, patterns, models, designs, reports, calculations, records, or other material of any nature produced or provided by or on behalf of the *Contractor* in relation to the *services* or the Affected Property;

(50) Intellectual Property Rights (“IPRs”) means patents, inventions, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off

(51) ISN means Industry Security Notices issued by the *Client* to the *Contractor* whether directly or by issue on the gov.uk website at: <https://www.gov.uk/government/publications/industry-security-notices-isns>.

(52) Joint Venture means two or more companies engaged in a solitary business enterprise without actual partnership or incorporation.

(53) 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.

(54) Necessary Consents means the planning permissions, building warrants and any other permissions, warrants, approvals, consents, licences and the like which may be necessary to enable the service to be carried out;

(55) 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.

(56) OGDs (or Other Government Departments) are Government departments other than the *Client*.

(57) Occasion of Tax Non-Compliance (OOTNC) means:

Any tax return of the *Contractor* submitted to a Relevant Tax Authority on or after 1 October 2012 that is found on or after 1 April 2013 to be incorrect as a result of:

1. 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;
2. 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
3. Any tax return of the *Contractor* submitted to a Relevant Tax Authority on or after 1 October 2012 that 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 date this Contract came into effect or to a civil penalty for fraud or evasion

(66) A Parent Company has the meaning given to “parent undertaking” under Section 1162 of the Companies Act 2006.

(67) The Parties are the *Client* and the *Contractor* and “Party” shall be construed accordingly.

(68) Personnel are all employees, agents, contractors and subcontractors of either Party as the case may be, excluding in the case of the *Client*, any of the *Contractor's* Personnel.

(69) Regulators means the Health and Safety Executive, the Scottish Environment Protection Agency and other regulatory bodies or other bodies specific with jurisdiction over the *service*, the Affected Property or the commercial operations of the *Client* and “Regulator” means each or any one of them.

(70) Regulatory Requirements means any condition, stipulation, proviso, restriction or any other licence, authorisation, consent, permission, order, permit, warrant, approval, notice or any other requirement of a Regulator or any Applicable Law which is necessary to enable the *Contractor* to Provide the Service or is otherwise required in connection with the *service* and any condition precedent or any other requirement of a Regulator which must be satisfied prior to the grant, issue, renewal, variation, extension, continuation and/ or reconfirmation of such licence, authorisation, consent, permission, order, permit, warrant, approval or notice.

(71) Relevant Tax Authority means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the *Contractor* is established.

(72) Requests for Information has the meaning set out in the FOIA or the EIR as relevant (where the meaning set out for the term "request" applies).

(73) A Secret Matter is any matter connected with this contract, or its performance or the Affected Property or the *Client* which is designated in writing by the *Client* as “TOP SECRET”, “SECRET”, or “OFFICIAL SENSITIVE”, and will include any information concerning the content of such matter and anything which contains or may reveal that matter.

(74) The Security Policy Framework is a Cabinet Office document describing the standards, best practice guidelines and approaches that are required to protect UK Government assets (people, information and infrastructure). It focuses on the outcomes that are required to achieve a proportionate and risk managed approach to security that enables government business to function effectively, safely and securely.

(75) Supplier Cyber Protection Service means the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire.

(76) Transparency Information is the content of this contract in its entirety (excluding any information under DEFFORM 539, and any MOD redactions), including from time to time agreed changes to such contract and details of any payments made by the *Client* under this contract.

## 2. THE CONTRACTOR'S MAIN RESPONSIBILITIES

### 20. Providing the Service

#### **Delete Clause 20.1 and replace as follows:**

"The *Contractor* Provides the Service in accordance with the Scope, this contract, all Applicable Laws, Regulatory Requirements, Necessary Consents and approvals from Others. The *Contractor* warrants to the *Client* that has and will continue to Provide the Service in a good and workmanlike manner using good quality new materials suitable for their purpose and to the quality specified in the Scope. The *Contractor* warrants and undertakes to the *Client* to:

- 20.1.1 Provide the Service as a minimum in accordance with Good Industry Practice;
- 20.1.2 maintain well documented records and other relevant information relating to the *service* in accordance with Good Industry Practice; and
- 20.1.3 to the extent applicable to the *service* comply with any requirements of the *Client* stated in the Scope or otherwise communicated to the *Contractor* in writing at the Contract Date (including health and safety, export/import control, site security (including any security aspects letters provided by the *Client*), quality, IT security and operational requirements) which apply to access to and use of the Service Areas or the Affected Property and any of the *Client's* sites, premises, plant, equipment information and/or systems;"

#### **Add new Clauses 20.3 to 20.5:**

- "20.3 The *Contractor* shall allocate sufficient resources to enable it to comply with its obligations under the contract.
- 20.4 The *Contractor* shall provide to the *Client* reports (in a format and content agreed between the Parties) in relation to Providing the Service and such other information as the *Client* may request from the *Contractor* from time to time. In addition, the *Contractor* shall agree with the *Client* the frequency of meetings to be held between the *Contractor* and the *Client* in order to review the *Contractor's* performance under the contract.
- 20.5 The *Contractor* shall:
  - 20.5.1 at all times obtain and maintain all Necessary Consents and comply with all Applicable Laws and Regulatory Requirements which are relevant to the *service*;
  - 20.5.2 at all times maintain a business continuity plan in accordance with Good Industry Practice;
  - 20.5.3 provide written instructions to the *Client* in respect of any particular requirements for the *service*, including without limitation, in respect of handling, storage, maintenance and disposal;

- 20.5.4 ensure that the *Client* is advised, before receipt, of any materials required for Providing the Service which are intrinsically hazardous to life or harmful to the environment by providing in writing, all relevant health, safety and environmental data so that appropriate precautionary arrangements can be made and ensuring that the *Client* is provided with all updates of such data;
- 20.5.5 ensure that waste and surplus materials and the like arising from the service or Providing the Service are not deposited on any area other than a public or private disposal facility controlled or recognised by the relevant local authority (and, where applicable, credit the *Client* with any relevant income arising from the surplus materials);
- 20.5.6 comply with all the requirements of the Environmental Protection Act 1990 and any other applicable legislation governing the controlled tipping of waste;
- 20.5.7 notify the *Client* as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the *service*;"

#### **24. Subcontracting**

***At the beginning of Clause 24.1 add:***

"The *Contractor* shall not, without the *Client's* prior written consent, sub-contract any of its obligations under the contract."

At the end of Clause 24.1 add:

"The *Client's* prior written consent is hereby given to the subcontracting of work by the *Contractor* to Robertson Facilities Management Limited."

#### **26. Assignment**

***Delete clause 26 and replace with:***

26.1 "Neither party will give, bargain, sell, assign, or otherwise dispose of the contract or any part thereof, or the benefit or advantage of the contract or any part thereof, without the previous consent in writing of the other party."

***Insert new Clauses 28 and 29:***

- 28 It is material condition of this contract that the *Contractor* ensures that neither the carrying out of the *service* nor any act, omission, or negligence of the *Contractor* or those for whom it is responsible results in the Affected Property being degraded.
- 29.1 The *Client* grants to the *Contractor* the right to use material provided by the *Client* in so far as is necessary to Provide the Service and subject to the *Contractor* complying with the obligations under this contract in relation to confidentiality and security. The *Contractor* may make this right available to Subcontractors provided that the *Contractor* ensures that the Subcontractors shall comply with the equivalent obligations in relation to confidentiality and security.
- 29.2 Intellectual Property (IP) Materials generated under this contract shall be vested in the *Contractor*. The *Contractor* hereby grants to the *Client* with effect from the Contract Date or in the case of any of the Intellectual Property (IP) Materials

not yet in existence with effect from the creation of such Intellectual Property (IP) Materials, an irrevocable, royalty-free, non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the *Contractor's* obligations or the termination of the contract or the determination of the *Contractor's* engagement under the contract or any dispute under the contract) to disclose, use, reproduce and modify the Intellectual Property (IP) Materials (including the designs therein) for any purpose whatsoever including but not limited to (1) the execution, completion, maintenance, operation, letting, advertisement, modification, extension, reinstatement and repair of the completed *services* (or any works carried out as part thereof), the Service Areas and/or the Affected Property; (2) in order to issue the Intellectual Property (IP) Materials or any part or any copy or any part thereof to the governments of NATO and EU nation states, Australia, New Zealand, Norway and any other allied nations (for which the status of allied nation shall be determined solely by the *Client*) for that government's information purposes; and (3) for any other United Kingdom Government purpose. Such licence shall carry the right to grant sub-licences and shall be transferable to any third parties.

- 29.3 The *Contractor* warrants and undertakes that copyright and all Intellectual Property Rights (free of restriction) in the Intellectual Property (IP) Materials are and shall remain vested in the *Contractor*.
- 29.4 The *Contractor* shall not grant to any third party the right to use any of the Intellectual Property (IP) Materials save as required to enable it to fulfil its obligations under this contract.
- 29.5 The *Contractor* warrants and undertakes that the Intellectual Property (IP) Materials (i) are either its own original works or if not that it has all necessary rights to use and licence same in accordance with this clause; (ii) do not infringe the intellectual property rights of any third person. The *Contractor* indemnifies the *Client* against all claims, loss, costs, charges and expenses incurred or suffered by *the Client* as a result of any infringement or alleged infringement in connection with the Intellectual Property (IP) Materials and/or the *Contractor's* or a third parties' Intellectual Property Rights.
- 29.6 The *Contractor* agrees on reasonable request at any time and following 2 (two) Calendar Days' notice to give to the *Client*, or those authorised by the *Client*, access to the Intellectual Property (IP) Materials and to provide copies (including electronic copies in a readable form) of the Intellectual Property (IP) Materials to the *Client*. Prior to completion of the *service* or on termination of this contract/the *Contractor's* obligation to Provide the Service, if applicable, the *Contractor* shall deliver all Intellectual Property (IP) Materials to the *Client*, (whether in the course of preparation or complete) provided that the *Contractor* shall be entitled to retain a copy for record purposes. Notwithstanding the foregoing, the *Contractor* will provide the *Client* with a CD-Rom containing any drawings and specifications prepared by or on behalf of the *Contractor* in connection with the *service* within 4 weeks of commencement of the *service* and thereafter shall provide such updated CD-Roms at the request of the *Client* from time to time, failing which on a bi-monthly basis. The *Contractor* shall provide originals of all Necessary Consents (save for those obtained by the *Client*) and the like and reports prepared or obtained by it to the *Client* within 10 Calendar Days of production or receipt of the same.

- 29.7 The *Contractor* waives and agrees not to assert (and to procure that any subcontractors of whatever tier and including Subcontractors do likewise) any moral rights in the Intellectual Property (IP) Materials or in relation to the *works* that it (or any subcontractors of whatever tier and including Subcontractors) may have pursuant to under Part 1 Chapter IV of the Copyright, Designs and Patents Act 1988 or any re-enactment or modification of it.
- 29.8 Notwithstanding that copyright in the Intellectual Property (IP) Materials remains vested in the *Contractor*, the *Contractor* shall not be entitled to use the Intellectual Property (IP) Materials other than in relation to the *works* without the prior written consent of the *Client*.

#### 4. QUALITY MANAGEMENT

##### 43. Notifying and Correcting Defects

***Insert new Clause 43.5:***

- 43.5** The *Contractor* complies with all constraints and conditions in the Scope attached to the correction of Defects. If the *Contractor* causes damage to the Affected Property or any fixtures, fittings or equipment or other property in the Affected Property it shall make good the damage as soon as reasonably possible at no cost to the *Client*."

##### 44. Accepting Defects

***Insert new Clause 44.3***

- 44.3** "No proposal or change referred to in this **Clause 44** shall be accepted or deemed accepted or entitle the *Contractor* to any change to Prices, the Task Completion Date and Task Order or Scope unless and until expressly accepted and instructed in writing signed by the *Service Manager* and expressly referred to this clause 44 (Accepting Defects) and only to the extent so accepted, which in the event of any dispute as to the extent of acceptance the burden of proof shall rest on the *Contractor*."

***Insert a new clause 45 as follows:***

**"Infrastructure Defects 45**

- 45.1 For the purposes of this clause 45, "**Infrastructure Contract Defects**" has the meaning given to the term "Defect" under the Infrastructure Contract. The *Client* and the *Contractor* hereby agree that, notwithstanding any other provision of this contract, under this contract the *Contractor* shall not be responsible for, nor shall it be entitled to any payment for:
- investigating or making good any Infrastructure Contract Defects

- completing any outstanding works under the Infrastructure Contract or
- any breach of the *Contractor's* obligations under the Infrastructure Contract.

45.2 The *Contractor* undertakes to notify the *Service Manager* forthwith on becoming aware of any Infrastructure Contract Defects.”

## 5. PAYMENT

### 51. Assessing the amount due

*Delete clause 51 and replace as follows:*

#### 51 Payment under the Contract Purchasing and Finance System (CP&F)

51.1 The *Service Manager* certifies a payment within five days (such period of time being calculated in accordance with Section 116 of the Housing Grants, Construction and Regeneration Act 1996) of each due date. The first payment is the amount due. Other payments are the change in the amount due since the last payment certificate. A payment is made by the *Contractor* to the *Client* if the change reduces the amount due. Other payments are made by the *Client* to the *Contractor*. Payments are in the *currency of this contract* unless otherwise stated in this contract.

51.2 The *Contractor* will no later than fourteen Calendar Days before the final date for payment submit an invoice for the notified sum (“**CP&F invoice**”), using a properly prepared message structure and format for an invoice in accordance with the arrangements required under the latest “electronic transactions agreement” entered into or to be entered into between the *Contractor* (or by a Boeing Entity) and the *Client* in the absence of such an agreement, the arrangements reasonably required by the *Service Manager*.

51.3 Payments to be made by the *Client* under this contract will be made by means of Banker’s Automated Clearing Services (BACS) directly into the *Contractor's* bank account and to facilitate payment by means of the BACS system, the *Contractor* will provide the *Bill Paying Branch* 4 weeks in advance of the submission of the first CP&F invoice details of the name and address of the bank, sort code and account number.

51.4 Notwithstanding any statement to the contrary any documentation received from the *Contractor* and any payment made by the *Client* will not be construed as acceptance by the *Client* of the performance of the *Contractor's* obligations nor as a waiver of his rights and remedies under this contract or otherwise.

51.5 For the purposes of this clause, Unique Order Identifiers (UOIs) are generated by CP&F. This contract will reference UOIs. The application

of UOIs is at the line item level. The *Contractor* must quote the applicable UOI in any communication concerning a line item.

- 51.6 Confirmation of receipt of deliveries by UOIs will not be construed as an acceptance under any term of this contract relating to acceptance by the *Client*.
- 51.7 Interest is calculated on a daily basis at the *interest rate* and is compounded annually.

## 6. COMPENSATION EVENTS

### 60. Compensation Events

***In clause 60.1, after “compensation events” add:***

“(a) only to the extent that such events are not consequent upon or necessitated by any negligence, omission, default, breach of contract or breach of statutory duty (whether by act or omission) of the *Contractor*, or those for whom it is responsible whether arising out of or in connection with this contract or otherwise; and (b) subject to any provision to the contrary in this contract.”

### 63. Assessing compensation events

***In clause 63.2 after “For other compensation events” insert “subject to clause 63.16”***

***Insert new clause 63.16 as follows:***

“Notwithstanding any other provision of this contract to the contrary, the *Service Manager* may, at its discretion, assess a compensation event based on the values of work, prices, sums or rates used in the Price List or extrapolated therefrom instead of Defined Cost failing which the *Service Manager* may revert to using the Defined Cost or otherwise may use the Shorter Schedule of Cost Components.”

In the seventh bullet of Clause 80.1 insert the words “under the exception of Defects in Plant or Materials provided pursuant to this Contract, which shall be a Contractor Liability” at the end of the existing wording.

## 8. LIABILITIES AND INSURANCE

### 83. Insurance Cover

Delete Clauses 83-86 and replace with:

83.1 Without prejudice to its obligation to indemnify the *Client* under this contract, the *Contractor* shall, from the Contract Date, take out and maintain or procure the taking out and maintenance in full force and effect insurances in accordance with the requirements specified in the Insurance Table at 83.14 and any other insurances as may be required by law (together the “Required Insurances”).

83.2 **Quality of the Insurances:** The Required Insurances referred to in clause 83.1 shall be taken out and maintained with insurers who (in the reasonable

opinion of the *Client*) are of good financial standing and of good repute in the United Kingdom insurance market.

**83.3 Non Invalidation Obligations:** The *Contractor* shall not (and the *Contractor* shall procure that none of its Subcontractors of any tier shall) take any action, or permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that Party is an insured, a co-insured or additional insured person or render an insurance policy void or voidable.

**83.4 Insurance of the Contract:** The Insurances referred to in clause 83.1 shall:

- a) Where specified in the Insurance Table name the *Client* as co-insured for its separate interest.
- b) Where specified in the Insurance Table provide for non-vitiation and severability of interests protection in respect of any claim made by the *Client* as a co-insured.
- c) Where specified in the Insurance Table procure that (insurers) shall undertake to waive all rights of subrogation howsoever arising and/or claims against the *Client*, its employees, servants or agents which they may have or acquire, arising out of any occurrence in respect of which any claim is admitted and is insured under the Required Insurances. The provisions of this clause 83.4c) shall not apply against any *Client* officer, director, employee, agent and assign who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate non-disclosure or deliberate breach of policy condition.
- d) Where specified in the Insurance Table procure that the Required Insurances shall contain an indemnity to principals clause under which the *Client* shall be indemnified in respect of claims made against the *Client* arising from the acts or omissions of, or performance of the *Contractor* under this contract.
- e) Be maintained from the date referred to in clause 83.1 above and until at least the expiry or termination of this contract and for such further period as may be specified in the Insurance Table substantially subject to the terms, cover features and extensions and principal exclusions as specified in the Insurance Table.
- f) Be maintained from time to time on terms no less favourable than those generally available to a contractor in respect of the risks insured in the United Kingdom insurance market from time to time.

**83.5 Requirements of the Contractor:** The *Contractor* shall:

- a) Without limiting any specific requirements in this contract, take or procure the taking of all reasonable risk management and risk control measures in relation to this contract as it would be reasonable to expect of a contractor, acting in accordance with industry best practice, including but not limited to the investigation and reporting of its claims to insurers;
- b) Discharge in full all duties and obligations in respect of the Insurance Act 2015 when procuring and maintaining any insurance(s) required by this contract, including in circumstances where the *Contractor* is

- required to name the *Client* on any such insurance policies to protect the *Client's* separate interests;
- c) comply with the duty of fair presentation to insurers when placing or renewing any insurances required by this contract and in relation to any variations or amendments to relevant policies of insurance during any policy period; and
  - d) Use reasonable endeavours to procure that all insurance brokers through whom any Required Insurances to be effected by the *Contractor* are effected or maintained shall maintain intact their files (including all documents disclosed and correspondence in connection with the placement of those Required Insurances and the payment of premiums and claims under such Required Insurances) until the date specified in the Insurance Table.

83.6 **Evidence of Required Insurances:** The *Contractor* shall provide, as soon as possible after request from or on behalf of the *Client* but in any event no later than two (2) weeks following such a request or the relevant insurance policy renewal date, to the *Client*:

- a) Evidence of the Required Insurances, in a form satisfactory to the *Client*, and
- b) Evidence, in a form satisfactory to the *Client* (which may be in the form of a certified copy of the policy where the *Client* is to be an insured), that the premiums payable under the Required Insurances have been paid and that the insurances are in full force and effect and meet the insurance requirements of the *Contractor* in respect thereof.

Neither inspection, nor receipt of such evidence, shall constitute acceptance by the *Client* of the terms thereof, nor shall it imply acceptance by the *Client* that the extent of insurance cover is sufficient or that the terms and conditions thereof are satisfactory, nor be a waiver of the *Contractor's* liability under this contract.

83.7 **Cancellation**

- a) Where the insurers purport to cancel, suspend or terminate the Required Insurances, the *Contractor* shall procure that the insurers shall, as soon as is reasonably practicable, notify the *Contractor* in writing in the event of any such proposed suspension, cancellation or termination.
- b) Where the *Contractor* receives notification from insurers pursuant to clause 83.7a), the *Contractor* shall promptly notify the *Client* in writing of receipt of such proposed suspension, cancellation or termination.

83.8 **Insurance Claims:** The *Contractor* shall promptly notify to insurers any matter arising from or in relation to this contract from which it may be entitled to claim under any of the Required Insurances. Except where the *Client* is the claimant party and without limiting the other provisions of this clause, the *Contractor* shall notify the *Client* immediately, (such notification to be

accompanied by reasonable particulars of the incident or circumstances giving rise to such claim):

- a) Of any incident or circumstances which may give rise to any claim amounting to or in excess of one hundred thousand pounds (£100,000) in connection with this contract under any of the Required Insurances.
- b) 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 the Required Insurances.

83.9 **Failure to Insure:** If the *Contractor* is in breach of clause 83.1 the *Client* may pay (at its option) any premiums required to keep such insurance in force or itself procure such insurance, and in either case, recover such amounts from the *Contractor* on written demand, together with all reasonable expenses incurred in procuring such insurance.

83.10 **Premiums:** Where any policy requires the payment of a premium, the *Contractor* shall be liable for such premium.

83.11 **Deductibles or Excess**

- a) Where any insurance is subject to an excess or deductible below which the indemnity from the insurers is excluded, the *Contractor* shall be liable for such excess or deductible.
- b) The *Contractor* shall not be entitled to recover from the *Client* any sum paid by way of excess or deductible under the insurances whether under the terms of this contract or otherwise.

83.12 **Application of Insurance Proceeds:** All insurance proceeds received under the *Contractor's* "All Risks" Insurance referred to in the Insurance Table, shall be applied to repair, reinstate and replace each part or parts of the insured property in respect of which the proceeds were received.

83.13 **Compliance:** Neither failure to comply nor full compliance with the insurance provisions of this contract shall limit or relieve the *Contractor* of its liabilities and obligations under this contract and in particular the *Contractor's* obligations in compliance with any indemnity provisions contained in this contract. The *Contractor's* obligations in respect of professional indemnity insurance continue after termination of this contract or the termination of the *Contractor's* employment under this contract for any reason, including breach by the *Client*.

83.14 **Insurance Table (Required Insurances)**

<b>1.</b>	<b>Not used</b>
<b>2.</b>	<b>Third Party Public and Products Liability Insurance</b>
2.1	<u>Insureds</u>  <i>Contractor</i>
2.2	<u>Interest</u>  To indemnify the Insured (in paragraph 2.1 above) in respect of all sums that the Insured may become legally liable to pay whether contractually or otherwise (including claimant's costs and expenses) as damages in respect of accidental;  <ol style="list-style-type: none"><li>1. death or bodily injury, illness or disease contracted by any person;</li><li>2. loss or damage to property;</li><li>3. interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities;</li></ol> happening during the Period of Insurance (in paragraph 2.8 below) and arising out of or in connection with this contract.
2.3	<u>Limit of indemnity</u>  Not less than £50,000,000 in respect of any one occurrence, the number of occurrences being unlimited, but in the annual aggregate in respect of products or pollution liability (to the extent insured under the policy).
2.4	<u>Maximum deductible threshold</u>  Not to exceed nil with £50,000 cover by <i>Contractor</i> captive insurance arrangements
2.5	<u>Territorial limits</u>  United Kingdom and elsewhere in the world in respect of non manual visits.
2.6	<u>Jurisdiction relating to policy interpretation</u>  Courts of England and Wales
2.7	<u>Choice of law</u>  This insurance shall be governed in accordance with the laws of England and Wales.

**2.8 Period of insurance**

From the date of this contract for the duration of this contract renewable on an annual basis unless agreed otherwise by the parties.

**2.9 Cover features and extensions**

1. Munitions of war
2. Cross liability clause
3. Contingent motor vehicle liability
4. Legal defence costs
5. Indemnities to principals clause in accordance with Clause 83.4(d)
6. Health & Safety at Work Act(s) clause
7. Data Protection Act clause
8. Consumer Protection Act 1987
9. Defence appeal and prosecution costs relating to the Corporate Manslaughter and Corporate Homicide Act 2007.
10. Waiver of subrogation in favour of the *Client* in accordance with Clause 83.4(c)

**2.10 Principal exclusions**

1. War and related perils.
2. Nuclear/radio active risks.
3. Liability for death, illness, disease or bodily injury sustained by employees of the insured arising out of the course of their employment.
4. Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.
5. Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
6. Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to all property belonging to the *Client* which is in the care, custody and control of the Insured.

7. Events more properly covered under a professional indemnity insurance policy.
8. Liability arising from the ownership, possession or use of any aircraft or marine vessels.
9. Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.
10. Losses indemnified under the Construction "All Risks" Insurance policy in paragraph 1 of this Clause 83.14 Insurance Table.
11. Liability arising from toxic mould.
12. Liability arising from asbestos.
13. Cyber risks.

**3. Not used**

**4. Airside Third Party Liability Insurance**

4.1 Insureds

*Contractor*

4.2 Interest

Legal liability the Insured (in paragraph 4.1 above) may incur for bodily injury to property damage arising from the performance of this contract airside, including legal liability for damage to aircraft.

4.3 Limit of indemnity

Not less than combined single limit for bodily injury/property damage of £50,000,000 any one occurrence the number of occurrences being unlimited in any annual policy period.

4.4 Maximum deductible threshold

Not to exceed nil with £50,000 cover by Contractor captive insurance arrangements

4.5 Territorial limits

Anywhere in the United Kingdom.

4.6 Jurisdiction relative to policy jurisdiction

Courts of England and Wales

4.7 Choice of law

This insurance shall be governed in accordance with the laws of England and Wales.

4.8 Period of insurance

From the date of this contract for the duration of this contract and renewable on an annual basis unless agreed otherwise by the Parties.

4.9 Cover features and extensions

1. Extensions as are generally applied as a matter of current aviation insurance market practice in the relevant insurance market from time to time.

4.10 Principal Exclusions

1. Radioactive contamination as per prevailing standard market exclusion.
2. Claims caused by any hostile detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
3. Noise, pollution, contamination etc as per prevailing standard market exclusion (other than pollution or contamination of a product supplied by the Insured).
4. Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment
5. Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.
6. Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
7. Liability arising from damage caused by any ships, vessels, craft or aircraft owned, used or operated by the Insured.

**5. Airside Motor Third Party Liability Insurance**

5.1 Insureds

*Contractor*

5.2 Interest

Legal liability of the Insured (in paragraph 5.1 above) to pay damages (including claimants costs and expenses) in respect of

1. any accident, injury, loss or liability, due to the presence of an Insured's vehicle in any premises or area to which any aircraft has access.
2. any accident, loss or damage to any aircraft or any liability or injury arising from such damage.
3. any consequential loss in connection with any aircraft, airport or airfield operation arising from the presence of the Insured's vehicle in any area to which any aircraft has access.

5.3 Limit of indemnity

Not less than unlimited other than in respect of damage occasioned to third party property where it shall be not less than £50,000,000 any one occurrence the number of occurrences being unlimited in any annual policy period.

5.4 Maximum deductible threshold

Not to exceed nil with £50,000 cover by Contractor captive insurance arrangements

5.5 Situation

*The Affected Property*

5.6 Period of insurance

From the date of this contract for the duration of this contract and renewable on an annual basis unless agreed otherwise by the Parties.

5.7 Cover features and extensions

1. Cross liability clause.
2. Personal injury to include false imprisonment, wrongful arrest, eviction or any like cause.
3. Obstruction, trespass, nuisance, loss of amenities, interference with easements or any like cause.
4. Indemnity to principals clause in accordance with Clause 83.4(d).

5.8 Principal exclusions

1. War and related perils.
2. Nuclear/radioactive risks.
3. Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment.

4. Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
5. Liability arising from damage caused by any ships, vessels, craft or aircraft owned, used or operated by the Insured.
6. Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

**6. Policies to be taken out as required by United Kingdom law.**

Parties to this contract are required to meet their statutory insurance obligations in full. Insurances required to comply with all statutory requirements including, but not limited to, Employers' Liability Insurance and Motor Third Party Liability Insurance.

The Limit of Indemnity for the Employers' Liability Insurance shall not be less than ten million pounds (£10,000,000) any one occurrence inclusive of costs, the number of occurrences being unlimited in any annual period of insurance or such greater amount as is required by the Applicable Law for the duration of this contract or such greater period as is required by law.

Compulsory insurances to contain an indemnity to principals clause in accordance with Clause 84.4(d) in respect of claims made against the *Client* arising out of the performance of the *Contractor* of his duties under this contract.

The insurance shall be maintained from the date of this contract throughout the period of this contract.

## SECONDARY OPTION CLAUSES

### OPTION X11: TERMINATION BY THE *CLIENT* (NOT TO BE USED WITH OPTION X19)

***At the end of Clause X11.2 insert***

"provided always that the *Contractor* has mitigated its costs and losses arising as a result of such termination."

### OPTION X18: LIMITATION OF LIABILITY

***Replace clause X18.3 with:***

**X18.3** For any one event, the liability of the *Contractor* to the *Client* for loss of or damage to the *Client's* property and third party property damage is limited to the amount in the Contract Data.

***Replace clause X18.5 with:***

**X18.5** The *Contractor's* total liability to the *Client* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to the

amount stated In the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the *law of the contract*.

The excluded matters are amounts payable by the *Contractor* as stated in this contract for

- a) loss of or damage to the *Client's* property
- b) third party property damage;
- c) Death and/or personal injury;
- d) Wilful default and wilful abandonment;
- e) Fraudulent misrepresentation;
- f) Gross misconduct; and
- g) Criminal acts and/or sanctions and/or prohibited acts.

## OPTION Y

### Y (UK) 2: THE HOUSING, GRANTS, CONSTRUCTION AND REGENERATION ACT 1996

**Delete Y2.2 and 2.3 and replace as follows:**

#### **Y2.2 Dates for payment**

The date on which a payment becomes due is ten (10) days after the assessment date (the due date).

The final date for payment is the later of (1) twenty one (21) days after the *Service Manager's* certificate (or in the event that such certificate is not issued by the *Service Manager*, twenty one days after the date on which the *Service Manager* was required to have issued such certificate) and (2) ten (10) days after receipt by the *Client* of a CP&F invoice from the *Contractor* in accordance with clause 51.2 (the final date for payment).

The *Service Manager's* certificate is the notice of payment to the *Contractor* specifying the amount due at the payment due date (the notified sum) and stating the basis on which the amount was calculated.

In relation to giving a payment notice it is immaterial that the amount then considered to be due may be zero.

#### **Notice of intention to pay less Y2.3**

If either Party intends to pay less than the notified sum, he notifies the other Party not later than fifteen (15) days (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under this contract unless he has notified his intention to pay less than the notified sum as required by this contract.

A pay less notice given by the *Client* under this clause Y2.3 may be given on its behalf by the *Service Manager* or any other person who the *Client* notifies the *Contractor* as being authorised to do so.”

**The following additional Z clauses shall also be included:**

**Z2 Waiver**

Z2.1 Failure by the *Client* (or the *Service Manager*) at any time to enforce any provision of this contract or to require performance by the *Contractor* of any of the provisions of the contract shall not be construed as a waiver of any such provision and shall not affect the validity of the contract or any part of it or create any estoppel or in any other way affect the right of the *Client* to enforce any provision in accordance with its terms.

Z2.2 No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

**Z3 Severability**

Z3 If any provision of this contract is held to be invalid, illegal or unenforceable to any extent then:

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

**Z4 Third Party Rights**

Z4 No right is granted to any person who is not a Party to this contract to enforce any term of this contract in his own right and the Parties to this contract declare that they have no intention to grant any such right.

**Z5 Recovery of Sums Due**

Z5 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 *Client* and/or such sum may be recoverable by the *Client* from the *Contractor* as a debt.

**Z6 Audit**

Z6 In addition to any other rights under this contract, the *Client* and its agents may at any time audit the books and records being maintained by the *Contractor* whilst undertaking this contract, including those books

and records relating to any costs and expenses incurred by the *Contractor* or charged to the *Client* and including those books and records being maintained by the Subcontractors. The *Client* shall use reasonable endeavours to procure that 10 Working Days' prior notice is given of any such audit but shall not be held in breach of this provision where less notice or no notice is provided for an audit that is required by Applicable Law or Statutory Requirements.

- Z7 Contractor's Representatives at Government Establishments**
- Z7.1 The *Contractor* shall have no claim against the *Client* for any additional cost or delay occasioned by the closure for holidays of Government Establishments, where this is made known to it prior to entering into this contract.
- Z7.2 The *Contractor* shall, except as otherwise provided for in this contract, make good or, at the option of the *Client*, pay compensation for all damage occurring to government property, beyond fair wear and tear, which includes land and buildings, occasioned by the *Contractor* or its Personnel, arising from its presence on a Government Establishment in connection with this contract.
- Z7.3 All property of the *Contractor* and its Personnel will be at the risk of the *Contractor* whilst it is on any Government Establishment, and the *Client* will accept no liability for any loss or damage howsoever occurring thereto or caused thereby, except as follows:
- a) where any such loss or damage was caused or contributed to by any act, neglect or default of any of the *Client's* Personnel then the *Client* will accept liability therefore to the extent to which such loss or damage is so caused or contributed to as aforesaid; and
  - b) where any property of the *Contractor* has been taken on charge by the *Client*, and a proper receipt has been given therefore, then the *Client* will be liable for any loss or damage occurring to that property while held on such charge as aforesaid, save to any extent such loss or damage is caused or contributed by any act neglect or default of the *Contractor* or any of the *Contractor's* Personnel.
- Z7.4 The *Contractor* will submit in writing to the *Client* for approval, initially and as necessary from time to time, a list of those of its Personnel who may need to enter a Government Establishment for the purpose of, or in connection with, work under this contract, giving such particulars as the *Client* may require, including full details of birthplace and parentage of any such Personnel who:
- a) were not born in the United Kingdom; or
  - b) if born in the United Kingdom, born of parents either or both of whom were not born in the United Kingdom.

The *Contractor* will provide its submissions under this clause Z7.4 in sufficient time prior to access by the relevant personnel being required to allow the *Client* to review and verify the information being provided and decide whether or not the requested access should be permitted (having regard to the level of clearance being sought and the extent and quality of the information being provided).

- Z7.5 The *Client* will issue passes for those Personnel who are approved by it in accordance with this clause Z7.5 herein for admission to a Government Establishment and Personnel will not be admitted unless in possession of such a pass. Passes will remain the property of the *Client* and will be surrendered on demand or on completion of the work.
- Z7.6 Notwithstanding the provisions of clauses Z7.4 and Z7.5 hereof if, in the opinion of the *Client*, there is misconduct by any of the *Contractor's* Personnel, or it will not be in the public interest for any person to be employed or engaged by the *Contractor*, the *Contractor* will remove such person without delay on being required to do so and will cause the work to be performed by such other person as may be necessary (provided always that any such removal or replacement of its Personnel will not constitute a Compensation Event and the cost of compliance with any instruction in relation to the same will be borne by the *Contractor*).
- Z7.7 The decision of the *Client* upon any matter arising under clauses Z7.4 to Z7.6 inclusive shall be final and conclusive and without any liability to the *Contractor*.
- Z7.8 The *Contractor* will 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 *Service Manager* in accordance with the Scope. 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).
- Z7.9 Where the *Contractor* enters a Government Establishment for the purpose of performing work under this contract (and without prejudice to the *Contractor's* obligations under the CDM Regulations):
- a) The *Contractor* will notify the *Service Manager* of:
    - i. any health and safety hazards associated with the work to be performed by the *Contractor's* Personnel;
    - ii. any foreseeable risks to the health and safety of all persons associated with such hazards; and
    - iii. any precautions to be taken by it as well as any precautions which, in its opinion, ought to be taken by the *Client*, in order to control such risks.
  - b) The *Client* will notify the *Contractor* of:

- i. any material health and safety hazards of which it is aware and which may be encountered by the *Contractor* or its Personnel on the Government Establishment and which a competent contractor could not be expected to have known about or have foreseen ; and
    - ii. any precautions (but without being responsible for the same) which, in its opinion, ought to be taken by the *Contractor*, in order to control such risks.
  - c) The *Contractor* will notify its Personnel of and, where appropriate, provide adequate instruction in relation to:
    - i. the hazards, risks and precautions notified by him to the *Client* under sub-clause Z7.9(a);
    - ii. the hazards, risks and precautions notified by the *Client* to the *Contractor* under sub-clause ZA.7.9(b); and
    - iii. the precautions which, in its opinion, ought to be taken by its Personnel in order to control those risks.
  - d) The *Contractor* will provide the *Service Manager* with:
    - i. copies of those sections of its own and, where appropriate, the *Contractor's* Personnel's safety policies which are relevant to the risks notified under sub-clause ZA.7.9(a);
    - ii. copies of any related risk assessments; and
    - iii. copies of any notifications and instructions issued by it to its Personnel under sub-clause Z7.9(c).
  - e) The *Client* will provide the *Contractor* with:
    - i. copies of those sections of its own safety policies which are relevant to the risks notified under sub-clause Z7.9(b);
    - ii. copies of any related risk assessments; and
    - iii. copies of any notifications and instructions issued by it to its employees similar to those called for from the *Contractor* under sub-clause Z7.9(c)
- and the *Contractor* shall comply with the safety policies provided by the *Contractor* and the *Client*.

Z7.10 The *Contractor* will Provide the Service in accordance with the *Client's* health and safety and sustainable development and environmental management requirements as detailed in the Scope. The *Contractor* will indemnify and keep the *Client* indemnified from and against any direct claims, actions, liabilities, losses, costs, expenses and damages arising as a result of the *Contractor's* negligence in complying with its obligations under clauses Z7.8 to Z7.10. The *Contractor* may be required to attend safety training at any Government Establishment, which may be arranged from time to time by the *Client*.

Z7.11 Prior to commencing the services the *Contractor* will provide the *Service Manager* with full details of all known hazardous materials and substances used or stored on the *Affected Property* and of any such materials which are not clearly labelled or appropriately stored, and will inform the *Service Manager* whether the *Affected Property* contains any toxic, hazardous or carcinogenic substances along with its procedures

for dealing with and carrying out the disposal of any hazardous or toxic waste.

Z7.12 The *Contractor* notifies the *Service Manager* of any health and safety hazards of which it is aware or ought reasonably to be aware, which may arise in connection with the performance of this contract. The *Contractor* will also draw these hazards to the attention of the *Client* and Others, any other persons engaged by the *Contractor* in the carrying out of the *works* at any *Affected Property*, or any other person who may be affected by these hazards.

Z7.13 The *Contractor* will procure that all Personnel will familiarise themselves with the emergency procedures laid down by the *Service Manager* and the *Contractor* and any other relevant Health and Safety policies and procedures adopted by the *Contractor* in accordance with the Scope.

Z7.14 The *Contractor* must and will procure that the Personnel at all times (1) comply with all legal requirements including but not limited to the "Duty of Care" provisions contained in part II of the Environmental Protection Act 1990 and any relevant regulations made under that Act (2) perform their duties in accordance with the Health and Safety Acts and (3) comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the conduct of personnel at the Government Establishment. Details of such rules, regulations and requirements shall be provided, on request, by the Head of Establishment concerned.

## **Z8 Health and Safety and the CDM Regulations**

Z8.1 The *Contractor* acts in accordance with the health and safety requirements stated in the Scope.

Z8.2 The *Contractor* shall appoint **Robertson Facilities Management Limited** as Principal Designer and as Principal Contractor as defined by and for the purposes of the CDM Regulations

Z8.3 The *Contractor* warrants that:

Z8.3.1 For the purposes of CDM, BDUK are the Client and Robertson Facilities Management Limited are the Principle Contractor and Principal Designer (as defined in the CDM Regulations) in relation to the project and hereby agree pursuant to Regulation 4(8) of the CDM Regulations that the Contractor shall be treated for the purposes of the CDM Regulations as the only 'client'. Accordingly, it shall perform all the functions and duties of the Client as defined and more particularly described in the CDM Regulations, and shall comply in full with its obligations under the CDM Regulations. Without prejudice to the foregoing the *Contractor* shall ensure that no act, omission, breach or default by or on behalf of the *Contractor* or those for whom it is responsible causes or contributes to any breach of the CDM Regulations by the Client; It shall procure that the Principal Contractor and Principal Designer perform all the functions and duties of a Principal

Contractor and Principal Designer as set out in the CDM Regulations and shall comply with their obligations under the CDM Regulations.

- Z8.3.2 It has, (and the Principal Designer and Principal Contractor have) at the Contract Date and shall continue to have, the skills, knowledge, experience and organisational capability to fulfil the above functions and duties for the works;
- Z8.3.3 It has allocated and will continue to allocate adequate resources to enable it to perform all the functions and duties of the Client under the CDM Regulations; and shall procure that the Principal Contractor and Principal Designer have allocated and shall procure that the Principal Contractor and Principal Designer have allocated and shall allocate adequate resources to enable them to perform the functions of Principal Designer and Principal Contractor under the CDM Regulations
- Z8.3.4 Before appointing any subcontractor to carry out or manage any work it will satisfy itself that such a subcontractor has the skills, knowledge, experience and organisational capability and has allocated adequate resources in terms of the CDM Regulations to do such work;
- Z8.3.5 It will provide such documents and other information as the Client may reasonably require in order to satisfy itself that the duties of the "Client" under the CDM Regulations are being satisfied; and shall ensure that the duties of the "Client" under the CDM Regulations are being discharged;
- Z8.3.6 It shall ensure that it has notified the Health and Safety Executive that as between the *Client* and the *Contractor* it has been agreed that the *Contractor* shall be the Client for the purposes of the CDM Regulations;
- Z8.3.7 It shall not commence any work on site until an adequate construction phase plan is in place, as required by the CDM Regulations; and
- Z8.3.8 It has or shall be deemed to have made all due allowance in the programming, planning and pricing of the services for compliance with this clause.

## **Z9 Nuisance**

- Z9.1 Without prejudice to clause 40 the *Contractor* undertakes at all times to protect the environment (both on and off the Affected Property) and to prevent any trespass, public or private nuisance (including any such nuisance caused by noxious fumes or dust, noisy working operations, vibration or the deposit of any material or debris on the public highway), trespass over adjoining property or the Affected Property, or other interference with the rights of any occupier or owner neighbouring or in the vicinity of the Affected Property or in the vicinity thereof or permitted accesses thereto and in each case any adjoining or neighbouring landowner, tenant or occupier or local authority or any public utility company or member of the public arising out of the carrying out of the *services* (whether by the *Contractor* or any of its Subcontractors) or of any obligation hereunder and shall not breach the condition of any

Necessary Consent or give rise to enforcement action or criminal proceedings by any relevant authority, and shall assist the *Client* in defending any action or proceedings which may be instituted in relation thereto. Without prejudice to its other obligations hereunder the *Contractor* shall take all reasonable safety and other measures to prevent damage or injury to any persons including the occupiers of adjoining or neighbouring property and members of the public.

Z9.2 Without prejudice to the *Contractor's* obligations under clause Z9.1 the *Contractor* shall ensure that there is no trespass on or over any adjoining or neighbouring property arising out of or in the course of or caused by the carrying out of the *services* or of any obligation pursuant to Section 4 (Defects). If the carrying out of the *services* or of any obligation pursuant to Section 4 (Defects) is likely to necessitate any interference with the rights of adjoining or neighbouring owners or occupiers or any party working on or at, owning, letting, financing, occupying or otherwise attending any neighbouring or adjacent sites, then the *Contractor* shall, at no cost to the *Client*, obtain the prior written agreement of such owners and/or occupiers or other parties thereto, and such agreement shall be subject to the approval of the *Client* before execution. The *Contractor* shall comply in every respect with any conditions contained in any such agreement.

Z9.3 The *Contractor* shall be responsible for and shall indemnify the *Client* from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the *Contractor* in performing his obligations under clause Z9.1 or Z9.2.

**Z11 Value Added Tax**

Z11.1 The Prices exclude any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the services by the *Contractor* to the *Client*.

Z11.2 If the *Contractor* is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of his business activities at the time of any supply, and the circumstances of any supply are such that the *Contractor* is liable to pay the tax due to HM Revenue and Customs (HMRC), the *Client* will pay to the *Contractor* in addition to any sum due under clause 50.3 or 50.4 (or any other sum due to the *Contractor*) a sum equal to the output VAT chargeable on the tax value of the works, and all other payments under this contract according to the law at the relevant tax point. In the event of any doubt about the applicability of the tax in such cases, the *Client* may require the *Contractor* to obtain and pass to the *Client* a formal ruling from HMRC.

- Z11.3 The *Contractor* is responsible for the determination of VAT liability. The *Contractor* is to consult his local VAT office in cases of doubt. The *Contractor* will notify the *Service Manager* of the *Client's* VAT liability under this contract, and any changes to it, when the liability is other than at the standard rate of VAT.
- Z11.4 Where the services come within the scope of UK VAT, but the *Contractor* is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the *Client* will be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the *services*.
- Z11.5 Where the *services* are deemed to be supplied to the *Client* 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 *Client* will pay to the *Contractor*, in addition to any sum due under clause 50.3 or 50.4 (and any other sum due to the *Contractor* under this contract), sum equal to the tax the *Contractor* is liable to pay to the tax authorities of the country in question in relation to *services*.
- Z11.6 For the avoidance of doubt, the *Client* will not be required to pay any sum in respect of the *Contractor's* input VAT (and/or similar EU and non-EU input taxes) in relation to the services supplied under this contract.
- Z12 Customs Duty Drawback – Not Used**
- Z13 Disclosure of Information**
- Z13.1.1 Subject to clauses Z13.1.4, and Z13.1.5, the *Contractor*:
- a) shall treat in confidence all Information it receives from the *Client* or the *Client's* Personnel;
  - b) shall not disclose any of that Information to any third party without the prior written consent of the *Client*, 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;
  - c) shall not use any of that Information otherwise than for the purpose of this contract; and
  - d) 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.
- Z13.1.2 The *Contractor* shall ensure that all Information disclosed to the *Contractor* by or on behalf of the *Client* under or in connection with this contract:
- a) is disclosed to the *Contractor's* Personnel only to the extent necessary for the performance of this contract; and
  - b) is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing services or having work performed for the *Client* under this contract or any Subcontract under it.

- Z13.1.3 The *Contractor* shall ensure that its Personnel are aware of the *Contractor's* arrangements for discharging the obligations at clauses Z13.1.1 and Z13.1.2 before they receive Information and shall take such steps as may be reasonably practical to enforce such arrangements.
- Z13.1.4 Clause Z13.1 shall not apply to any Information to the extent that the *Contractor*:
- a) has the right to use or disclose the Information in accordance with other conditions of this contract; or
  - b) 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 itself 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.

Z13.1.5 The *Contractor* shall not be in breach of this clause 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.

Z13.1.6 Nothing in this clause shall affect the Parties' obligations of confidentiality where information is disclosed orally in confidence.

Z13.1.7 The *Contractor* will take every precaution to ensure that information about this contract arising from or connected with this contract, is divulged only to the minimum number of employees and then only to the extent essential to each person's action in carrying out this contract. The *Contractor* will not in any circumstances allow access by employees to general information not relating to the Affected Property with which such employee is personally concerned. No information regarding the services being provided under this contract or facilities to photograph or film will be given or permitted by the *Contractor* except with prior written permission of the *Client*.

Z13.1.8 The *Contractor* will not communicate with representatives of the general and technical press, radio, television or other communications media unless specifically granted permission to do so in writing by the *Client*.

## **Z14 Data Protection**

Z14.1 The *Contractor* will duly observe all obligations under DEFCON 532b which arise in connection with this contract.

Z14.1.1 In particular, the *Contractor* will:

- a) only carry out processing of personal data to the extent required under this contract;

- b) implement appropriate technical and organisational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access;
- c) take reasonable steps to ensure the reliability of staff who have access to personal data; and
- d) obtain the required consents in order to comply with the *Client's* commercial management procedure, including full disclosure of rates and the build up of such rates.

Z14.2. The *Contractor* will fully indemnify the *Client*, his servants or agents against the costs of dealing with any claims made in respect of information subject to the Data Protection Act 1998 and GDPR which claims would not have arisen but for some act, omission or negligence on the part of the *Contractor*, his servants, agents, suppliers or any other person under his control.

## **Z15 Corrupt Gifts and Payments of Commission**

Z15.1 The *Contractor* shall not do, and warrants that in entering into this contract it has not done any of the following (hereafter referred to as "Prohibited Acts"):

- a) offer, promise, give or agree to give to any Personnel of the *Client* or any OGD, any gift or financial advantage of any kind as an inducement or reward
  - i. for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other contract with the *Client*, or any OGD; or
  - ii. for showing or not showing favour or disfavour to any person in relation to this or any other contract with the *Client*, or any OGD; or
- b) enter into this or any other contract with the *Client*, or any OGD, in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the contract is made 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 *Client*.

Z15.2 If the *Contractor* or its Personnel do any of the Prohibited Acts or commit any offence under the Prevention of Corruption Acts 1889 -1916 or under sub Sections 108-109 of the Anti-Terrorism, Crime and Security Act 2001 (for offences committed wholly or partly before 1 April 2011) or an offence under the Bribery Act 2010 with or without the knowledge or authority of the *Contractor* in relation to this contract or any other contract with the *Client*, or any OGD, the *Client* shall be entitled:

- a) to terminate this contract or any other contract entered into between the *Client* and the *Contractor* and recover from the *Contractor* the amount of any loss resulting from the termination;
- b) to recover from the *Contractor* the amount or value of any such gift, consideration or commission; and
- c) to recover from the *Contractor* any other loss sustained in consequence of any breach of this clause Z15.3, where this contract has not been terminated.

- Z15.3 In exercising its rights or remedies under this clause, the *Client* shall:
- a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the Prohibited Act;
  - b) 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 Subcontract where the Prohibited Act is that of a Subcontractor or anyone acting on its or their behalf;
    - ii. requiring the *Contractor* to procure the dismissal of an employee (whether its own or that of a Subcontractor or anyone acting on its behalf) where the Prohibited Act is that of such employee.

Z15.4 Recovery action taken against any Personnel of the *Client*, or any OGD shall be without prejudice to any recovery action taken against the *Contractor* pursuant to this clause

## **Z16 Conflicts of Interest**

Z16.1 The *Contractor* shall take appropriate steps to ensure that neither the *Contractor* nor its Personnel are placed in a position where, in the reasonable opinion of the *Client*:

- a) there is or may be an actual conflict or potential conflict, between the pecuniary or personal interests of the *Contractor* and the duties owed to the *Client* under the provisions of this contract; or
- b) the behaviour of the *Contractor* or its Personnel is not in the *Client's* best interests or might adversely affect the *Client's* reputation.

Z16.2 The *Contractor* shall as soon as reasonably practicable disclose to the *Client* full particulars of any behaviour or relationship which might give rise to an actual or potential conflict or otherwise breach Clause Z16.1.

Z16.3 The *Client* may terminate this contract by notice in writing and/or take such other steps it deems necessary where, in the reasonable opinion of the *Client*, there is or may be an actual conflict or potential conflict, between the financial or personal interests of the *Contractor* or its Personnel and the duties owed to the *Client* under the provisions of this contract or otherwise breach Clause Z16.1. The actions of the *Client* pursuant to this clause do not prejudice or affect any right of action or remedy which has accrued or will accrue to the *Client*.

Z16.4 The Parties agree that it would be a generally unacceptable conflict of interest for the same or an associated party to act both as *Service Manager* and as a significant member of the supply chain of the *Contractor* engaged on the same project or works.

## **Z17 Transparency**

Z17.1 Notwithstanding any other term of this contract (including clause Z13 (Disclosure of Information)) the *Contractor* understands that the *Client* may publish the Transparency Information to the general public. The

*Contractor* shall assist and co-operate with the *Client* to enable the *Client* to publish the Transparency Information.

Z17.2 Before publishing the Transparency Information to the general public in accordance with clause Z17.1 above the *Client* shall redact any information that would be exempt from disclosure if it was the subject of a request for information under the FOIA or the EIR, including the *Contractor's* Commercially Sensitive Information.

Z17.3 The *Client* may consult with the *Contractor* before redacting any information from the Transparency Information in accordance with clause Z17.2 above. 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 *Client* shall exercise its own discretion, subject always to the provisions of the FOIA or the EIR.

Z17.4 For the avoidance of doubt, nothing in this clause Z17 shall affect the *Contractor's* rights at law.

## **Z18 Security Measures**

Z18.1 The *Contractor* shall:

- (a) take all reasonable steps to ensure that all the *Contractor's* Personnel engaged on any of the services has notice that the Official Secrets Acts 1911-1989 applies to it and will continue so to apply after the completion or expiry of this contract; and
- (b) if directed by the *Client*, ensure that any of the *Contractor's* Personnel shall sign a statement acknowledging that, both during the term of this contract and after its expiry or termination, it is bound by the Official Secrets Acts 1911-1989 (and where applicable by any other legislation).

Z18.2 Unless it has the written authorisation of the *Client* to do otherwise, neither the *Contractor* nor its Personnel shall, either before or after the expiry 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:

- a) who is not a British citizen;
- b) who does not hold the appropriate authority for access to the protected matter;
- c) in respect of whom the *Client* has notified the *Contractor* in writing that the Secret Matter shall not be disclosed to or acquired by that person;
- d) who is not the *Contractor's* Personnel; or
- e) who is the *Contractor's* Personnel and has no need to know the information for the proper performance of the works.

Z18.3 Unless it has the written permission of the *Client* to do otherwise, the *Contractor* and its Personnel shall, both before and after the expiry or termination of this contract, take all reasonable steps to ensure that:

- a) no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of this contract; and
  - b) any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy Framework and upon request, is delivered up to the *Client* who shall be entitled to retain it.
- Z18.4 A decision of the *Client* on the question of whether the *Contractor* has taken or is taking reasonable steps as required by this clause, shall be final and conclusive.
- Z18.5 The *Contractor* shall:
- a) provide to the *Client*:
    - i. upon request, such records giving particulars of all its Personnel who have had at any time, access to any Secret Matter that is required to be kept in accordance with sub-clause Z18.3(b);
    - ii. upon request, such information as the *Client* may from time to time require so as to be satisfied that the *Contractor* and its Personnel are complying with the *Contractor's* obligations under this clause, 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 Personnel to comply with any obligations relating to Secret Matter arising under this clause immediately upon such failure becoming apparent; and
  - b) ensure that, for the purpose of checking the *Contractor's* compliance with the obligation in sub-clause Z18.3 (b), a representative of the *Client* 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 or the services and inspect any document or thing in any such premises, which is being used or made for the purposes of the services or this contract. Such representative shall be entitled to all such information as it may reasonably require.
- Z18.6 If at any time either before or after the completion or termination of this contract, the *Contractor* or any of its Personnel discovers or suspects that an unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the *Contractor* shall immediately inform the *Client* of the matter with full particulars thereof.
- Z18.7 If the *Contractor* proposes to make a Subcontract which will involve the disclosure of Secret Matter to the Subcontractor, the *Contractor* shall:
- a) submit for approval of the *Client* the name of the proposed Subcontractor, a statement of the work to be carried out and any other details known to the *Contractor* which the *Client* shall reasonably require;

- b) incorporate into the Subcontract, the terms of this clause Z18 and such secrecy and security obligations as the *Client* shall direct, with the following changes to terms; "this contract" shall mean the 'Subcontract', '*Client*' shall mean the '*Contractor*' and '*Contractor*' shall mean the 'Subcontractor'; and
- c) inform the *Client* immediately it becomes aware of any breach by the Subcontractor of any secrecy or security obligation and, if requested to do so by the *Client*, terminate the Subcontract.
- Z18.8 The *Client* shall be entitled to terminate this contract immediately if:
- a) the *Contractor* is in breach of any obligation under this clause; or
- b) the *Contractor* is in breach of any secrecy or security obligation imposed by any other contract with the *Client* or any OGD;
- where the *Client* considers the circumstances of the breach jeopardise the secrecy or security of the Secret Matter.
- Z18.9 The *Contractor* shall also be required to comply with the security clauses as set out in Appendix 2 (Security Clauses), and the relevant security clearances and site access requirements set out in the Scope and Site Information.
- Z19 Equality**
- Z19.1 The *Contractor* shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 (the "Equality Act") or any statutory modification or re-enactment thereof relating to discrimination in employment.
- Z19.2 Where in connection with this contract, the *Contractor* is required to carry out work on the *Client's* premises or alongside the *Client's* employees on any other premises in a manner which any third party might reasonably assume to be a role which is being undertaken by an employee of the *Client*, the *Contractor* shall comply with the reasonable directions of the *Client* in order to enable the *Client* to fulfil its duties under Section 149(1) of the Equality Act. Those directions shall include but not be limited to the directions set out in these clauses Z13-33
- Z19.3 The *Contractor* shall take all reasonable steps to procure the observance of the provisions of clauses Z19.1 and Z19.2 by the *Contractor's* Personnel engaged in relation to this contract or any other contract between the *Contractor* and the *Client*.
- Z19.4 If the *Contractor* becomes aware of any prosecution or proceedings, brought under the Equality Act, against the *Contractor* or its Personnel engaged in performance of this contract or any other contract between the *Contractor* and the *Client*, the *Contractor* shall immediately notify the *Client* at the address specified in the Contract Data. The *Contractor* shall not be required to so notify in breach of any duty of confidentiality between the *Contractor* and any of its employees.
- Z19.5 Notification by the *Contractor* of any information shall not prejudice any rights of the *Client* or the *Contractor* under this contract or any other contract between the *Contractor* and the *Client*.

Z19.6 The *Contractor* agrees to take reasonable efforts to reflect this clause Z19 in any Subcontract that it enters into to satisfy the requirements of the contract and to require its Subcontractors to reflect this condition in their sub-subcontracts that they enter into to satisfy the requirements of this contract.

**Z20 Publicity**

Z20.1 The *Contractor* may publicise the services and/or this contract only with the *Client's* written agreement.

Z20.2 The *Contractor* shall take all reasonable steps to ensure that its Personnel do not publicise the services and/or this contract other than in accordance with clause Z20.1.

**Z21 Fraud and Prevention of Corruption**

Z21.1 The *Contractor* shall provide the *Client* with its proposed fraud prevention manual within two (2) months of the Contract Date. The *Client* shall review the fraud prevention manual and advise the *Contractor* of any further requirements it considers should be incorporated in the fraud prevention manual. The Parties shall act reasonably to agree the fraud prevention manual as soon as reasonably practicable thereafter and the agreed fraud prevention manual is hereafter referred to as the Fraud Prevention Manual.

Z21.2 In addition to the requirements of clause Z15 (Corrupt Gifts and Payments of Commission), and this clause Z21, the *Contractor* shall comply with the requirements of the Fraud Prevention Manual and its annexes.

Z21.3 The *Contractor* shall produce and maintain a fraud risk register of potential Fraud and theft risks to this contract and show what controls it proposes to address the risks identified. This is to be reviewed and updated annually from the Contract Date.

Z21.4 The *Contractor* shall provide the Service Manager with a programme and details of Fraud Awareness Training which is to be provided to the *Contractor's* Personnel or any other persons under its control at regular intervals. Training is to clearly show what is expected from them to fulfil the Fraud prevention measures under this contract.

Z21.5 The *Contractor* warrants that in entering this contract it has not committed any Fraud and shall maintain a robust Fraud prevention and ethics policy which concurs with the *Client's* zero tolerance regime with regard to Fraud and theft and in accordance with the tender submission and all discussions relating to this contract and this contract.

Z21.6 The *Contractor* shall procure that its Subcontractors are under equivalent contractual obligations as are set out in this clause Z21 and shall take all practicable steps to prevent Fraud or the risk of Fraud arising and shall disclose the relevant provisions within the Subcontracts upon request by the *Client*.

Z21.7 The *Contractor* warrants that it has read, and that its Personnel shall comply with the detailed anti-fraud measures and recommendations set out within the Fraud Prevention Manual, the Fraud Prevention Requirements (annexed to the Fraud Prevention Manual), the Fraud,

Regularity and Propriety Code of Procurement Ethics (annexed to the Fraud Prevention Manual) and the *Client's* Policy on Fraud, Theft, Bribery, Corruption, Irregularity and Waste and upon entering into this contract shall circulate copies of the said manual and policies to each and every member of its Personnel at any time engaged in relation to this contract.

- Z21.8 The *Contractor* shall, in complying with the Fraud Prevention Manual, keep and maintain all relevant records, invoices, approvals, notes, minutes of meetings and all such other original documents as may be required to verify work carried out by the *Contractor* and its Subcontractors so that they may be provided to the *Client* upon request.
- Z21.9 The *Contractor* shall, in accordance with the Fraud Prevention Manual, carry out an internal audit on a period not greater than a six (6) monthly basis in respect of this contract. Where the *Contractor* or its Parent Company is a PLC, the audit committee of the *Contractor* or PLC Company shall manage and be responsible for such audit. Where the *Contractor* is a Joint Venture company, or a non-PLC, that company or Joint Venture Company shall set up an audit committee to manage and be responsible for such audit. The audit committee shall:
- a) report to the *Client* in respect of the standards achieved in the audit;
  - b) notify the *Client* of any Fraud identified in any internal or external audit; and
  - c) make recommendations to the *Client* as to what measures should be taken to improve Fraud prevention and forward an action plan to show recommendations are put in place and ensure that these are acted upon.
- Z21.10 Without prejudice to clause Z13 (Disclosure of Information) and clause Z18 (Security Measures), the *Contractor* shall immediately report to the *Client* any circumstances giving rise to Fraud within its own organisation, that of its Subcontractor or the *Client* or otherwise in relation to this contract and shall provide all such relevant information which may assist the *Client* in dealing with such report efficiently and effectively.
- Z21.11 The *Contractor* shall immediately report to the *Client* any act or omission, whether fraudulent, inadvertent or accidental which has resulted or could result in the *Client* being charged for work and/or services which have not been carried out.
- Z21.12 The *Client* shall be entitled to terminate this contract immediately in accordance with Section 9 in the event that the *Contractor*, any of its Subcontractors, any of its Personnel or any other party for whom it is responsible commits an act of Fraud or theft.
- Z21.13 The *Contractor* shall fully co-operate and comply with any investigations and enquiries initiated by the *Client*, the Defence Fraud Unit, the National Audit Office, the Police, or any other organisation identified by the *Client* and/or any organisation acting on behalf of them.
- Z21.14 The *Client* shall be entitled to set-off, deduct, abate or recover as a debt against the *Contractor* all monies and losses howsoever arising in

connection with or sustained as a consequence of Fraud including all associated investigation costs.

Z21.15 Any Fraud related actions under this clause Z21 may be brought by the *Client* or such other appropriate body by civil or criminal proceedings. Such proceedings shall be brought in the English courts unless the Parties otherwise agree.

## **Z22 Change of Control**

Z22.1 The *Contractor* shall as soon as practicable, and in any event by not less than thirty (30) Calendar Days' prior written Notice of any proposed or anticipated Change of Ownership, provide the *Client* with notice of such anticipated Change of Ownership. The *Contractor* shall, at the request of the *Client* at any time, confirm to the *Client* the details of the legal and beneficial ownership of its, its Parent Company's and its Subcontractor's shares and whether any arrangements for a Change in Ownership have been entered into.

Z22.2 In the event of a Change of Ownership of any shares of a Subcontractor and/or Parent Company which is listed on a Regulated Investment Exchange as defined in Section 285(1)(a) of the Financial Services and Markets Act 2000, the provisions of clause Z22 shall not apply.

Z22.3 Where the Change of Ownership is to an Unsuitable Third Party or where the *Contractor* is otherwise in breach of the provisions of this clause Z22, the *Client* may terminate this contract in accordance with Section 9 (Termination) at any time during the service period by giving fourteen (14) Calendar Days' notice in writing, and this contract shall terminate on the date falling fourteen (14) Calendar Days after the date on which the *Contractor* receives such notice.

## **Z23 Decoupling**

Z23.1 If the *Contractor* shall enter into any other contract with the *Client* or any OGD relating in any way to the subject matter of this contract or the Affected Property, then, no breach by the *Client* or OGD of that other contract nor any other act or omission nor any written or oral statement nor any representation whatsoever of or by the *Client* or OGD, its servants or agents or other contractors relating to or connected with any other contracts as aforesaid shall, regardless of any negligence on its part or their part:

- a) give the *Contractor* any right under this contract or to a Compensation Event under this contract or any other relief or remedy whatsoever against the *Client*, or
- b) affect, modify, reduce or extinguish either the obligations of the *Contractor* or the rights or remedies of the *Client* (including the right to liquidated damages under this contract); or
- c) be taken to amend, add to, delete or waive any term of this contract.

## **Z24 Freedom of Information Act**

Z24.1 The *Contractor* acknowledges that the Authority is subject to the requirements of the code of practice on government information, the FOIA and the EIR and assists and co-operates with the Authority to

enable the Authority to comply with its Information disclosure obligations.

- Z24.2 The *Contractor*:
- a) transfers to the Service Manager all Requests for Information that it receives as soon as practicable and in any event within one week of receiving a Request for Information;
  - b) provides the Service Manager with a copy of all Information in its possession, or power in the form that the Service Manager requires within seven Calendar Days (or such other period as the Service Manager may specify) of the Service Manager's request; and
  - c) provides all necessary assistance as reasonably requested by the Service Manager to enable the *Client* to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or regulation 5 of the EIR.
- Z24.3 The *Client* is responsible for determining in its absolute discretion whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, the FOIA or the EIR.
- Z24.4 The *Contractor* does not respond directly to a Request for Information unless expressly authorised to do so by the *Client*.
- Z24.5 The *Contractor* acknowledges that the *Client* may be obliged under the FOIA, or the EIR to disclose information concerning the *Contractor* or the service without consulting the *Contractor* or having taken their views into account. Where the *Client* does not consult with the *Contractor*, the *Client* takes reasonable steps, where appropriate, to give the *Contractor* advanced notice or draws the disclosure to the *Contractor's* attention after any such disclosure.
- Z24.6 The *Contractor* ensures that all Information is retained for disclosure in accordance with DEFFORM 539A (Commercially Sensitive Information).
- Z24.7 The *Contractor* acknowledges that the Commercially Sensitive Information listed in DEFFORM 539A (Commercially Sensitive Information) is of indicative value only and that the *Client* may be obliged to disclose Information, with or without consultation.
- Z25 Amendments to Contract**
- Z25.1 Subject to clause 14.3, the terms and conditions of this Contract may not be amended except by the written agreement of the duly authorised representatives of the Parties. For the purposes of this Contract the *Client's* authorised representative is the Commercial Officer.
- Z25.2 The written agreement of the Parties will be obtained only by a serially numbered amendment letter being issued to the *Contractor* by the *Client*. The amendment will come into force only when the *Contractor* has despatched to the *Client* on a DEFFORM 10B an unqualified acceptance of the *Client's* offer.

Z25.3 Subject to clause 14.3, any purported amendment to the terms and conditions of this Contract which does not satisfy the terms of this Condition will be of no effect.

Z25.4 If the scope of the services are reduced the *Client* shall be free to appoint another contractor to carry out any part of the services that has been so removed without penalty and the *Contractor* shall have no claim for loss of profit, loss of opportunity or otherwise.

**Z26 Negative Covenants.**

Z26.1 Unless the *Contractor* shall have obtained the prior written consent of the *Client*, the *Contractor* shall not (or, to the extent the same is within his control, shall not permit any person to):

- a) Create, incur, assume or permit to exist any lien upon the Affected Property or any other Affected Property or any part thereof, or upon any property of the *Client*;
- b) Sell, lease, assign, transfer or otherwise dispose of any of the *Client's* property (including all property owned, hired or used by the *Client*);
- c) Cause the *Client* to be, or to become, responsible or liable for obligations of any other person;
- d) Settle or compromise any action or claim or waive any rights or institute any proceedings, suits or litigation for or on behalf of the *Client*.

**Z27 Intellectual Property Rights of Third Parties**

Z27.1 The *Contractor* warrants that the Intellectual Property (IP) Materials are either its own original works, or do not infringe the Intellectual Property Rights of any third person or it has the right to grant a licence in relation to the Intellectual Property (IP) Materials and the *Contractor* shall indemnify the *Client* in respect to all costs, claims, demands, losses, damages, proceedings, expenses and other liabilities arising out of any infringement of any such Intellectual Property Rights.

Z27.2 The *Client* notifies the *Contractor* in writing of any claim or demand brought against the *Client* for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the *Contractor*.

Z27.3 The *Contractor* at its own expense conducts all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the *Contractor*, provided always that the *Contractor*:

- a) consults the *Client* on all substantive issues which arise during the conduct of such litigation and negotiations;
- b) takes due and proper account of the interests of the *Client*; and
- c) does not settle or compromise any claim without the *Client's* prior written consent (not to be unreasonably withheld or delayed).

Z27.4 The *Client* at the *Contractor's* request affords to the *Contractor* all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the *Client* or the *Contractor* by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the *Contractor's* obligations under this contract and the *Contractor* indemnifies the *Client* for all reasonable costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so.

Z27.5 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the *Contractor* is made in connection with this contract or in the reasonable opinion of the *Contractor* is likely to be made, the *Contractor* notifies the *Client* as soon as reasonably practicable and, at its own expense and subject to the consent of the *Client* (not to be unreasonably withheld or delayed), uses its best endeavours to:

- a) modify any services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, in order to avoid the infringement or the alleged infringement, provided that the provisions herein apply mutatis mutandis to such modified services or to the substitute works; or
- b) procure a licence to use and provide any part of the services which is the subject of the alleged infringement, on similar terms to the licence granted under clause 29.2 of this contract;

and in the event that the *Contractor* is unable to comply with these requirements within twenty-eight (28) Calendar Days of receipt of the *Contractor's* notification the *Client* may terminate this contract by written notice.

## **Z28 Access and Facilities Provided by the Contractor**

Z28.1 The *Contractor's* progress and quality standards in carrying out the services under the contract will be monitored by the *Client*. The *Contractor* will provide to the Service Manager all reasonable access to his premises for these purposes.

Z28.2 The *Contractor* will provide, at no additional cost to the *Client*, such accommodation and facilities for representatives of the *Client* as the *Client* may reasonably require. All accommodation provided will be adequately furnished, lit, heated and ventilated and will include suitable cloakroom and communication facilities.

Z28.3 As far as is reasonably practical the *Contractor* will ensure that the provisions in clauses Z28.1 and Z28.2 are included in his Subcontracts. Access to such Subcontractor's premises will be arranged by the *Client* through the *Contractor*.

## **Z29 Retention and Supply of Records and Data**

Z29.1 Subject to clause Z13 (Disclosure of Information), the *Contractor* will permit all Contract Records to be examined and if necessary copied, by or on behalf of the *Client* or will provide copies to the *Client* at the *Client's* reasonable cost.

Z29.2 Unless the Scope specifies otherwise the Contract Records will be retained for a period of at least twelve (12) years after completion of the services provided always that notwithstanding the generality of this clause Z29.2 all Contract Records executed under seal or expressed to be executed as deeds will be retained by the *Contractor* for a minimum period of twelve (12) years following completion of the works.

Z29.3 The *Client* will be entitled at any time to make copies of Contract Records supplied under this clause, as the *Client* may think fit and to use such Contract Records (or copies of them) in any UK Government Department.

Z29.4 Copies will be maintained by the *Contractor* in such media and formats as the *Client* may agree and such copies shall be "Control Copies". Control Copies will not be altered by the *Contractor* in any way which changes the build standard except as authorised in writing by the *Client*. Control Copies will be deemed to be the Property of the *Client*, and the *Client* may take possession of any or all Control Copies notwithstanding any administration, receivership, winding-up or liquidation of the *Contractor* or any transfer of its assets to any third party.

### **Z30 Environment and Carbon Management**

Z30.1 The *Contractor* will use all reasonable endeavours to improve the environmental efficiency of the carrying out of the services and at all times demonstrate to the *Client* a commitment to compliance with environment legislation in force from time to time.

Z30.2 In particular the *Contractor* will where possible use energy efficient vehicles, reduce, reuse and recycle waste generated, use energy for buildings and equipment in an efficient manner, and use and reuse water and other resources in an efficient manner.

### **Z31 Contractor's Warranties**

Z31.1 The *Contractor* hereby represents and warrants for the benefit of the *Client* that:

- a) he has sufficient information about the *Client* and the services and that he has made all appropriate and necessary enquiries to enable him to Provide the Services in accordance with this contract;
- b) he has all the resources, including financial, technical and human resources, as are required to Provide the Services in accordance with this contract;
- c) The *Contractor* is a company validly existing and is authorised to conduct its business under the laws of England. The *Contractor* has the power and authority (including, where its procedures so require, the consent of its holding company) to enter into this contract, and to perform his obligations hereunder;
- d) The *Contractor* shall immediately notify the *Client* if it suffers any of the insolvency events listed in clause 91.1 and/or if any claim, litigation, adjudication, arbitration or administrative proceeding is in progress or pending or threatened against him or any of his

assets or any party which has given the *Client* a guarantee or indemnity in respect of the *Contractor's* obligations and liabilities under the Contract which will or might have a materially adverse effect on the ability of the *Contractor* or guarantor to perform his obligations under this contract or guarantee, as appropriate;

- e) The *Contractor* has and will maintain the necessary training, experience and capability to perform all of his obligations under this contract;
- f) The *Contractor* based his tender on his own inspection and own independent verification of any information made available to him by the *Client* with the Scope. The *Contractor* acknowledges that no entitlements to Compensation Events nor excusal from any obligation or liability under this contract on the basis that the *Contractor* has failed to carry out his own due diligence on all aspects of the documents or has misinterpreted or misunderstood any fact relating to the Scope, Site Information or otherwise to the contract or the works;
- g) The *Contractor* shall immediately notify the *Client* if there is any change in its Subcontractors or any material breach of Subcontract or any event of insolvency of the kind listed in R1 to R6 in relation to the Subcontractor;
- h) The *Contractor* shall immediately notify the Service Manager of any change in his credit rating (for example, Dun & Bradstreet (D&B), Moody's, Standard & Poor (S&P) or Fitch IBCA) from that existing at the time of contract award. Notification by the *Contractor* of such information shall not prejudice any rights of the *Client* or the *Contractor* under this contract and
- i) this contract is executed by a duly authorised representative of the *Contractor*.

## **Z32 Occasion Of Tax Non-Compliance (OOTNC)**

Z32.1 The *Contractor* represents and warrants that at the date this contract came into effect, it has notified the *Client* in writing of any OOTNC or any litigation that it is involved in that is in connection with any OOTNC.

Z32.2 If, at any point during the duration of this contract an OOTNC occurs, the *Contractor* shall:

- a) Notify the *Client* in writing of such fact within 20 Working Days of its occurrence; and
- b) Promptly provide to the *Client*
  - (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 *Client* may reasonably require.

- Z32.3 For the avoidance of doubt, the obligation at clause Z32.2 also applies to OOTNC in non-UK jurisdictions. If the OOTNC occurred in non-UK jurisdictions, the notification must be accompanied by a full explanation of the OOTNC and any relevant tax laws and administrative provisions so the *Client* can understand the nature and seriousness of the OOTNC.
- Z32.4 The *Client* shall be entitled to terminate this contract in the event that:
- a) the warranty given by the *Contractor* pursuant to clause Z32.1 is materially untrue; or
  - b) the *Contractor* commits a material breach of its obligation to notify the Authority of any OOTNC as required by clause Z32.2;
  - c) the *Contractor* fails to provide details of proposed mitigating factors which, in the reasonable opinion of the *Client*, are acceptable.
- Z32.5 The *Client* shall be entitled to set-off, deduct, abate or recover as a debt against the *Contractor* all monies and losses howsoever arising in connection with or sustained as a consequence of any breach of this clause Z32.
- Z32.6 In exercising its rights or remedies under clause Z32 the *Client* shall:
- (a) 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
  - (b) without prejudice to clause Z32.5 seriously consider, where appropriate, action other than termination of this contract to deal with the failure by the *Contractor* to comply with this clause Z32.
- Z33 Cyber Risk**
- Z33.1 The *Client* shall
- (a) 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
  - (b) notify the *Contractor* as soon as reasonably practicable where the *Client* reassesses the Cyber Risk Level relating to this contract.
- Z33.2 The *Contractor* shall, and shall procure that its Subcontractors shall:
- (a) comply with DEFSTAN 05-138;
  - (b) complete the CSM Risk Assessment Process in accordance with the *Client's* instructions, ensuring that any change in the Cyber Risk Level is notified to any affected Subcontractor, and complete a further CSM Risk Assessment or CSM Supplier

Assurance Questionnaire where a change is proposed to the *Contractor's* supply chain which has or may have an impact on the Cyber Risk Level of this contract or on receipt of any reasonable request by the *Client*;

- (c) carry out the CSM Supplier Assurance Questionnaire no less than once in each year of this contract commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire;
- (d) having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge its obligations under this clause Z33 in accordance with Good Industry Practice provided always that where there is a conflict between the *Contractor's* obligations under Z33.2(a) above and this Z33.2(d) the *Contractor* shall notify the *Client* in accordance with the notification provisions in DEFSTAN 05-138 as soon as it becomes aware of the conflict and the *Client* shall determine which standard or measure shall take precedence;
- (e) comply with all Cyber Security Instructions notified to it by the *Client* as soon as reasonably practicable;
- (f) notify the JSyCC WARP in accordance with ISN 2014/02 as amended or updated from time to time and the *Contractor's* NSA/DSA, and in the case of a Subcontractor 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;
- (g) in coordination with its NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the *Client* 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; and
- (h) consent to the *Client* 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 Subcontractor as appropriate; and
- (i) include provisions equivalent to clause Z33.6.(a) in all Subcontracts imposing provisions equivalent to this clause Z33.2 (the "equivalent provisions") and, where a Subcontractor breaches terms implementing this clause in a Subcontract, the *Contractor* shall, and shall procure that its Subcontractors shall,

in exercising their rights or remedies under the relevant Subcontract:

- (i) notify the *Client* of any such breach and consult with the *Client* regarding any remedial or other measures which are proposed as a consequence of such breach, taking the *Client's* views into consideration; and
- (ii) have regard to the equivalent provisions.

PROVIDED ALWAYS THAT where the *Contractor* has notified the *Client* that it or one or more of its Subcontractors cannot comply with clause Z33.2.(a) to (i) above the *Client* and *Contractor* will seek to agree a Cyber Security Implementation Plan and where the *Client* has agreed a Cyber Security Implementation Plan with the *Contractor*, the *Contractor* shall, and shall procure that its Subcontractors shall, comply with such Cyber Security Implementation Plan until implementation is agreed to have been achieved whereupon clause Z33.2.(a) to (i) above shall apply in full. In the event that a Cyber Security Implementation Plan cannot be agreed the cyber provisions of DEFCON 530 or any agreed alternative dispute resolution procedure shall apply.

- Z33.3
- (a) The *Client* agrees that the *Contractor* shall be entitled to rely upon the self-certification by a Subcontractor of its compliance with its obligations pursuant to Clause Z33.2. In the event that a Subcontractor is found to be in breach of its obligations in Clause Z33.2 and where the *Contractor* has relied upon the Subcontractor's self-certification, the *Contractor* shall not be held to be in breach of this clause Z33.
  - (b) Where the *Contractor* becomes aware that a Subcontractor is not complying with its obligations, the *Contractor* shall notify the *Client* and provide full details of the Subcontractor's non-compliance as soon as reasonably practicable and shall consult with the *Client* 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 Subcontract having regard to Clause Z33.2 (i).
  - (c) Having regard to the *Client's* views, the *Contractor* shall take all reasonable measures to address any non-compliance of a Subcontractor in accordance with the reasonable timescales required by the *Client*. Where the *Contractor* fails to do so, this shall amount to a breach of this Clause Z33 and the provisions of Clause Z33.6 (b) or Z33.6 (c) as appropriate shall apply.
  - (d) The *Contractor* shall, and shall procure that its Subcontractors shall, include provisions equivalent to this Clause Z33.3 in all Subcontracts which flow down the obligations set out in Clause Z33.2 of this contract.
- Z33.4
- (a) The *Contractor* shall keep and maintain, and shall ensure that any Subcontractor shall keep and maintain, until 12 years after termination or expiry of this contract, or as long a period as may

be agreed between the Parties, full and accurate records including 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 DEFSTAN 05-138 and this Clause Z33, 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 Subcontractor.
- (b) The *Contractor* shall, and shall ensure that any Subcontractor shall on request provide the *Client*, the *Client's* representatives and/or the *Contractor's* NSA/DSA such access to those records as may be required in connection with this contract.
- Z33.5 (a) Except where an audit is imposed on the *Client* by a regulatory body or there is a Cyber Security Incident in which case the *Contractor* agrees, and shall procure that its Subcontractors agree, that the *Client* and its representatives, in coordination with the *Contractor's* NSA/DSA or the NSA/DSA on behalf of the *Client*, may conduct such audits as it considers in its absolute opinion necessary, the *Client*, its representatives and/or the *Contractor's* NSA/DSA may, not more than twice in any calendar year and for a period of 12 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 Subcontractor's compliance with its obligations under this Clause Z33; 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 Z33.5 (a) (i) and Z33.5 (a)(ii) above.
- (b) The *Client* shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the *Contractor* and/or Subcontractor or delay the provision of the Contractor Deliverables and supplier information received by the *Client* in connection with the audit shall be treated as confidential information.
- (c) The *Contractor* shall, and shall ensure that any Subcontractor shall on demand provide the *Client* and any relevant regulatory body, including the *Contractor's* NSA/DSA, (and/or their agents or representatives), together "the Auditors", with all reasonable

co-operation and assistance in relation to each audit, including but not limited to:

- (i) all information requested by the *Client* within the permitted scope of the audit;
  - (ii) reasonable access to the Site (and any premises from which Contractor Deliverables are provided in connection with this contract or from which the *Contractor* or any relevant Subcontractor 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 Subcontractor generates, processes, stores or transmits MOD Identifiable Information in relation to this contract) controlled by the *Contractor* or any Associated Company and any Subcontractor and to any equipment used (whether exclusively or non-exclusively) in the performance of this contract and, where such sites and/or equipment are outwith the control of the *Contractor*, shall secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and
  - (iii) access to any relevant staff.
- (d) The *Client* shall endeavour to (but is not obliged to) provide at least 15 Calendar Days notice of its intention to conduct an audit.
- (e) The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause Z33, unless the audit identifies a material breach of the terms of this Clause Z33 by the *Contractor* and/or Subcontractor in which case the *Contractor* shall reimburse the *Client* for all the *Client's* reasonable costs incurred in the course of the audit
- Z33.6 (a) In exercising its rights or remedies under this Clause Z33, the *Client* 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.
- (b) Where the Cyber Risk Level of this contract is assessed to be a moderate or high, and the *Contractor* breaches the terms of this Clause Z33, the *Client* shall be entitled:
- (i) to terminate this contract or the engagement of the *Contractor* under this contract (whether in whole or in part) and to claim damages as though such breach is a material breach; and

- (ii) where this contract or the engagement of the *Contractor* under this contract has not been terminated, to recover from the *Contractor* any other loss sustained in consequence of any breach of this Clause Z33, subject to any provision which is agreed elsewhere in this contract.
  - (c) 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 Z33, the *Client* shall be entitled:
    - (i) to recover from the *Contractor* the amount of any loss sustained in consequence of any breach of this Clause Z33, subject to any provision which is agreed elsewhere in this contract; and
    - (ii) where the *Contractor* does not comply with any reasonable instructions issued by the *Client* or the *Contractor's* NSA/DSA within the time period specified to remedy such breach or prevent further breaches, the *Client* shall be entitled to terminate this contract (whether in whole or in part) and to claim damages in accordance with Clause Z33.6 (b) (ii) as though such breach is a material breach.
  - (d) Where the *Contractor* commits an act of fraud, negligence or wilful misconduct in respect of its obligations under this Condition the *Client* shall be entitled to terminate this Contract (whether in whole or in part) and to claim damages as though such breach is a material breach.
- Z33.7
- (a) On termination or expiry of this Contract the provisions of this Condition excepting Z33.2 (b) and Z33.2 (c) above shall continue in force so long as the *Contractor* and/or and Subcontractor holds any MOD Identifiable Information relating to this contract.
  - (b) Termination or expiry of this contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Clause Z33 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.
  - (c) The *Contractor* agrees that the *Client* has absolute discretion to determine changes to DEFSTAN 05-138 and/or the Cyber Risk Level. In the event that there is such a change to DEFSTAN 05-138 or the Cyber Risk Level, then this shall be deemed to be an additional Compensation Event under clause 60.1 (18) and either party may notify the other of the same 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 this contract and reasonable in all the circumstances.
  - (d) The *Contractor* shall not recover any costs and/or other losses under or in connection with this Clause Z33 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 *Client* or with other bodies.

- Z34 The *Contractor* shall deliver to the *Client* collateral warranty agreements in favour of the *Client* and if requested by the *Client*, each Interested Party (as defined in the Infrastructure Contract) from the Subcontractor that is responsible for the *services* within fourteen (14) calendar days of the start of the Service Period. The *Contractor* shall also deliver to the *Client* a copy of the sub-contract between the *Contractor* and the subcontractor duly executed as a deed and in terms consistent with the terms of this contract and otherwise as approved by the *Client* (acting reasonably).

## Appendix 1

### SECURITY CLAUSES

#### **Security Grading**

1. The *Client* shall issue a Security Aspects Letter which shall define the SECRET MATTER that is furnished, or which is to be developed, under this contract. The *Contractor* shall mark all SECRET MATTER which he or she originates or copies during the contract with the equivalent national grading.

#### **Protection of SECRET MATTER**

2. SECRET MATTER shall be protected in a manner to promote discretion in order to avoid unauthorised access. The *Contractor* shall take every effort to prevent the loss or compromise of the information or deliberate or opportunist attack.
3. Disclosure of SECRET MATTER shall be strictly in accordance with the "need to know" principle. Except with the written consent of the *Client*, the *Contractor* shall not disclose the contract or any provision thereof to any person other than a person directly employed by the *Contractor* or subcontractor, or Service Provider.
4. Any samples, patterns, specifications, plans, drawings or any other documents issued by or on behalf of the *Client* for the purposes of the contract remain the property of the *Client* and must be returned on completion of the contract or, if directed by the *Client*, destroyed in accordance with paragraph 21 below (Destruction).
5. When not in use SECRET MATTER shall be stored under lock and key.

#### **Access**

6. Access shall be confined to those individuals who have a "need-to-know" and whose access is essential for the purpose of his or her duties.
7. The *Contractor* shall ensure that all individuals having access to SECRET MATTER meet legal requirements in respect of immigration and the right to work in the UK and have undergone basic recruitment checks. *Contractors* shall apply the requirements of HMG Baseline Personnel Security Standard (BPSS) for all individuals having access to SECRET MATTER. Further details and the full requirements of the BPSS can be found at the Government website at <https://www.gov.uk/government/publications/security-policy-framework>

#### **Transmission of SECRET MATTER**

8. SECRET MATTER shall be transmitted, both within and outside company premises in such a way as to make sure that no unauthorised person has access.
9. Advice on the transmission of SECRET MATTER abroad or any other general advice including the transmission of SECRET MATTER shall be sought from the *Client*.

#### **Use of Communications and IT Systems**

10. The detailed functions that must be provided by an IT system to satisfy the minimum requirements described below cannot be described here; it is for the implementers to identify possible means of attack and ensure that they are blocked.

11. As a general rule, any communication path between an unauthorised user and the data can be used to carry out an attack on the system or be used to compromise or exfiltrate data.

12. **[REDACTED]**

The accounting records shall have a facility to provide the System Manager with a hard copy of all or selected activity. There shall also be a facility for the records to be printed in an easily readable form. All security records are to be inaccessible to users without a need to know.

If the operating system is unable to provide this then the equipment shall be protected by physical means when not in use i.e. locked away or the hard drive removed and locked away.

g) Integrity & Availability. The following supporting measures shall be implemented:

(1) Provide general protection against normally foreseeable accidents/mishaps and known recurrent problems (e.g. viruses and power supply variations)

(2) Defined Business Contingency Plan

(3) Data backup with local storage

(4) Anti Virus Software (Implementation, with updates, of an acceptable industry standard Anti-virus software).

h) Logon Banners. Wherever possible, a “Logon Banner” shall be provided to summarise the requirements for access to a system which may be needed to institute legal action in case of any breach occurring.

(1) A suggested format for the text depending on national legal requirements could be:

(a) “Unauthorised access to this computer system may constitute a criminal offence”

i) Unattended Terminals. Users are to be automatically logged off the system if their terminals have been inactive for some predetermined period of time, or systems must activate a password protected screen saver after 15 minutes of inactivity, to prevent an attacker making use of an unattended terminal.

j) Internet Connections. Computer systems shall not be connected direct to the Internet unless protected by a firewall (a software based personal firewall is the minimum) which is acceptable to the *Client’s* Principal Security Advisor.

k) Disposal. Before IT storage media (e.g. disks) are disposed of, an erasure product shall be used to overwrite the data. This is a more thorough process than deletion of files, which does not remove the data.

## Laptops

13. Laptops holding any *Client* supplied information are to have, as a minimum, a FIPS 140-2 approved full disk encryption solution installed.
14. Unencrypted laptops not on a secure site<sup>2</sup> are to be recalled and only used or stored in an appropriately secure location until further notice or until approved full encryption is installed. Where the encryption policy cannot be met, a Risk Balance Case that fully explains why the policy cannot be complied with and the mitigation plan, which should explain any limitations on the use of the system, is to be submitted to the *Client* for consideration. Unencrypted laptops and drives containing personal data are not to be taken outside of secure sites. For the avoidance of doubt the term “drives” includes all removable, recordable media (e.g. memory sticks, compact flash, recordable optical media (e.g. CDs and DVDs), floppy discs and external hard drives.
15. Any token, touch memory device or password(s) associated with the encryption package is to be kept separate from the machine whenever the machine is not in use, left unattended or in transit.
16. Portable communication and information services (CIS) devices are not to be left unattended in any public location. They are not to be left unattended in any motor vehicles either in view or in the boot or luggage compartment at any time. When the vehicle is being driven the CIS is to be secured out of sight in the glove compartment, boot or luggage compartment as appropriate to deter opportunist theft.

### **Loss and Incident Reporting**

17. Any loss of [REDACTED] shall be reported without delay to the *Client*.
18. Any security incident involving any *Client* owned, processed or generated information shall be immediately reported to the *Client's* Warning, Advice and Reporting Point (WARP), within the Joint Security Co-ordination Centre (JSyCC). This will assist the JSyCC in formulating a formal information security reporting process and the management of any associated risks, impact analysis and upward reporting to the *Client's* Chief Information Officer (CIO) and, as appropriate, the company concerned. The *Client's* WARP will also advise the *Contractor* what further action is required to be undertaken.

### **Subcontracts**

19. In accordance with clause 26.2 (Subcontracting) of this contract, the *Contractor* shall obtain acceptance of the *Commercial Officer*, for each proposed Subcontractor. When subcontracting, these security clauses shall be incorporated within the Subcontract document.

### **Publicity Material**

20. *Contractors* wishing to release any publicity material or display hardware that arises from this contract, whether directly or indirectly, or from a Defence related Private Venture activity, must seek the prior approval of the *Client*. Publicity material includes open publication in the *Contractor's* publicity literature or website or through the media;

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<sup>2</sup> Secure Sites are defined as either Government premises or a secured office on the *Contractor* premises.

displays at exhibitions in any country; lectures or symposia; scientific or technical papers, or any other occasion where members of the general public may have access to the information even if organised or sponsored by the *Client*, or any other government department.

### **Destruction**

21. As soon as no longer required SECRET MATTER shall be destroyed in such a way as to make reconstitution very difficult or impossible, for example, by burning, shredding or tearing into small pieces. Unwanted SECRET MATTER which cannot be destroyed in such a way shall be returned to the *Client*.

### **Interpretation/Guidance**

22. Advice regarding the interpretation of the above requirements should be sought from the *Client*.
23. Further requirements, advice and guidance for the protection of the *Client's* information at the level of OFFICIAL SENSITIVE and below can be found in Industrial Security Notices (ISNs) at:

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

### **Audit**

24. Where considered necessary by the *Client* the *Contractor* shall permit the inspection of the *Contractor's* processes and facilities to ensure compliance with these requirements.

### **JSyCC WARP Contact Details**

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

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

Telephone: Working Hours: 0306 770 2187

Out of Hours/Duty Officer Phone: 07768 558863

Fax: 01225 846904

**Mail: Joint Security Co-ordination Centre (JSyCC), GOSCC, Building 405, MOD Corsham, Westwells Road, Wiltshire, SN13 9NR]**

## **PART TWO**

### **DATA PROVIDED BY THE CONTRACTOR**

## 1 General

The *Contractor* is defined in the Agreement.

The *fee percentage* is **11.043%**

The service areas are **the provision of interim facilities management services to the Client as necessary to maintain the Infrastructure so that it is safe, secure and compliant with all legal requirements, as more particularly described in the Scope**

The *key persons* are:

Name (1)

**[REDACTED]**

Job

**Facilities Management Site Focal**

Responsibilities

- **Co-ordinates and manages the FM service delivery**
- **Acts as the point of contact between the MOD, BDUK P-8A Programme and Functions and the FM Service Provider**
- **Manages and monitors the FM Service Provider delivery**
- **Produces service delivery reporting with performance indicators for FM contract stakeholders**

Name (2)

**[REDACTED]**

Job

**Contract Management Specialist**

Responsibilities

- **Negotiates changes and amendments to the terms of the contract, and changes and amendments to the terms, with the Employer and ensures that these terms are cascaded to the supply chain, to ensure back-to-back contracts are in place.**
- **Validates the wording of contracts and assists the project manager with any clarifications to contracts during the whole project lifecycle.**

- Provides commercial support to Contractor functions and participate in negotiating the FM service contracts and letters requiring escalation by the Contractor's project manager, as well as managing budgets and ensuring engagement for external FM Service commercial services that may be required to support the project.

The following matters will be included in the Early Warning Register

**Not applicable**

## **2 The Contractor's main responsibilities**

The Scope provided by the Contractor for its plan is in

**DBDU-PA00152 – Interim FM BDUK Project Management Plan**

## **3 Time**

The plan identified in the Contract Data is

**DBDU-PA00152 – Interim FM BDUK Project Management Plan**

## **5 Payment**

The *price lists* are set out at Annex C

**Firm Prices**

**Schedule of Rates**

The tendered total of the FIRM Price is **[REDACTED]**

## **Resolving and avoiding disputes**

The Senior Representatives of the Contractor are

Name (1)

**[REDACTED]**

Address for communications

**630 Bristol Business Park,**

**Dakota House**

**Coldharbour Lane**

**Bristol**

**BS16 1EJ**

Address for electronic communications

**[REDACTED]**

Name (2)

**[REDACTED]**

Address for communications

**630 Bristol Business Park,**

**Dakota House**

**Coldharbour Lane**

**Bristol**

**BS16 1EJ**

Address for electronic communications

**[REDACTED]**

**Data for the Short Schedule of Costs Components**

Prices are broken down within Annex C

**Annex B – Scope**

***Client's Scope***

The Clients Scope comprises the following documents:

- :20200914\_Interim\_FM-Requirements\_v2.0\_OSC

### ***Contractor's Scope***

The Contactor's Scope comprises the following documents:

- DBDU-PA00152 – Interim FM BDUK Project Management Plan v2.0
- DBDU-PA00153 – Interim FM RFM Proposal Summary v2.0
- DBDU-PA00154 – Interim FM RFM SOW Compliance Matrix v2.0
- DBDU-PA00155 – Interim FM MDAL v2.0

**Annex – C****Price list****Firm Prices**

<b>Item Number</b>	<b>WBS Reference</b>	<b>Description</b>	<b>Unit</b>	<b>Expected Quantity</b>	<b>Rate</b>	<b>Price</b>
1	1.1	Programme Manager	Monthly	10		
2	1.2	PIO/PMO Manager	Monthly	10		
3	1.3	PMO - Project controller	Monthly	10		
4	1.4	PMO - Integrated master scheduler	Monthly	10		
5	1.5	Operations	Monthly	10		
6	1.6	Engineering lead	Monthly	10		
7	1.7	Quality assurance	Monthly	10		
8	1.8	SCM	Monthly	10		
9	1.9	EH&S	Monthly	10		
10	1.1	Commercial management	Monthly	10		
11	1.11	Finance	Monthly	10		
12	1.12	Project Management	Monthly	10		
13	2.2	FM specialist	Monthly	10		
14	2.3	Procurement agent	Monthly	10		
15	2.4	Commercial	Monthly	10		
16	2.5	Finance	Monthly	10		
16.1	2.6	Bid & Proposal cost	Monthly	1		
17	3.10A	Transition and Knowledge Transfer Management	Monthly	10		
18	3.11	Water coolers	Monthly	10		
19	3.13	Snacks & cool drinks vending	Monthly	10		
20	3.14	Waste Service	Monthly	10		
21	3.16	Grounds maintenance	Monthly	10		
22	3.17	M&E Engineer	Monthly	10		
23	3.18	Facilities Assistant	Monthly	10		
24	3.19	Cleaning	Monthly	10		
25	3.20	Cleaning equipment, materials & consumables	Monthly	10		
26	3.21	Management & Contract Administration	Monthly	10		
27	3.22	Sub-contractors (M&E, Pest Control, Grounds)	Monthly	10		
28	3.24	Insurance Premium	Monthly	10		
29	n/a	Risk	Monthly	10		
		<b>Total Firm Price</b>				

**Schedule of Rates**

<b>Item Number</b>	<b>Item</b>	<b>Description</b>	<b>Unit</b>	<b>Price</b>
30	Waste removal service	General waste -1100L -70kg max.	Per event	
31	Waste removal service	Recycling -1100L -70kg max.	Per event	
32	Waste removal service	Cardboard Waste -1100L -1 unit	Per event	
33	Waste removal service	Confidential Paper --20 no.	Per event	
34	Waste removal service	Sanitary Waste --70 no.	Per event	
35	Waste removal service	Oil Cans -Waste Safe -	Per event	
36	Waste removal service	Paints & Solvents -Waste Safe -300kg max.	Per event	
37	Waste removal service	Rags -205L Oil Drum -	Per event	
38	Waste removal service	Chemicals and Bottles -205L Oil Drum -	Per event	
39	Waste removal service	WEEE Container --	Per event	
40	Waste removal service	Lamps -Lamp Coffin -Per Kg	Per event	
41	Waste removal service	Jet A1 & oil -1000L IBC -	Per event	
42	Waste removal service	Mixed Metals) -Waste Safe/Cage -Assumed clean scrap	Per event	
43	Waste removal service	Transport - Lossiemouth --Per collection	Per event	
44	Waste removal service	Consignment Note --	Per event	
45	Waste removal service	Replacement IBC --	Per event	
46	Waste removal service	Replacement Drum --	Per event	
47	Waste removal service	Rental of Waste Safe --Per month	Per event	
48	Waste removal service	1000L bunded IBC (supply & deliver cost) --Required for aviation fuel storage	Per event	
49	Skips and other waste containers Item	8 cubic yard skip --Includes delivery, uplift and disposal of waste	Per event	
50	Skips and other waste containers Item	12 cubic yard enclosed skip --Includes delivery, uplift and disposal of waste	Per event	
51	Skips and other waste containers Item	40-yard enclosed skip --Includes delivery and uplift haulage. This skip could be used for cardboard or mixed waste	Per event	
52	Skips and other waste containers Item	Freestanding office bin for central waste collection - -Purchase price	Per event	
53	Façade Cleaning	Bird waste removal --Minimum 3 hour duration for reactive bird waste removal and disposal	Per event	
54	Façade Cleaning	External window clean --estimated 4 hour duration to complete whole building clean	Per event	
55	Façade Cleaning	Internal window clean --estimated 4 hour duration to complete whole building internal clean	Per event	
56	Façade Cleaning	Skylights --estimated 2 hour duration	Per event	
57	Façade Cleaning	Cladding --estimated 16 hour duration to complete whole building	Per event	
58	Façade Cleaning	Parapets --estimated 5 hours to complete whole area	Per event	

59	Façade Cleaning	Full roof clean --Minimum 120 hours required to cover access and cleaning equipment hire and full roof power wash	Per event	
60	Façade Cleaning	Gutter clean --Minimum 64 hours required to cover access equipment hire and full gutter clean	Per event	
61	Winter services	Gritting (per visit) --1	Per event	
62	Winter services	Mechanical snow clearing (per visit) --1	Per event	
63	Winter services	Manual snow clearing (per visit) --1	Per event	
		<b>Supply of Goods</b>		
		Note: All items are supply only and do not include labour for installation		
64	Evac+ Chairs	500 Series Chair --	Per event	
65	Evac+ Chairs	300 Series Chair --	Per event	
66	Evac+ Chairs	Signage --	Per event	
67	Evac+ Chairs	Bracket --	Per event	
68	First aid, eye wash & defibrillators	First aid kit --Minimum 3 hour duration for reactive bird waste removal and disposal	Per event	
69	First aid, eye wash & defibrillators	Eye wash station --estimated 4 hour duration to complete whole building clean	Per event	
70	First aid, eye wash & defibrillators	First aid cabinet --estimated 4 hour duration to complete whole building internal clean	Per event	
71	First aid, eye wash & defibrillators	First aid room furniture - standard --estimated 2 hour duration	Per event	
72	First aid, eye wash & defibrillators	First aid room furniture - premium --estimated 16 hour duration to complete whole building	Per event	
73	First aid, eye wash & defibrillators	Defibrillator --estimated 5 hours to complete whole area	Per event	
74	First aid, eye wash & defibrillators	Defibrillator cabinet - internal --Minimum 120 hours required to cover access and cleaning equipment hire and full roof power wash	Per event	
75	First aid, eye wash & defibrillators	Defibrillator cabinet - external --Minimum 64 hours required to cover access equipment hire and full gutter clean	Per event	
76	Fire risk assessments	Fire risk assessment --	Per event	
77	Fire risk assessments	Fire risk assessment review --	Per event	
78	Fire extinguishers	Foam (AFFF) – 6L -37-29	Labour & Materials	
79	Fire extinguishers	Powder - 6Kg -37-29	Labour & Materials	
80	Fire extinguishers	Co2 - 2kg -16.6-46	Labour & Materials	
81	Fire extinguishers	Extinguisher & blanket signage -8-4	Labour & Materials	
82	Fire extinguishers	Extinguisher double stand -19-41	Labour & Materials	
83	Fire extinguishers	Online training per participant -24-N/A	Labour & Materials	

84	Fire extinguishers	Onsite training (max. 8 people). Extinguishers used will be charged at the rates above -360-N/A	Labour & Materials	
		<b>Labour hourly rates</b>		
		Note: All rates are for normal working hours only. Applicable rates out with normal working hours i.e. overtime is charged at the applicable rate.		
85	BMS	Engineer - Normal working hours --A minimum call-out period of 4 hours applies	Per hour	
86	BMS	Mileage allowance --	Per hour	
87	Hangar & Simulator doors	Fitter --A minimum call-out period of 8 hours applies	Per hour	
88	Hangar & Simulator doors	Electrician --A minimum call-out period of 8 hours applies	Per hour	
89	Emergency safety showers and eyewash	Engineer --Shower type required prior to providing a rate	Per hour	
90	Emergency safety showers and eyewash	Senior Engineer / Trainer --Shower type required prior to providing a rate	Per hour	
91	UPS	Engineer --A minimum call-out period of 4 hours applies	Per hour	
92	UPS	Engineer training / UPS familiarisation demonstration --*This is a rate for the training rather than an hourly rate	Per hour*	
93	Generator and HV	Senior Engineer --A minimum call-out period of 4 hours applies	Per hour	
94	Generator and HV	Project Engineer --A minimum call-out period of 4 hours applies	Per hour	
95	Generator and HV	HV Engineer --A minimum call-out period of 4 hours applies	Per hour	
96	Generator and HV	Senior Technician --A minimum call-out period of 4 hours applies	Per hour	
97	Generator and HV	Generator Technician --A minimum call-out period of 4 hours applies	Per hour	
98	Generator and HV	Electrical or Mechanical Fitter --A minimum call-out period of 4 hours applies	Per hour	
99	RFM Staff	Facilities M&E Engineer - Site based --	Per hour	
100	RFM Staff	Facilities M&E Engineer - Mobile --A minimum call-out period of 2 hours applies	Per hour	
101	RFM Staff	FM Assistant / Janitor - Site based --	Per hour	
102	RFM Staff	Cleaner - Site based --	Per hour	
103	RFM Staff	Cleaning Supervisor - Site based --	Per hour	
104	BIM Updates	Periodic Drawing Updates --	Per update	
105	BIM Updates	Periodic Model Updates --	Per update	
106	BIM Updates	Periodic COBie Updates --	Per update	
107	BIM Updates	Applicable in any month where relevant changes to the facility have been identified or instructed.		

WBS References in the table above relate to the Work Breakdown Structure (WBS) contained in the Contractor's Management Plan.

Items 2.1 and 3.1-3.9 of the WBS are outside the scope of this contract so are not priced (they are in scope of the separate Compensation Event covering mobilisation activity).

Firm prices have not been provided for WBS item 3.15 (Winter Grounds services) because it is not possible to accurately forecast volumes for these services, so a price per event offers better value for money.

**Annex – D**

**Key Performance Indicators**

KPI	Title / Description	Criteria and Calculation	Measurement Reporting and Frequency	Target			Weighting	Withhold	Incentive Adjustment
				Green	Amber	Red			
1	Business Partner/Site Satisfaction	Number of recorded complaints (as defined within the agreed Complaints Management System) received by all routes - email, helpdesk and Facilities Management System.  Recorded complaints divided by total work order tasks per site in quarter.	Monthly	<2 %	2% - 5%	5% +	10%	0%	0%
2	Complaints handling	Percentage of complaints received acknowledged within target of 4 working hours and resolved within 48 hours	Monthly	100 %	90% - 99%	<90 %	10%	0%	0%
3	Preventable Business Disruptions the root cause of which is action or inaction of the Supplier	Measures business disruption events that result in loss of productivity or render all or part of the Property unusable for normal business purposes as a result of circumstances within Service Provider control (eg. as a result of a failure to exercise contractor management). Each event is considered a business disruption. Number of times facility experiences unplanned outages or disruptions due to failure of facility systems or building fabric.	Monthly	0	1	2+	15%	0%	0%

4	Regulatory Preventative Maintenance Timeliness  (Service Delivery Health)	Measures maintenance and inspection events for regulatory PPMs completed to target schedule for the period. Subject to waiver/exemption review due to circumstances beyond Service Provider control.	Monthly	100%	-	<100 %	20%		
5	Emergency and Critical Response Timeliness  (Service Delivery Health)	Measures percentage of requests meeting defined SLA emergency/critical response and containment action time, based upon agreed priority allocation at point of raising request.	Monthly	100%	<100 %- 66%	<66 %	20%	0%	0%
6	Emergency and Critical Completion Timeliness  (Service Delivery Health)	Measures percentage of Priority 1 and Priority 2 Safety Emergency and Business Critical Service Requests completed within agreed SLA hours with follow up incident report and preliminary recommendations. Based upon agreed priority allocation at point of raising request.	Monthly	100%	<100 %- 90%	<90 %	10%	0%	0%
7	Health, Safety and Environmental Recordables	Measures number of recordable workplace injuries. Applicable to Supplier on-site employees and subcontractors.	Monthly	0	-	1+	10%	0%	0%
8	Safety - Lost Workdays	Measures number of lost work days due to workplace injury. Applicable to Supplier on-site employees and subcontractors (only for events not counted towards KPI 6).	Monthly	0	-	1+	5%	0%	0%