



Ministry
of Defence

Contract No: AIRISTAR/CB/6

For: Integrated Sentinel Support Solution

Dated: 30 September 2016

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<p>Name and Address of Contractor:</p> <p>Kao One Kao Park Harlow Essex CM17 9NA</p>	<p>Ministry of Defence</p> <p>SCHEDULE OF REQUIREMENTS FOR</p> <p>Integrated Sentinel Support Solution Contract</p>	<p>Contract No: AIRISTAR/CB/6</p> <p>Issued: 29 September 2016</p> <p>Previous Contract No: CIS4B/9</p>
<p>Requirements</p>		
Item No	Description	Price All
1	<p>Delivery of Core Services in accordance with Schedule 2 (Statement of Work)</p>	<p>Firm Price in accordance with Schedule 5 (Pricing and Payment)</p>
2	<p>Performance of Tasks for:</p> <p>Minor Logistics Support Tasks Non Attributable Item Small Modifications Reach Back – SRPSA Obsolescence</p> <p>authorised in accordance with the Task Authorisation Form Process at Schedule 9 (Contract Management)</p>	<p>Limit of Liability in accordance with Schedule 5 (Pricing and Payment)</p>
3	<p>Performance of Tasks for:</p> <p>Minor Logistics Support Tasks Non Attributable Item Small Modifications Reach Back – SRPSA Obsolescence</p> <p>authorised in accordance with the Task Authorisation Form Process at Schedule 9 (Contract Management)</p>	<p>Limit of Liability in accordance with Schedule 5 (Pricing and Payment)</p>
4	<p>Option price for 8C Depth Maintenance for a fifth Aircraft in accordance with Section 4 Schedule 2 (Statement of Work)</p>	<p>Firm Price in accordance with Schedule 5 (Pricing and Payment)</p>

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1. Schedule Contents

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THIS CONTRACT is made on [Insert date]

BETWEEN:

1. **THE SECRETARY OF STATE FOR DEFENCE** (the "Authority"); and
2. Raytheon Systems Limited, whose registered office is at Kao One, Kao Park, Harlow, Essex, CM17 9NA (406809) having a place of business at RAF Waddington Lincoln LN5 9NB (the "Contractor").

BACKGROUND:

This Contract, AirISTAR/CB/6 is for the provision of support for the UK MOD Fleet of 4 (four) Aircraft.

This contract shall be effective from the 1 October 2016.

The Authority requires the Contractor to provide a service for the Sentinel fleet, including, provision of Depth Maintenance, defined spares, technical queries, technical publications, and provision of obsolescence and modification services, as defined in Schedules 2 and 4 to the Contract (Statement of Work and Performance Management, respectively).

IT IS AGREED as follows:

SECTION A: DEFINITIONS AND INTERPRETATION

1 Definitions and Interpretation

Definitions

- 1.1 In this Contract:
 - 1.1.1 the terms, phrases and acronyms defined in Schedule 1 (Definitions and Abbreviations) shall have the meanings given to them in that Schedule, unless the context otherwise requires.

Interpretation

- 1.2 In this Contract unless the context otherwise requires:
 - 1.2.1 the masculine includes the feminine and vice versa, and words importing the neuter include the masculine and the feminine and vice versa;
 - 1.2.2 the singular includes the plural and vice versa;
 - 1.2.3 the words "include", "includes", "including" and "included" shall be construed as if they were immediately followed by the words "without limitation" except where explicitly stated otherwise;
 - 1.2.4 the expression "person" means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture and includes their successors and permitted assignees or transferees;
 - 1.2.5 unless stated to the contrary, any reference to this Contract or to any other document shall include any permitted variation, amendment or supplement to such document;

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- 1.2.6 subject to Clause 74 (Legislative Risk) references to any enactment, order, regulation, or other similar instrument (including any EU instrument) shall be construed as a reference to the enactment, order, regulation, or instrument (including any EU instrument) as amended, supplemented, replaced or consolidated by any subsequent enactment, order, regulation, or instrument (including any EU instrument);
 - 1.2.7 the heading to any Contract provision shall not affect the interpretation of that provision;
 - 1.2.8 any decision, act, or thing which the Authority is required or authorised to take or do under this Contract may be taken or done only by any person authorised, either generally or specifically, by the Authority to take or do that decision, act, or thing on behalf of the Authority;
 - 1.2.9 unless excluded within the terms of this Contract or where otherwise required by law:
 - 1.2.10 references to submission of documents in writing shall include electronic submission; and
 - 1.2.11 any requirement for a document to be signed or references to signatures shall be construed to include electronic signature, provided that a formal method of authentication as previously agreed between the Parties is employed and such agreed method is recorded in this Contract; and
 - 1.2.12 a reference in this Contract to any Clause, part, paragraph or Schedule, is, except where expressly stated to the contrary, a reference to such Clause, part, paragraph or Schedule of this Contract.
- 1.3 The Schedules to this Contract form part of this Contract and shall be taken into account in the interpretation of this Contract.

2 Precedence

- 2.1 If there is any inconsistency between the provisions of the main body of this Contract and the Schedule, or between any of the Schedules, the conflict shall be resolved according to the following order of priority:
- 2.1.1 the main body of this Contract, Schedule 1 (Definitions and Acronyms), Schedule 5 (Pricing and Payment) and Schedule 4 (Performance Management);
 - 2.1.2 Schedule 2 (Statement of Work);
 - 2.1.3 the remaining Schedules;
 - 2.1.4 the Appendices to the Schedules; and
 - 2.1.5 the Annexes to the Schedules.
- 2.2 If there is any conflict or inconsistency between the provisions of this Contract and the provisions of any document referred to in this Contract (including any other document referred to in that or any subsequent document), then the provisions of this Contract shall prevail.
- 2.3 If a Party becomes aware of any conflict or inconsistency within or between the documents referred to in Clauses 2.1 and/or 2.2 (Precedence) such Party's

Representative shall notify the other Party's Representative in writing forthwith and the Parties will seek to resolve such inconsistency. If either Party considers the inconsistency to be material, then the matter shall ultimately be determined in accordance with Clause 82 (Disputes).

SECTION B: CORE OBLIGATIONS

3 Contractor's Obligations

- 3.1 The Contractor shall provide the Contractor Deliverables and/or shall ensure that the Contractor Deliverables are provided in accordance with:
- 3.1.1 Good Industry Practice;
 - 3.1.2 all Necessary Consents;
 - 3.1.3 Legislation;
 - 3.1.4 British Standards which are appropriate and relevant to the provision of the Contractor Deliverables;
 - 3.1.5 the Contractor's approved quality assurance systems as set out in Clause 62 (Quality Assurance) and Schedule 3 (Quality Standards and Requirements); and
- 3.2 The Contractor shall comply with the Statement of Work, as detailed at Schedule 2 (Statement of Work) to this Contract.
- 3.3 The Authority has notified the Contractor that it believes that Contract AirSTAR/CB/6 is a Qualifying Defence Contract for the purposes of the Defence Reform Act 2014 and the Single Source Contract Regulations 2014 and as a consequence the Contractor shall comply with such regulations.

4 Contract Period

- 4.1 This Contract and the rights and obligations of the Parties to this Contract shall take effect on the Effective Date, and except as set out in Clause 68 (Continuing Obligations), shall terminate on the earlier of:
- 4.1.1 the Expiry Date; or
 - 4.1.2 the Termination Date.
- 4.2 The Authority may request an extension to this Contract beyond the Expiry Date on a reasonable endeavours basis no later than 18 (eighteen) months from the planned Expiry Date by giving the Contractor formal Notice requesting such an extension. If the Contractor agrees to such an extension, the Parties shall negotiate in good faith to agree terms and conditions.

5 Contractor Warranties and Representations

Contractor Warranties

- 5.1 The Contractor warrants and represents to the Authority that at the Effective Date:
- 5.1.1 it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract and any Sub-Contracts;

- 5.1.2 it is not subject to any claim, litigation, arbitration, proceedings or any other obligation which shall or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
- 5.1.3 it shall not, and has not, committed any Prohibited Act and for this purpose only the words "or without" in the introduction of the definition of Prohibited Act shall be deleted; and
- 5.1.4 so far as it is aware, there is not, nor has there been, any infringement or alleged infringement of any third party's IPR in connection with this Contract and the Authority relies upon such warranties and representations.

Contractor Undertakings

- 5.2 The Contractor undertakes that for so long as this Contract remains in full force:
 - 5.2.1 it shall give the Authority immediate notice of commencement of any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator, administrator or adjudicator or mediator or Relevant Authority ("**Dispute Forum**") against itself or a Sub-Contractor which would adversely affect, to an extent which is material in the context of this Contract, the Contractor's ability to perform its obligations under this Contract, unless such notice is precluded by the rules of the Dispute Forum, provided that notice shall be given within 20 (twenty) Business Days of the Contractor becoming aware such proceedings may be threatened or pending; and
 - 5.2.2 it shall not undertake the performance of its obligations under this Contract otherwise than through itself or a Sub-Contractor or Authority manpower under Schedule 7 (Government Furnished Assets).

Status of Contractor Warranties and Undertakings

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

6 Decoupling Sub-Contracting with the Crown

- 6.1 If the Contractor enters into or has entered into any contract with the Crown (other than this Contract) relating in any way to the subject matter of this Contract, then no breach by the Crown of that other contract, nor any other act or omission, nor any written or oral statement nor any representation whatsoever of or by the Crown, its servants or agents, or other contractors relating to or connected with any such other contract shall, regardless of any negligence on its part or their part:
 - 6.1.1 give the Contractor any right under this Contract to an extension of time or additional payment or damages or any other relief or remedy whatsoever against the Authority;
 - 6.1.2 affect, modify, reduce or extinguish either the obligations of the Contractor under this Contract or the rights or remedies of the Authority under this Contract (including without limitation the Authority's right to make Payment Withholds pursuant to Schedule 5 (Pricing and Payment)); or
 - 6.1.3 be taken to amend, add to, delete or waive any term or condition of this Contract.

- 6.2 This Clause 6 (Decoupling) shall not affect the rights of the Contractor under Schedule 7 (Government Furnished Assets).

7 Interdependent Contracts

- 7.1 If, as a result of any default, negligence and/or breach by the Contractor or any Sub-Contractor of any of its or their obligations under or pursuant to any direct contracts between the Authority and the Contractor, the Authority is unable to comply with any or all of its obligations under Schedule 7 (Government Furnished Assets) then, notwithstanding any other provision of this Contract:
- 7.1.1 such failure by the Authority to comply with those obligations shall not be treated as a GFA Failure for the purposes of this Contract provided that the Authority has used its reasonable endeavours to mitigate such failure as set out in Schedule 4 (Performance Management);
 - 7.1.2 the Contractor shall not be entitled to any relief and/or any compensation of whatever nature (including any adjustment to the Contract Price) and howsoever arising in respect of such failure by the Authority to comply; and
 - 7.1.3 nothing shall affect the Authority's right to make any Retentions pursuant to Schedule 5 (Pricing and Payment).

8 Contract Management

- 8.1 The Parties shall comply with the provisions of Schedule 9 (Contract Management) throughout the Contract Period.

9 Necessary Consents

- 9.1 The Contractor shall:
- 9.1.1 use reasonable endeavours to obtain and maintain all Necessary Consents which may be required for the provision of the Contractor Deliverables under this Contract, including the entering into of any legally binding agreements necessary for the grant of the Necessary Consents;
 - 9.1.2 use reasonable endeavours to provide timely assistance to the Authority to obtain all Necessary Consents that, as a matter of law, only the Authority is eligible to obtain;
 - 9.1.3 be responsible for implementing each Necessary Consent (save to the extent that only the Authority is, as a matter of law, able to implement the whole or the relevant part of such Necessary Consent) within the period of its validity in accordance with its terms and relevant Legislation;
 - 9.1.4 provide to the Authority, when required, a copy of:
 - 9.1.4.1 any application for a Necessary Consent or any variation, relaxation or waiver (with a copy of all accompanying drawings and other documents);
 - 9.1.4.2 any Necessary Consent; and
 - 9.1.4.3 any legally binding agreement entered in to for the purposes of obtaining a Necessary Consent, where such agreement permits such disclosure;

- 9.1.5 comply with the conditions attached to any Necessary Consents and the terms of any associated legally binding agreement and procure that no such Necessary Consent or associated legally binding agreement is breached by it or any Sub-Contractor; and
 - 9.1.6 use all reasonable endeavours to preserve the Necessary Consents, and procure, where it is able to do so, that such Necessary Consents are not revoked or quashed and that all Necessary Consents continue in full force and effect for such time as is necessary for the Contractor to provide the Contractor Deliverables to the Authority.
- 9.2 References in this Contract to Necessary Consents shall be construed as referring to the Necessary Consents as from time to time varied, relaxed or waived.
- 9.3 The Authority shall, subject to the Contractor's compliance with Clause 9.1.2, use all reasonable endeavours to obtain all Necessary Consents that, as a matter of law, only the Authority is eligible to obtain.
- 9.4 Not Used
- 9.5 Not Used
- 9.6 Both Parties acknowledge that its ability to meet its obligations under this Clause 9 may be impacted by delays or imposed conditions outside of either Party's control. In such a circumstance, the Parties shall meet to agree the way forward, in accordance with Clause 23 (Force Majeure).

10 Approval by the Authority

- 10.1 Except for a confirmation of a Change pursuant to Clause 71 (Contract Changes) which expressly changes the Contractor's obligations or liabilities or the Authority's rights under this Contract and/or save as expressly stated in this Contract no review, comment or approval by the Authority shall operate to exclude or limit the Contractor's obligations or liabilities or the Authority's rights under this Contract.

SECTION C: SUB-CONTRACTING

11 Sub-Contracting

- 11.1 The Contractor shall ensure, to the extent that they are applicable, that the terms and conditions of this Contract are reflected in any sub-contracts he may award for any part of the Contractor Deliverables.
- 11.2 Sub-contracting any part of this Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under this Contract. The Contractor shall be responsible for the acts and omissions of the Sub-Contractors as though such acts or omissions are its own.
- 11.3 Without prejudice to Condition 11.3, in all circumstances, the Contractor shall ensure that all sub-contracts in relation to this Contract include:
- 11.3.1 a requirement that either party to the Sub-Contract may release to the Authority any of those parts of the sub-contract documentation as are necessary to demonstrate the Contractor's compliance with the provisions of the Contract and that any such release shall not amount to a breach of any provision of confidentiality contained within the Sub-Contract; and

11.3.2 provisions that the Authority's rights, which are otherwise enforceable under the Contracts (Rights of Third Parties) Act 1999, are not rendered unenforceable; and

11.3.3 a term which requires payment to be made to the Sub-contractor within a specified time period not exceeding 30 (thirty) Business Days from receipt of a valid invoice as defined by the Sub-Contract requirements (unless otherwise agreed between the Contractor and the relevant Sub-Contractor).

11.4 Except where the Authority notifies the Contractor in writing that it is not required, the Contractor shall use all reasonable endeavours to include in any Material Single Source Sub-contract (Non-Qualifying) the terms specified in Paragraph 13 of Schedule 5 (*Pricing and Payment*).

11.5 The Contractor shall inform the Authority immediately when it becomes aware of any breach by any Sub-Contractor of any of the requirements set out or referred to in Clauses 37.3 (Personnel Security), 46 (Supply of Data for Hazardous Articles, Materials and Substances), 64 (Termination for Contractor Default), 70 (Tax Compliance), any Prohibited Acts, and if requested to do so by the Authority, shall terminate the relevant Sub-Contract.

12 Sub-Contracting to Supported Businesses

12.1 When placing sub-contracts, the Contractor is asked to give consideration, as far as possible, to placing work on a competitive basis with sub-contractors that are Supported Businesses.

12.2 For the purpose of Condition 12.1: "Supported Businesses" means establishments or services where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market.

12.3 The Contractor can find details of Supported Businesses in the United Kingdom on the Supported Business Directory that is the British Association for Supported Employment at Unit 4, 200 Bury Road, Tottington, Lancashire BL8 3DX (Telephone: 01204 880733) or <http://base-uk.org/procurement>.

13 Overseas Expenditure, Import and Export Licence

Overseas Expenditure

13.1 In this Clause 13 "foreign" and "overseas" shall be understood from the position of the Authority and be regarded as "non-UK".

13.2 The Contractor shall report, in writing, to the Authority details of any direct overseas expenditure valued over £1 million likely to be incurred in the execution of this Contract immediately if the possibility is known if such details were not furnished at the time of tendering. The details to be provided are as follows:

13.2.1 the contract number;

13.2.2 the country in which the Sub-Contract is placed/to be placed;

13.2.3 the name, division and full postal address of the Sub-Contractor;

13.2.4 the value of the Sub-Contract as applicable to this Contract;

13.2.5 the date placed/to be placed.

- 13.3 For the purpose of this Clause 13 overseas expenditure comprises only those direct payments made by the Contractor to overseas firms and to UK firms, including UK branches or subsidiaries of overseas firms, for the supply of finished or semi-finished manufactured products imported directly into the UK by the Contractor or by such UK firms.
- 13.4 The Contractor shall submit any information required by Clause 13.2 to the Commercial Officer detailed in Box 1 of DEFFORM 111 (Appendix to Contract).

Import Licence

- 13.5 If, in the execution of this Contract, the Contractor needs to import material into the UK for which an import licence is required, the responsibility for applying for the licence shall rest with the Contractor. The Authority shall provide the Contractor with all reasonable assistance in obtaining any necessary import licence with regard to any defence or security issue that may arise.

Export Licence

- 13.6 The Contractor shall notify the Authority promptly if the Contractor becomes aware that all or part of any Contractor Deliverables (including information and software) to be delivered under this Contract is or will be subject to:
- 13.6.1 a non-UK export licence, authorisation or exemption, or
 - 13.6.2 any other related transfer control,
- that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. This does not include the Intellectual Property specific restrictions of the type referred to in Clause 34 (Intellectual Property Rights).
- 13.7 If requested by the Authority, the Contractor shall give the Authority a summary of every existing or expected licence and restriction referred to in Clause 13.6 and any related obligation or restriction to the extent that they place an obligation or restriction on the Authority with which the Authority must comply, including, to the extent applicable to such obligations or restrictions:
- 13.7.1 the exporting nation, including the export licence number (where known);
 - 13.7.2 the Contractor Deliverables (including information and software) affected;
 - 13.7.3 the nature of the restriction and obligation;
 - 13.7.4 the authorised end use and end users;
 - 13.7.5 any specific restrictions on access by third parties, or by individuals based upon their nationality, to the Contractor Deliverables used in the performance or fulfilment of this Contract;
 - 13.7.6 any specific restrictions on the end user or on re-transfer or re-export to third parties of the Contractor Deliverables or of anything delivered or used in the performance or fulfilment of the Contractor Deliverables.

The Contractor shall not be required to disclose any of the provisos to a licence (or even the existence of them) to the extent they do not relate to an obligation or constraint with which the Authority must comply.

- 13.8 When an export licence is required from a foreign government for the performance of this Contract, the Contractor shall promptly consult with the Authority on the licence requirements and, where the Contractor is an applicant for the licence:
- 13.8.1 ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverables to be delivered under this Contract, the Contractor, unless agreed otherwise with the Authority, identifies in the licence application:
 - 13.8.1.1 the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereafter "HM Government"); and
 - 13.8.1.2 the end use as: For the Purposes of HM Government;
 - 13.8.2 include in the submission for the licence a statement that "information on the status of processing this licence application may be shared with the Ministry of Defence of the United Kingdom".
- 13.9 If the information required under Clauses 13.6 and 13.7 has been provided previously to the Authority by the Contractor, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Clauses 13.6 and 13.7.
- 13.10 If the Contractor becomes aware of any changes in the information notified previously under Clauses 13.6, 13.7 or 13.9 that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in these Clauses, the Contractor shall notify the Authority promptly of the change.
- 13.11 If the Contractor or any Sub-Contractor in the performance of this Contract needs to export materiel for which an export licence from a foreign government is required, the responsibility for taking expeditious action to apply for and obtain the licence shall rest with the Contractor or Sub-Contractor. The Authority shall provide all reasonable assistance in obtaining and maintaining any export licence from the foreign government with regard to any defence or security issue that may arise.
- 13.12 Where performance of the Contractor's obligations requires the export of items for which a foreign export licence is required, the Contractor shall include the dependencies for the export licence application, grant and maintenance in the Risk and Opportunity Management Plan, with appropriate review points and mitigation measures identified.
- 13.13 The Authority may make a written request to the Contractor to seek a variation to the licence conditions to a foreign export licence to enable the Authority to re-export or re-transfer a licensed item or licensed information from the UK to a non-licensed third party. If the Authority makes such a request:
- 13.13.1 the Contractor shall, or shall procure that the Contractor's Sub-Contractor will, expeditiously consider whether or not there is a reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence in accordance with the procedures of the licensing authority;
 - 13.13.2 the Authority shall provide sufficient information, certificate and other documentation necessary to support the application for the requested variation; and

13.13.3 the Authority will pay the Contractor a fair and reasonable charge for this service based on the cost of providing it which will be in accordance with Schedule 6 (Contract Change).

14 Waiver of Import Duty

14.1 European Union (EU) legislation permits the use of various procedures to suspend customs duties. The Contractor is responsible for ensuring compliance with all regulations relating to the operation of the accounting for import duties. This includes, but is not limited to, obtaining the appropriate Her Majesty's Revenue and Customs (HMRC) authorisations.

SECTION D: PRICE / COSTS / PAYMENT

15 Pricing and Payment

15.1 The Parties shall comply with the provisions of Schedule 5 (Pricing and Payment).

SECTION E: PERFORMANCE AND REMEDIES

16 Key Performance Indicators and Performance Monitoring

16.1 The Parties shall comply with the provisions of Schedule 4 (Performance Management).

16.2 Without prejudice to Schedule 4 (Performance Management) and subject to Clauses 16.4, the Authority, the Authority's Representative and any agents or consultants of the Authority (such agents and consultants to be subject to the Contractor's consent, not to be unreasonably withheld or delayed) may at any time and with reasonable prior notice undertake any inspection of any of the Contractor Deliverables, and make any audit or check of any aspect of the Contractor's performance of this Contract as required by the Authority or where the same shall have been requested by the National Audit Office (but not so as to unreasonably delay or impede the Contractor from meeting its obligations under this Contracts). The Contractor shall promptly provide all reasonable co-operation in relation to any inspection, audit or check.

16.3 Not Used

16.4 In exercising any right under Clauses 16.2 and any other provision of the Contract where the Authority is entitled to enter a site of the Contractor:

16.4.1 The Contractor shall notify the Authority or its Authorised Representatives within a reasonable time (and the Authority and its Authorised Representatives shall comply with) the relevant safety and security procedures applicable to the inspection and or audit being undertaken which shall include any relevant health and safety plans, site rules and any reasonable directions with regard to site safety and security.

17 Not Used

18 Limitation upon claims in respect of Aviation Products

18.1 The Contractor shall not be liable to the Authority for loss or damage to the Authority, including loss of use of property, arising from or in connection with the Authority's ownership, possession, handling or use of Aviation Products, where such loss of damage is caused by an Occurrence or a Grounding.

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18.2 Clause 18.1 of this Clause shall apply notwithstanding negligence on the part of the Contractor or of any Subcontractor but shall be subject to Clauses 18.3 and 18.4 below.

18.3 Clause 18.1 above shall not apply to loss or damage caused:

18.3.1 otherwise than by an Occurrence or a Grounding; or

18.3.2 by fraud on the part of the Contractor or its Subcontractor; or

18.3.3 by wilful misconduct or deliberate concealment by the Contractor or any of its Subcontractors except for those acts of wilful misconduct or deliberate concealment which, in the opinion of a reputable independent insurance adviser were insurable under a policy of insurance generally available in the insurance market.

18.4 Clause 18.1 of this Clause shall:

18.4.1 not prevent the Authority from claiming indemnity from the Contractor or any Subcontractor in respect of any claim by third parties (including employees of the Authority);

18.4.2 not operate to require the Authority to indemnify the Contractor or any Subcontractor in respect of any claim made by third parties (including employees of the Authority);

18.4.3 not affect any right or remedy of the Authority express or implied relating in any way to the repair or replacement, cost of repair or cost of replacement or inspection or transportation in connection therewith of any Aviation Product lost or damaged otherwise than by reason of an Occurrence.

18.5 A Sub-Contractor engaged to provide goods, services or works in or towards fulfilment of any obligation on the part of the Contractor under this Contract shall be entitled in its own right to enforce the terms of Clause 18.1 above against the Authority but as if in Clause 18.3, references to the Contractor were references to such Subcontractor and references therein to any Subcontractor were references to any subcontractor of such Subcontractor at any level of subcontracting.

Definitions

18.6 In this Clause 18, the following words and expressions shall have the meanings given to them:

18.6.1 "**Aircraft**" includes Missiles, air cushion vehicles, hovercraft, lighter-than air aircraft, helicopters and UAVs.

18.6.2 "**Aviation Product**" means a completed Aircraft or Space Vehicle or Satellite and any article, including software, forming part thereof supplied, serviced, repaired or modified by the Contractor under this Contract, or any article supplied, serviced, repaired or modified by the Contractor under this Contract for installation in, or for use in connection with, or for spare parts for, an Aircraft or Space Vehicle or Satellite including ground handling tools and equipment, and also means training aids, instructions, manuals, blueprints, engineering or other data or any article in respect of which engineering or other advice and services and labour have been given or supplied by the Contractor under this Contract in connection with an Aircraft or Space Vehicle or Satellite.

18.6.3 "**Grounding**" means the complete and continuous withdrawal from all flight operations at or about the same time of one or more Aircraft due to a mandatory

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order of the Federal Aviation Administration of the United States of America (FAA), or the Civil Aviation Authority of the United Kingdom (CAA), or any other applicable airworthiness authority (including any military authority), because of an existing, alleged or suspected like defect, fault or condition affecting the safe operation of two or more like Aircraft and which results from an Occurrence.

- 18.6.4 “**Missile**” means any non-manned, self-propelled device capable of free flight, whether self controlled or not and includes any ground support or control equipment.
- 18.6.5 “**Occurrence**” means an accident or incident (other than a Grounding) which arises out of the provision, possession, handling or use of an Aviation Product and causes personal injury including bodily injury, sickness or disease, including death, at any time resulting therefrom, or damage to or destruction of property, including loss of use of such property. A series of accidents following as a consequence of one Occurrence shall be deemed to be one Occurrence.
- 18.6.6 “**Space Vehicle or Satellite**” means a spacecraft or satellite including parts detached on route designed to travel to and/or in space or to orbit or to remain in geosynchronous orbit.
- 18.6.7 “**Subcontractor**” means, except where stated otherwise, any subcontractor engaged by the Contractor or by any other subcontractor of the Contractor at any level of subcontracting.
- 18.6.8 “**UAV**” means an aircraft which does not carry personnel, is capable of sustained flight by aerodynamic means, is remotely piloted or automatically flies a pre-programmed flight profile, is reusable and not classified as a guided weapon or similar one shot device designed for the delivery of munitions.

19 Flights Liability and Indemnity

- 19.1 In this Clause 19, the following words and expressions shall have the meanings given to them below:
 - 19.1.1 “**Aircraft**” means an aircraft either to be supplied under this Contract or issued to the Contractor under this Contract and means the complete aircraft including its engines and equipment.
 - 19.1.2 “**Authorised Flight**” means a flight, taxiing or Engine Ground Run of an Aircraft, permitted in accordance with DEFSTAN 05-100 Issue 5 Amendment 1 - MOD Requirements for Aircraft Flight and Ground Running for which the Contractor holds a valid Flight Authorisation Certificate or in the case of an Engine Ground Run, a valid Engine Ground Running Certificate. Each Authorised Flight (except Engine Ground Run) shall be deemed to begin at the time the Aircraft is embarked by the pilot (or where appropriate the first pilot) involved in the Authorised Flight (i.e. when the first foot is placed upon the ladder or access point) with an intent to move the Aircraft under its own means of propulsion and shall conclude at the time when that pilot (or where appropriate the last such pilot) has disembarked.
 - 19.1.3 “**Engine**” means the main propulsion engine or engines of the Aircraft.
 - 19.1.4 “**Engine Ground Run**” means running the Engine in the Aircraft on the ground but with no intention to taxi or fly. Engine Ground Running shall be deemed to begin at the time the Aircraft is embarked by the first person approved to carry

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out the Engine Ground Running (i.e. when the first foot is placed upon the ladder or access point) with an intent to initiate the Engine starting sequence and shall conclude when the Engine has been safely shut down.

19.1.5 “**Damage**” means material damage including physical loss or destruction and ‘Damaged’ shall be construed accordingly.

19.1.6 “**Personal Injury**” means personal injury including sickness or death.

19.1.7 “**Unauthorised Flight**” means any flight, taxiing or Engine Ground Run of an Aircraft conducted or authorised by the Contractor, his servants or agents other than an Authorised Flight.

19.1.8 “**Subcontractor**” means any subcontractor or supplier at any level of subcontracting.

19.2 Notwithstanding anything contained elsewhere in this Contract liability for Damage or Personal Injury resulting from any Authorised Flight shall in all instances be determined under the provisions of this Clause irrespective of whether such Damage or Personal Injury is attributable to any neglect or default of the Authority or of the Contractor or of any of its Subcontractors or to any negligence or misconduct on the part of their respective servants or agents.

19.3 When Damage or Personal Injury results from an Authorised Flight, the Authority shall accept liability and indemnify the Contractor and its Subcontractors accordingly for:

19.3.1 all Damage to the Aircraft or to any property of the Authority; and

19.3.2 all Damage to any property of the Contractor or its Subcontractors carried or installed in the Aircraft; and

19.3.3 all claims by or on behalf of any representative of the Authority participating in or present at the Authorised Flight; and

19.3.4 all third party claims of whatsoever nature;

19.3.5 except as provided by Clause 19.5 (Flight Liability and Indemnity).

19.4 The Contractor shall inform the Authority as soon as is reasonably practicable of any claim made against it for which it is indemnified by the Authority pursuant to Clause 19.3 above. The Authority shall, at its discretion, be entitled to take control of the conduct of any such claim, which shall include the right to settle the claim. Where the Authority exercises this right, the Contractor shall do all that is reasonable to assist the Authority in its defence of the claim. In the event that the Authority decides not to take control of the conduct of the claim, and without prejudice to the Authority’s right to take control of the claim at a later stage, it shall promptly notify the Contractor of its decision and shall pay the Contractor’s reasonable costs of defending the claim including the cost of any legal proceedings or action.

19.5 When Damage or Personal Injury results from an Authorised Flight, the Contractor shall accept liability and indemnify the Authority accordingly for:

19.5.1 all Damage to any property in the care of the Contractor or its Subcontractors on the ground, whether the Contractor’s property or on loan, other than that property belonging to the Authority;

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19.5.2 all claims by or on behalf of any person in the Contractor's or its Subcontractor's employment including the Authority's reasonable costs of defending the claim, including the cost of any legal proceedings or action;

19.5.3 all claims by any person on board the Aircraft excluding those covered by Clause 19.3.3.

19.6 The Authority shall inform the Contractor as soon as is reasonably practicable of any claim made against it for which it is indemnified by the Contractor pursuant to this Clause 19.5 ~~19.6~~ (Flight Liability and Indemnity). The Contractor shall do all that is reasonable to assist the Authority in its conduct of the claim. The Authority will consult the Contractor throughout conduct of the claim and, whilst reserving the right to agree settlement, will obtain the prior consent of the Contractor or his insurer to this settlement. The consent of the Contractor or his insurer shall not be unreasonably withheld. Consultation with the Contractor and settlement of claims shall not diminish the Contractor's obligations under this Clause 19.6.

19.7 The Contractor shall not conduct, nor authorise anyone else to conduct, nor whilst the Aircraft is within the Contractor's or its Subcontractor's control allow anyone to conduct an Unauthorised Flight. In the event of an Unauthorised Flight the Contractor shall accept liability and indemnify the Authority accordingly for:

19.7.1 all Damage to the Aircraft or any property of the Authority or the Contractor, being Damage howsoever arising, resulting from the Unauthorised Flight; and

19.7.2 all claims whether in respect of Personal Injury or Damage to property, by an employee of the Authority or of the Contractor or its Subcontractors or by any third party, being claims, howsoever arising, resulting from the Unauthorised Flight.

The Authority shall inform the Contractor as soon as is reasonably practicable of any claim made against it for which it is indemnified by the Contractor pursuant to this Clause 19.7. The Contractor shall do all that is reasonable to assist the Authority in its conduct of the claim. The Authority will consult the Contractor throughout conduct of the claim and, whilst reserving the right to agree settlement, will obtain the prior consent of the Contractor and or his insurer to this settlement. The consent of the Contractor or his insurer shall not be unreasonably withheld. Consultation with the Contractor and settlement of claims shall not diminish the Contractor's obligations under this Clause 19.7.

19.8 This Clause 19.8 shall apply if any Aircraft sustains Damage in such circumstances that liability falls to the Authority under Clause 19.3:

19.8.1 the Authority shall be under no obligation to have the Aircraft repaired or replaced.

19.8.2 where the Aircraft which has been Damaged was to be supplied under the Contract, the Authority shall be entitled either to:

19.8.2.1 accept the Aircraft in its Damaged condition in performance or partial performance of this Contract and the Contract Price for that Aircraft shall be reduced by such a sum as is reasonable, or

19.8.2.2 require the Contractor to repair, or replace, the Aircraft. No profit shall be allowed to the Contractor in respect of such repair or replacement but the Contract Price shall be equitably adjusted to take account of the cost of the repair or replacement and the Contract delivery date

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for the Aircraft shall be extended by such period as is reasonably necessary to allow for the performance of the repair or replacement.

- 19.8.3 Where the Aircraft was issued to the Contractor for the purposes of maintenance, modification or repair, then either:
- 19.8.3.1 the Authority shall be entitled to accept the Aircraft in its Damaged condition in performance or partial performance of the Contract and the Contract Price for that maintenance, modification or repair shall be reduced by such a sum as is reasonable having regard to the extent which, at the time when the Damage was sustained, the repair or maintenance was incomplete or further work remained to be done in relation to it under the provisions of the Contract, or
 - 19.8.3.2 unless it can be shown to the satisfaction of the Authority that the Aircraft is beyond possible repair, the Authority shall be entitled to require the Contractor to repair, or to procure the repair of, the Aircraft. No profit shall be allowed to the Contractor in respect of such repair but the Contract Price shall be equitably adjusted to take account of the cost of the repair and the Contract delivery date for the Aircraft shall be extended by such period as is reasonably necessary to allow for the performance of the repair.
- 19.8.4 When the Contract is a contract which involves the issue of the Aircraft by the Authority to the Contractor for purposes other than maintenance, modification or repair:
- 19.8.4.1 the Authority shall be entitled by notice in writing to the Contractor to terminate the Contract pursuant to Clause 65 (Termination for Convenience) so far as it relates to that Aircraft and the sum payable by the Authority to the Contractor for the work to be done under the Contract in connection with that Aircraft shall be reduced by such a sum as is reasonable having regard to the extent to which at the time when the Damage was sustained that work was incomplete;
 - 19.8.4.2 if the Authority requires the Aircraft to be repaired or replaced such repair or replacement shall be the subject of separate contractual arrangements;
 - 19.8.4.3 if the Contract cannot be performed as a consequence of the Damage to the Aircraft and the Authority does not authorise its repair or replacement, it shall terminate the Contract pursuant to Clause 19.8.4.1.
 - 19.8.4.4 In all other circumstances the period for Contract performance shall be extended by such period as is reasonable having regard to the period of unavailability of the Aircraft and the Contract terms and conditions, including Contract Price, shall be equitably adjusted to take account of the unavailability of the Aircraft.
- 19.8.5 the Authority shall make its decision with regard to its entitlements under this Clause 19.7 within a reasonable period of time after it becomes aware of the Damage and the Contractor shall be entitled to be kept reasonably informed of the Authority's progress towards that decision and any reasons for delay. For the purpose of this Clause, that which is reasonable shall be established by taking

account of all the relevant circumstances regarding the cause of, the level of, and the consequences of the Damage sustained.

- 19.9 Subject always to the Contractor's Subcontractor agreeing to and complying with the terms of Clause 19.4 of this Clause as if it were the Contractor, where such a Subcontractor either performs an Authorised Flight or directly participates or assists in an Authorised Flight, he shall be entitled in his own right to enforce the terms of Clauses 19.2 and 19.3 of this Clause that confer a benefit upon it.

20 Not Used

21 States of Emergency, Period of Tension, Transition to War and Hostilities

- 21.1 Without prejudice to Clause 23 (Force Majeure), the Contractor shall continue to provide the Contractor Deliverables during any state of emergency, period of tension, transition to war and during hostilities unless otherwise directed by the Authority. The Authority will notify the Contractor of any changes or additions to the Contract requirements in accordance with Schedule 6 (Contract Change). Exceptionally, urgent requirements may be commenced in accordance with Paragraph 7 of Schedule 6 (Contract Change).

22 Flying Rate Adjustment

- 22.1 The Service to be provided in accordance with Schedule 2 (*Statement of Work*) is based on an Annual Flying Rate. In the event that the Authority declares an increased Annual Flying Rate requirement the Parties shall meet to agree how such requirement shall be supported. This will be authorised by a formal Contract Change in accordance with Clause 71 (*Contract Change*).

23 Force Majeure

- 23.1 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.
- 23.2 As soon as practicable following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.

Effect of a Force Majeure Event

- 23.3 The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and or interruption of the Service and the Contractor shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 23.4 No Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party. The Authority shall not be entitled to terminate this Contract for Contractor Default to the extent that such Contractor Default arises from a Force Majeure Event, but without prejudice to Clause 23.3.

Financial Effect

- 23.5 Where it is agreed or determined that a Force Majeure Event has occurred, the Contractor shall:

- 23.5.1 continue to claim payment in accordance with Schedule 5 (Pricing and Payment);
- 23.5.2 collect and separately record the costs and/or savings to the Contractor and Sub-Contractors associated with the impact of the Force Majeure Event to enable such costs and/or savings to be considered in any Contract Price adjustment after cessation of the Force Majeure Event or earlier at interim reconciliations should either Party so elect. In determining the costs and/or savings to be taken into account with respect to the Force Majeure Event:
 - 23.5.2.1 such costs must be reasonably and properly incurred, having regard to the circumstances of the Force Majeure Event and any applicable insurances that may be available to compensate for the event; and/or
 - 23.5.2.2 such costs and/or savings are calculated using rates and charges which are consistent with the rates and charges that would otherwise be applicable to the provision of the Contractor Deliverables.

23.6 For the avoidance of doubt, the remedies for performance failure set out in Schedule 4 (Performance Management) and or Schedule 5 (Pricing and Payment) will not apply during the subsistence of the Force Majeure Event where the failure of performance is solely due to the Force Majeure Event.

23.7 Where the Force Majeure Event affects a part of the Contractor Deliverables, the provisions of Clauses 23.5 and 23.6 shall only apply to such affected part. Clauses 23.5 and 23.6 shall not apply to unaffected parts of the Contractor Deliverables, or where the prevention and mitigation undertaken allow performance to be resumed.

Cessation of Force Majeure Event

23.8 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification this Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event and Clauses 23.5 and 23.6 shall no longer apply, and the provisions of Schedule 5 (Pricing and Payment) shall apply subject to the outcome of any Contract Price adjustments for the period during which the Force Majeure Event existed.

24 Indemnities and Liabilities

Contractor's Indemnities

24.1 The Contractor shall, subject to Clauses 19 (Flights Liability and Indemnity), 24.2 to 24.8 inclusive (Indemnities and Liabilities) and Clause 25 (Limit of Liabilities) be responsible for, and release and indemnify the Authority and its employees and agents from and against all liability for:

24.1.1 death or personal injury; and

24.1.2 breach of statutory duty applicable to the Contract,

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

Contractor acting on the instruction of the Authority properly given in accordance with this Contract.

Except where otherwise expressly stated in this Contract, nothing contained in this Contract shall affect the liability the Contractor may have to a third party arising out of its default or non-performance or its negligent act or omission or wilful misconduct and shall not be construed as an indemnity by the Authority against any claims originating with third parties.

Conduct of indemnity claims

- 24.2 If any claim is subject to an indemnity from either Party to the other:
- 24.2.1 the Party wishing to make a claim (the “Indemnified Party”) shall notify the other Party (the “Indemnifying Party”) of the relevant claim as soon as reasonably practicable, giving full particulars of the claim;
 - 24.2.2 the Indemnified Party shall take all reasonable steps (and, if the Contractor is the Indemnified Party, it shall ensure that its Sub-Contractors shall take all reasonable steps) to minimise and mitigate any loss for which the Indemnifying Party is liable under this Contract; and
 - 24.2.3 subject to Clause 24.3 if the claim relates to an action by a third party against the Indemnified Party, the Indemnifying Party shall, at its own expense (and with the assistance and co-operation of the Indemnified Party, such assistance and co-operation to be provided at the expense of the Indemnifying Party) have conduct of such claim, including its settlement, and the Indemnified Party shall not, unless the Indemnifying Party has failed to resolve the claim within a reasonable period, take any action to settle or prosecute the claim.
- 24.3 Notwithstanding the foregoing, the Authority shall at all times have the right to refuse to allow the Contractor to have conduct of the claim if the Authority considers that conduct of the claim should be retained by the Authority on grounds of national interest including national security. Where the Contractor is the Indemnifying Party and the Authority exercises its right under this Clause 24.3 to conduct of a claim for an indemnity provided by the Contractor, the Contractor agrees to pay any settlement the Authority has reached with the claimant provided such settlement is in the opinion of the Contractor reasonable in the circumstances. Any disputes arising under this Clause 24.3 shall be settled in accordance with Clause 82 (Disputes).
- 24.4 The Indemnifying Party shall:
- 24.4.1 consult, to the extent reasonably practicable, with and keep the Indemnified Party reasonably informed of the conduct of the claim; and
 - 24.4.2 not bring the name of the Indemnified Party into disrepute in any way in its conduct of the action.
- 24.5 The Indemnified Party shall:
- 24.5.1 not compromise the claim in any way whatsoever by making statements or admissions (other than in accordance with the Indemnifying Party’s consent, not to be unreasonably withheld or delayed);
 - 24.5.2 do nothing which could prejudice the defence of any such claim; and
 - 24.5.3 not bring the name of the Indemnifying Party into disrepute.

Repayment of subsequently recovered amounts to the Indemnifying Party

- 24.6 If the Indemnifying Party pays to the Indemnified Party an amount in respect of an indemnity and the Indemnified Party subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Indemnified Party shall immediately repay to the Indemnifying Party whichever is the lesser of:
 - 24.6.1 an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out of pocket costs and expenses properly incurred by the Indemnified Party in recovering the same; or
 - 24.6.2 the amount paid to the Indemnified Party by the Indemnifying Party in respect of the claim under the relevant indemnity, provided that:
 - 24.6.2.1 there shall be no obligation on the Indemnified Party to pursue such recovery; and
 - 24.6.2.2 the Indemnifying Party shall be repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Indemnified Party exceeds any loss sustained by the Indemnified Party.
- 24.7 Unless expressly permitted under this Contract, neither Party shall be entitled to exercise any common law or statutory rights in relation to any breach of this Contract to the extent that this Contract provides an express remedy in relation to the breach.
- 24.8 Notwithstanding any other provisions of this Contract, neither Party shall be entitled to recover compensation or make a claim under this Contract in respect of any loss that it has incurred to the extent that it has already been compensated in full in respect of that loss pursuant to this Contract or otherwise.

25 Limitation of Liability

- 25.1 *REDACTED*
- 25.2 Nothing in this Contract shall be construed as excluding or limiting either Party's liability for death or personal injury resulting from that Party's negligence, fraud or fraudulent misrepresentation or any other liability which cannot be limited or excluded as a matter of law.

SECTION F: INFORMATION PROVISIONS

26 Authority Data

- 26.1 For the purposes of this Clause 26, "**Authority Data**" means:
 - 26.1.1 the data, text, drawings, diagrams or images (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and:
 - 26.1.1.1 which are supplied to the Contractor by or on behalf of the Authority; or

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- 26.1.1.2 which the Contractor is required to generate, process, store or transmit and which are material to the performance of this Contract; or
- 26.1.1.3 any Personal Data for which the Authority is the Data Controller, provided that, for the avoidance of doubt, the term Authority Data does not imply any ownership rights in any Authority Data pursuant to this Clause 26.
- 26.2 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 26.3 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority (provided that this Clause 26.3 shall not apply to Clause 26.1.1.2 of the definition of Authority Data).
- 26.4 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority.
- 26.5 Subject to Clause 26.10 the Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data provided that this Clause 26.5 shall not apply to Clause 26.1.1.2 of the definition of Authority Data unless such Authority Data is within the custody and control of the Contractor.
- 26.6 The Contractor shall perform secure back-ups of all electronic Authority Data held on its IT systems and shall ensure that up-to-date back-ups are stored in accordance with the Business Continuity Plans and the Contractor shall procure (as reasonably required by the Authority) that the Sub-Contractors perform secure backups of all electronic Authority Data held on the Sub-Contractor's IT systems. The Contractor shall ensure that such back-ups are made available to the Authority upon reasonable request.
- 26.7 The Contractor shall ensure that any electronic system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.
- 26.8 If the Authority Data is corrupted, lost or sufficiently degraded as a result of an act attributable to the Contractor's (or his Subcontractors) default so as to be unusable, the Authority may, where it does not already have a copy:
- 26.8.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data and the Contractor shall do so as soon as practicable; and/or
- 26.8.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable proven expenses (in the same level of detail as incurred by the Authority from the Contractor) incurred directly in doing so.
- 26.9 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor and/or Authority may be required to take.
- 26.10 Where the Contractor stores Authority Data on the Authority's IT systems, the Authority shall be responsible for preserving the integrity of Authority Data and preventing the loss or corruption of such data when in the Authority's possession or control. The Authority shall ensure that up to date back-ups are stored in accordance with its Business

Continuity Plans and such back-ups are made available to the Contractor upon reasonable request.

27 Contractor's Records

- 27.1 The Contractor shall (and shall procure that its Sub-Contractors shall) at all times, and in accordance with Good Industry Practice, maintain all records in the possession, custody or control of the Contractor (or the Sub-Contractor (as the case may be)) relating to this Contract and the provision of the Contractor Deliverables (without prejudice to any other express provisions in this Contract relating to such information):
- 27.1.1 of all incidents relating to health, safety and security which occur during the Contract Period to the extent that the Authority is not legally obliged to do so as owner of the Authority Sites;
 - 27.1.2 of all claims made by a third party against either Party that are submitted to the Contractor and/or a Sub-Contractor in connection with this Contract;
 - 27.1.3 of all Disputes dealt with pursuant to Clause 82 that arise during the Contract Period;
 - 27.1.4 all certification and/or authorised documentation relating to the attainment of Necessary Consents, third party quality standards and/or evidence of compliance with any specified DEFSTAN requirements;
 - 27.1.5 relating to hazardous substances pursuant to Clause 46; and
 - 27.1.6 any Contractor owned Intellectual Property Rights, Contractor's use of Authority owned Intellectual Property Rights and records relating to applicable Third Party Intellectual Property Rights, (the "Records") and without prejudice to Clause 28 (*Disclosure of Information*) and Clause 34 (*Intellectual Property Rights*) make the Records available to be examined and if necessary, copied, by or on behalf of the Authority, as the Authority may reasonably require when requested upon reasonable notice. The Records shall be maintained for a period of at least 6 (six) Years after the expiry or earlier termination of this Contract.
- 27.2 The Authority shall be entitled to disclose the Records set out in Clauses 27.1.2, 27.1.4, 27.1.5 and 27.1.6 to potential Follow-On Contractors.

28 Disclosure of Information

- 28.1 Subject to Clauses 28.4 to 28.9 each Party:
- 28.1.1 shall treat in confidence all Information it receives from the other;
 - 28.1.2 shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of this Contract;
 - 28.1.3 shall not use any of that Information otherwise than for the purpose of this Contract; and
 - 28.1.4 shall not copy any of that Information, except to the extent necessary for the purpose of exercising its rights of use and disclosure under this Contract.

- 28.2 Both Parties shall take all reasonable precautions necessary to ensure that all Information disclosed to the other under or in connection with this Contract:
- 28.2.1 is disclosed to its employees and/or Sub-Contractors, only to the extent necessary for the performance of this Contract; and
 - 28.2.2 is treated in confidence by them and not disclosed except with the prior written consent of the originating Party or used otherwise than for the purpose of performing work or having work performed under this Contract or any Sub-Contract.
- 28.3 Both Parties shall ensure that their employees and/or Sub-Contractors are aware of the arrangements for discharging the obligations at Clauses 28.1 and 28.2 before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.
- 28.4 Clauses 28.1 and 28.2 shall not apply to any Information to the extent that either Party:
- 28.4.1 exercises rights of use or disclosure of such Information granted otherwise than in consequence of, or under, this Contract;
 - 28.4.2 has the right to use or disclose the Information in accordance with other conditions of this Contract; or
 - 28.4.3 can show:
 - 28.4.3.1 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;
 - 28.4.3.2 that the Information was already known to it (without restrictions on disclosure or use) prior to receiving the Information under or in connection with this Contract;
 - 28.4.3.3 that the Information was received without restriction on further disclosure from a third party which lawfully acquired the Information without any restriction on disclosure; or
 - 28.4.3.4 from its records that the same information was derived independently of that received under or in connection with this Contract;
- provided that the relationship to any other Information is not revealed.
- 28.5 Neither Party shall be in breach of this Clause 28 (Disclosure of Information) where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality and such disclosure shall in no way diminish the obligations of the Parties under this Clause 28 (Disclosure of Information).
- 28.6 The Authority may disclose the Information:
- 28.6.1 on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body, which shall include: disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes;

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- 28.6.2 on a confidential basis to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 28.6.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 28.6.4 on a confidential basis to a professional adviser, consultant or other person engaged by the Authority for any purpose relating to or connected with this Contract;
- 28.6.5 on a confidential basis for the purpose of the exercise of its rights under the Contract; or
- 28.6.6 on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract;

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this condition. Before sharing any Information in accordance with clause 28.6 above, the Authority may redact the Information. Any decision to redact information made by the Authority shall be final.

- 28.7 The Authority shall not be in breach of this Contract where any disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information (FOI) Act 2000 or the Environmental Information Regulations 2004 (“the **Regulations**”). To the extent permitted by the time for compliance under the FOI Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of FOI Act Information under the FOI Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the FOI Act Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose FOI Act Information in order to comply with the FOI Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the FOI Act or the Regulations.
- 28.8 For the purposes of the National Audit Act 1983, the Controller and Auditor General may examine such documents as he may reasonably require which are owned, held, or otherwise within the control of the Contractor and/or any Sub-Contractor and may require the Contractor and/or any Sub-Contractor to produce such written or oral explanations as he considers necessary. It is hereby declared that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the Contractor is not a function exercisable under this Contract.
- 28.9 Nothing in this Clause 28 shall affect the Parties' obligations of confidentiality where information is disclosed orally in confidence.

Controlled Information

- 28.10 This Clause 28.10 and Clauses 28.11 to 28.12 (inclusive) shall apply in respect of any Controlled Information communicated to and/or held by the Contractor, in addition to and notwithstanding Clauses 28.1 to 28.8 (Disclosure of Information) (inclusive), or any other confidentiality Clause of this Contract.
- 28.11 The Contractor shall:

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- 28.11.1 hold the Controlled Information and not use it other than for the purpose of discharging its obligations under this Contract;
 - 28.11.2 not copy the Controlled Information except as strictly necessary for the purpose of discharging its obligations under this Contract;
 - 28.11.3 not disclose the Controlled Information to any third party unless so authorised in writing beforehand by the Authority;
 - 28.11.4 protect the Controlled Information diligently against unauthorised access and against loss; and
 - 28.11.5 act diligently to ensure that:
 - 28.11.5.1 Controlled Information is disclosed to its employees only to the extent necessary for the purpose of discharging its obligations under this Contract; and
 - 28.11.5.2 employees to whom Controlled Information is disclosed are made aware of and required to comply with the terms of these Clauses 28.10 to 28.13 (inclusive).
- 28.12 Where Controlled Information is provided to the Contractor, it shall:
- 28.12.1 compile a register of that Controlled Information, which shall include an explicit description of the Controlled Information, a record of the number of copies made and a record of all access to the Controlled Information including access to any copies of the Controlled Information;
 - 28.12.2 maintain such register for the duration of this Contract and for 6 (six) Years following expiry or earlier termination of this Contract in accordance with its terms;
 - 28.12.3 make such register of access available to the Authority upon reasonable notice for inspection and audit for so long as it is required to be maintained under Clause 28.12.2; and
 - 28.12.4 on expiry or earlier termination of this Contract in accordance with its terms, return to the Authority all original and duplicate copies of the Controlled Information, or else at the Authority's option destroy these copies and provide a certificate of destruction to the Authority.
- 28.13 Nothing in these Clauses 28.10 to 28.13 (inclusive) shall diminish or extinguish any right of the Contractor to copy, use or disclose any information that is not Controlled Information to the extent that it can show:
- 28.13.1 that the information concerned was or has become published or publicly available for use without breach of any provision of this Contract or any other agreement between the Parties;
 - 28.13.2 that such information was already known to it (without restrictions on disclosure or use) prior to receiving it under or in connection with this Contract;
 - 28.13.3 that the information concerned was lawfully provided by a third party without restriction on use or further disclosure; or

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

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

Publicity and Communications with the Media

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

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

28.14.2 other than as specified in Schedule 2 (Statement of Work) or where the Authority has given its prior written consent photograph or film in or upon any Authority Sites;

28.14.3 erect or exhibit on any part of the Authority Sites any trade boards; or

28.14.4 exhibit or attach to any part of the Authority Sites any sign notice or advertisement, other than where specified in the Contract or unless the Authority has given its prior written consent or as otherwise required to comply with Legislation.

29 Supply of Information for NATO Codification and Defence Inventory Introduction

29.1 Where specified in Schedule 2 (*Statement of Work*) the Contractor shall comply with the provisions of Part B of Schedule 11 (*Ancillary Requirements and Information*)

30 Accuracy of Information

30.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the provision of the Contractor Deliverables save where the drawings incorporate information provided by the Authority and the Contractor (using Good Industry Practice) has identified errors and notified the Authority of the errors for the Authority's rectification.

31 Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority)

31.1 In this Clause 31, the expressions "Data Controller" and "Personal Data" shall have the same meanings as in the Data Protection Act 1998 in which they are defined in section 1 but used in lower case letters.

31.2 In the performance of this Contract, both Parties shall comply with their obligations as a Data Controller under the Data Protection Act 1998.

32 Transparency

32.1 For the purposes of this Clause 32 the following words and expressions shall have the meanings given to them below:

32.1.1 "**Transparency Information**" shall mean the content of this Contract in its entirety, including from time to time agreed changes to this Contract, and details of payments made by the Authority to the Contractor under this Contract and;

- 32.1.2 “**Contractor Commercially Sensitive Information**” shall mean the information listed in Schedule 12 (*Commercially Sensitive Information*) being information notified by the Contractor to the Authority which is acknowledged by the Authority as being commercially sensitive information.
- 32.2 Notwithstanding any other term of this Contract, including Clause 28 where applicable, the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.
- 32.3 Before publishing the Transparency Information to the general public in accordance with Clause 32.2 above, the Authority shall redact any information that would be exempt from disclosure if it was the subject of a request for information under the FOI Act or the Regulations, including the Contractor Commercially Sensitive Information.
- 32.4 The Authority may consult with the Contractor before redacting any information from the Transparency Information in accordance with Clause 32.3 (Transparency) 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 Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.
- 32.5 For the avoidance of doubt, nothing in this Clause 32 shall affect the Contractor’s rights at law.

33 Government Reciprocal Audit Arrangements

- 33.1 For the purposes of Schedule 5 (Pricing and Payment), the relevant officials of the overseas government specified in this Contract shall be the authorised representative of the Authority.

SECTION G: INTELLECTUAL PROPERTY RIGHTS

34 Intellectual Property Rights

- 34.1 Copyright
- 34.1.1 This Clause 34.1 shall apply to all copyright works generated under the Contract, or delivered to the Authority under the provisions of the Contract, except that it shall not apply to copyright works covered by such other software clause as may appear in the Contract or for which the Authority is otherwise licensed, or to any work deliverable under the Contract and subject to the terms of Clauses 34.2 (Vesting in the Authority), 34.3 (Design Rights), 34.4 (Repair and Maintenance Information), 34.5 (Retention of Records) and/or 34.6 (Data-pack).
- 34.1.2 The Contractor shall use all reasonable endeavours to ensure that copyright in any work generated under the Contract shall be the property of and vest in the Contractor, subject to the rights of third parties in pre-existing works.
- 34.1.3 The Contractor agrees not to publish any copyright work generated under the Contract without the consent in writing of the Authority. The Authority will not normally raise objection to publication unless delay or limited publication only is considered necessary in the national interest. The Authority will review, upon request by the Contractor, any such restriction on publication.
- 34.1.4 The Authority shall have, in respect of any copyright work to which this Clause 34.1 applies, a free licence;

- 34.1.4.1 to copy the work and to circulate and use the work or any copy thereof within any United Kingdom Government Department (which term includes the United Kingdom Armed Forces) provided that no part of the work nor any copy thereof shall, except with the prior written permission of the Contractor or pursuant to Clause 34.1.4.2 or 34.1.4.3, be made available to any third party;
- 34.1.4.2 to issue the work or any part of the work or any copy of the work or any part thereof to another supplier or potential supplier to the United Kingdom Government for the purpose of use only under a contract, or tendering for a proposed contract, for a United Kingdom Government purpose, provided that the supplier or potential supplier is placed under an obligation which restricts disclosure and use of such work to the said purposes;
- 34.1.4.3 to issue the work or any part of the work or any copy of the work or any part thereof to the government(s) of the nation(s) prescribed in the Contract, for information only, in pursuance of information exchange arrangements for defence purposes, provided that the recipient government is placed under an obligation not to use such work for other than information purposes or disclose it to a third party;

provided that, subject to any pre-existing rights of the Authority, Clauses 34.1.4.2 and 34.1.4.3 above shall only apply to the work or any part of the work or any copy of the work or any part thereof if such work or part thereof is generated under the Contract. Clauses 34.1.4.2 and 34.1.4.3 shall apply to all works or parts thereof unless otherwise marked by the Contractor in accordance with Clause 34.1.5 below.

- 34.1.5 As soon as he becomes aware that any copyright work or part thereof delivered or proposed to be delivered is a work subject to special conditions or any third party rights known to the Contractor, or is a work or part thereof not generated under the Contract, the Contractor shall inform the Authority and upon delivery shall appropriately mark such work or part thereof to identify the same and indicate the relevant conditions or rights.
- 34.1.6 The Contractor may mark or include in any copyright work to which this Clause 34.1 applies a copyright notice provided that such copyright notice acknowledges the Authority's rights under this Clause 34.1. Any such notice shall be perpetuated in any copies of such work made by the Authority or any other United Kingdom Government Department or its agents or contractors.
- 34.1.7 This Clause 34.1 shall constitute an 'agreement to the contrary' for the purposes of Section 48 of the Copyright, Design and Patents Act 1988.
- 34.1.8 In this Clause 34.1 'copyright work' shall be understood to include any works, data or other materials in which a database right subsists.

34.2 Vesting in the Authority

34.2.1 All intellectual property rights of any nature in the results generated in the performance of work under the Contract and recorded in any written or other tangible form (the 'Results'), including rights in inventions, designs, computer software, databases, copyright works and information shall vest in and be the property of the Authority. This Clause 34.2 is applicable to CDR Number 1 referred to in the form at Appendix 1 to

Schedule 17 (Contract Data Requirements) of this Contract. The Contractor shall take all necessary measures to secure that vesting. On request, the Contractor shall demonstrate to the Authority's satisfaction that, where it has sub-contracted work under the Contract, it has secured that vesting in the work performed by its sub-contractors.

- 34.2.2 The Authority may use, have used, copy and disclose the Results by itself or through third parties for any purpose whatsoever subject to the Contractor's patents and design rights (registered or unregistered) and to the rights of third parties not employed in the performance of work under the Contract.
- 34.2.3 The Authority shall determine whether any of the Results should be protected by patent or other protection. The costs of patent or like protection shall be borne by the Authority. The Contractor shall assist the Authority in filing and executing documents necessary to secure that protection. The Contractor shall use all commercially reasonable endeavours to secure similar assistance from subcontractors as appropriate. The costs of such patent or other protection shall be borne by the Authority.
- 34.2.4 The Contractor shall mark any copyright work comprising Results with the legend: '© Crown-owned copyright [insert the year of generation of the work]'.
- 34.2.5 Apart from intellectual property rights vested in the Authority by virtue of Clause 34.2.1, ownership of, or rights in, all other intellectual property are not transferred to the Authority by this Clause 34.2.
- 34.2.6 Unless otherwise agreed with the Authority, the Contractor shall retain a copy of the Results together with records of all work done for the purposes of the Contract for six (6) years after the completion of the Contract.
- 34.2.7 The Authority shall have the right to require the Contractor to furnish to the Authority copies of any and all of the Results and such records for so long as they are retained by the Contractor. A reasonable charge for this service based on the cost of providing it will be borne by the Authority unless already included in the price of the Contract.
- 34.2.8 The Contractor shall treat the Results as if received in confidence from the Authority and:
- 34.2.8.1 shall not copy, use or disclose to a third party any of the Results without the prior written consent of the Authority, except that the Contractor may without prior consent, copy and use the Results, and disclose the Results in confidence to its officers, employees and sub-contractors, to such extent as may be necessary for the performance of the Contract or any sub-contract under it or in the exercise of any right granted pursuant to Clause 34.2.12 of this Clause 34.2; and
- 34.2.8.2 shall take all reasonable precautions necessary to ensure that the Results are treated in confidence by those of its officers, employees and sub-contractors who receive them and are not further disclosed or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any sub-contract under it.
- 34.2.9 The Contractor shall ensure that his employees are aware of his arrangements for discharging the obligations at Clause 34.2.8 and take such steps as may be reasonably practical to enforce such arrangements.

- 34.2.10 The confidentiality provisions of Clause 34.2.8 shall not apply to the Results or any part thereof to the extent that the Contractor can show that they were or have become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the parties.
- 34.2.11 The Contractor shall not be in breach of the confidentiality obligations contained in this Clause 34.2 where it can show that any disclosure of the Results was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Contractor shall ensure that the recipient of the Results is made aware of and asked to respect its confidentiality and, wherever possible and permitted by law, shall notify the Authority as soon as practicable after becoming aware that such disclosure is required. Such disclosure shall in no way diminish the obligations of the Contractor under this Clause 34.2.
- 34.2.12 The Contractor shall be entitled to request consent from the Authority to reuse (under licence or otherwise) the Results and intellectual property rights vested in the Authority by virtue of Clause 34.2.1 for other purposes including, but not limited to, tendering for other work for the Authority or work for another UK Government department. Such consent shall be properly considered by the Authority taking into account matters such as national security and the rights of third parties.

34.3 Design Rights

Application

- 34.3.1 This Clause 34.3 applies to deliverable Information identified in a Contract Data Requirement as being subject to this Clause 34.3.
- 34.3.2 For the purposes of this Clause, the following definitions apply:
- 34.3.2.1 'Contract Data Requirement' means CDR Number 2 referred to in the form at Appendix 2 to Schedule 17 (Contract Data Requirements) of this Contract.
- 34.3.2.2 'Information' means technical data relating to Articles, processes or materials whether in human readable form or in machine readable form, or in any other form (but excluding software subject to such other software clause or for which the Authority is otherwise licensed).
- 34.3.2.3 'Intellectual Property' includes patents, registered designs, design rights, topography rights, copyright, database rights and other rights in Information.
- 34.3.2.4 'Article' means part or the whole of any article which the Contractor is required under the Contract to supply or in connection with which he is required under the Contract to carry out any service and any other article or part thereof to the same design as that article or any Modification of that design made in the exercise of rights granted under this Clause 34.3.
- 34.3.2.5 'Modification' means a change to the build standard of an Article and the expressions 'to Modify' and 'Modified' shall be interpreted accordingly.

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- 34.3.2.6 'for the Services of the United Kingdom Government' means anything done in relation to Articles owned or used by the Authority, under the authority of, or to the order of, a Minister of the Crown in pursuance of authority vested in the Minister by Parliament.

Ownership

- 34.3.3 All Intellectual Property generated in the performance of work under the Contract shall, subject to any rights of the Crown or any third party and to the terms of this Clause 34.3, belong to the Contractor.

Rights of Use

- 34.3.4 Subject to the provisions of this Clause 34.3 and to the rights of third parties the Authority and any other United Kingdom Government Department shall have, during the period of the Contract and at all times thereafter, the right, anywhere in the world for the Services of the United Kingdom Government, to copy, in whole or in part, and use any Information to which this Clause 34.3 applies:

Monitoring and Evaluation

- 34.3.4.1 to monitor work under the Contract and to inspect, test and evaluate the delivered Information and Articles;

Fitting/Matching Equipment

- 34.3.4.2 to define the relevant interfaces to enable Articles to interface or cooperate with other equipment and to use the resultant interfaces for the purposes of designing, developing and manufacturing such other equipment;

Associated Equipment

- 34.3.4.3 to design, develop and produce trainers and simulators relating to Articles; Jigs, Tools & Test Equipment;
- 34.3.4.4 to design, develop and produce jigs, tools, and test equipment relating to Articles;

Competitive Procurement

- 34.3.4.5 to manufacture Articles or, where the development of a process or material was specifically called for in the Contract, to use that process or to produce that material;

Modification

- 34.3.4.6 to Modify the design of Articles, including the carrying out of design investigations, or where the development of a process or material was specifically called for in the Contract, to Modify that process or material and to produce design, manufacturing, user and other documentation relating to the Modifications or to the Modified design;

Disposal of Articles

- 34.3.4.7 to dismantle, scrap or otherwise destroy any Article.

Sales

- 34.3.5 The Authority shall also have the right to sell, hire, lease or otherwise dispose of anything manufactured in exercise of the rights granted under Clause 34.3.4 of this Clause 34.3, which is either outworn or surplus stock.

Conditions of Use

- 34.3.6 The rights set out in Clauses 34.3.4 and 34.3.5 of this Clause 34.3 may be exercised by the Authority itself, any other United Kingdom Government Department or any agent acting on behalf of, or a contractor in pursuance of a contract with, the Authority or any such Department.
- 34.3.7 The rights granted to the Authority, and to any other United Kingdom Government Department, under this Clause 34.3 are additional to any rights under any other contract. The rights include the right to copy and to issue any Information the subject of this Clause 34.3 as necessary to prospective tenderers for the purposes of establishing their interest in tendering and of preparing tenders for anything to be done or proposed to be done pursuant to Clauses 34.3.4 or 34.3.5.
- 34.3.8 Except as provided in Clauses 34.3.9 and 34.3.10 below or otherwise provided in the Contract, the Contractor shall not be entitled to receive any royalty or other payment in respect of the exercise of the rights granted under Clauses 34.3.4 or 34.3.5 of this Clause 34.3 notwithstanding the existence of any Intellectual Property owned or controlled by the Contractor covering the Articles.
- 34.3.9 Subject to the rights of the Crown arising otherwise than under this Clause 34.3, and provided that the Contractor has met in a timely manner any obligations included in the Contract to inform the Authority of the existence of any relevant United Kingdom patent or registered design, the Contractor shall be entitled to claim payment under the provisions of Sections 55-59 of the Patents Act 1977 or the First Schedule to the Registered Designs Act 1949 in respect of any patented invention or registered design owned or controlled by the Contractor and used in the exercise of the rights granted under Clauses 34.3.4 and 34.3.5 of this Clause 34.3. The terms to be agreed or settled for the use of any such patented invention or registered design shall not include payment of compensation under Section 57A of the Patents Act 1977 or paragraph 2A of the First Schedule to the Registered Designs Act 1949 in respect of any invention or design covering the Articles, or described in any Information, that is deliverable under the Contract and is subject to this Clause 34.3.
- 34.3.10 Nothing in Clauses 34.3.8 and 34.3.9 of this Clause 34.3 shall affect the rights of the Contractor in or grant to the Authority or any other United Kingdom Government Department any rights in, any Intellectual Property not covering the Articles.

Consideration for Initial Production

- 34.3.11 In the event that the Contract does not cover initial production the Authority will give consideration to placing any first production order for Articles with the Contractor provided that he can offer satisfactory price, delivery and other terms (whether established by competition or otherwise). The Authority reserves the right to determine what constitutes a 'first production order' for the purpose of this clause. For any subsequent order or orders for the production of Articles or for work in the exercise of rights under Clause 34.3.4 of this Clause 34.3, the

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Authority will normally seek competitive tenders, but undertakes to invite the Contractor to tender provided that he is still eligible to perform such work for the Authority.

Modifications

34.3.12 The rights under Clause 34.3.4.6 shall only be exercised if:

34.3.12.1 the Contractor is unwilling to accept or unable to perform a contract on fair and reasonable terms for the Modifications required; or

34.3.12.2 the Modifications are required to enable the Articles to interface with equipment supplied by a third party.

In either event, the Authority shall, upon receipt of a written request from the Contractor, ensure that the Contractor is provided with one copy of all Information delivered to the Authority in relation to any such Modification. The Authority shall grant or procure for the Contractor the right to be granted a licence to use, have used and sub-license in any part of the world any Intellectual Property covering such Information for the purposes of manufacturing, selling and supporting any Article on fair and reasonable terms as between willing licensee and willing licensor.

Liability

34.3.13 In the event that Information to which this Clause 34.3 applies is used by or for the Authority otherwise than for the purpose for which the Information was supplied in accordance with the relevant Contract Data Requirement, the Contractor shall have no liability whatsoever for any direct or indirect consequences, including losses, damages or injuries caused to the Authority or any third party, arising from its use.

Release of Information and Confidentiality

34.3.14 The Authority shall ensure that Information released to any third party under this Clause 34.3 is limited to that necessary for the task on which the third party is engaged.

34.3.15 All Information which is provided to the Authority subject to this Clause 34.3 is disclosed in confidence and shall only be copied, disclosed and used in accordance with the provisions of this Clause 34.3. The Authority shall ensure that all disclosures of Information to any third party shall be under express conditions of confidentiality between the Authority and the third party, and shall procure, at the request of the Contractor, a direct confidentiality agreement in the form of the Confidentiality Agreement (Appendix 1 to Schedule 15 to the Contract).

Clarification of Information

34.3.16 At the request of the Authority, or any other United Kingdom Government Department, at any time during the period for which the Contractor is required by this or any subsequent contract to retain the Information the Contractor shall, subject to the availability of resources and within the United Kingdom, provide assistance to the Authority, the other Department or their agents or contractors in exercising the rights granted under this Clause 34.3. Such assistance shall be

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limited to that required to enable a third party of similar skill to the Contractor in the relevant area of technology to interpret any Information supplied under the terms of this Clause 34.3. The Contractor shall be entitled to payment by the Authority or other United Kingdom Government Department on fair and reasonable terms for any such assistance provided.

Marking

34.3.17 Any Information supplied subject to this Clause 34.3 may be marked by the Contractor with a copyright and/or other restrictive legend provided that the legend acknowledges the Authority's rights under this Clause 34.3. Any such marking shall be perpetuated in any copies of the Information made by the Authority or any other United Kingdom Government Department or its agents or contractors.

Levy

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

Interpretation

34.3.19 The headings in this Clause 34.3 are for convenience only and shall not affect the interpretation of the Clause.

34.3.20 This Clause 34.3 shall constitute an agreement to the contrary for the purposes of Section 48(5) of the Copyright, Designs and Patents Act 1988 and an assignment to the Contractor of future design right for the purposes of Section 223 of the Copyright, Designs and Patents Act 1988.

34.4 Repair and Maintenance Information

Application

34.4.1 This Clause 34.4 applies to deliverable Information identified in a Contract Data Requirement as being subject to this Clause 34.4.

Definitions

34.4.2 For the purposes of this Clause 34.4, the following definitions apply:

34.4.2.1 'Contract Data Requirement' means CDR Numbers 2 and 3 referred to in the form at Appendices 2 and 3 (respectively) to Schedule 17 (Contract Data Requirements) of this Contract.

34.4.2.2 'Information' means technical data relating to Articles, processes or materials whether in human readable form or in machine readable form, or in any other form (but excluding software subject to such other software clause for which the Authority is otherwise licensed).

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- 34.4.2.3 'Intellectual Property' includes patents, registered designs, design rights, topography rights, copyright, database rights and other rights in Information.
- 34.4.2.4 'Article' means part or the whole of any article which the Contractor is required under the Contract to supply or in connection with which he is required under the Contract to carry out any service and any other article or part thereof to the same design as that article.
- 34.4.2.5 'Repair and Maintenance' means activity to maintain Articles in an operable condition including:
- 34.4.2.5.1 maintenance of records of defects and reliability;
 - 34.4.2.5.2 the identification of replacements for Articles that become obsolete;
 - 34.4.2.5.3 the preparation and application of procedures and arrangements (including safety procedures) for removing Articles from and re-installing them in an operational system, and for handling, storing, transporting, packaging and labelling Articles;
 - 34.4.2.5.4 inspection and testing of Articles to check calibration and performance and to detect and identify faults;
 - 34.4.2.5.5 dismantling Articles;
 - 34.4.2.5.6 preparation and application of repair schemes;
 - 34.4.2.5.7 reassembling Articles after repair, or incorporation of modifications, including the incorporation of replacement or new parts;
 - 34.4.2.5.8 testing and calibrating of Articles prior to, during or after re-assembly and after reinstallation in an operational system;
 - 34.4.2.5.9 reworking or reconditioning of Articles;
- but excluding redesign or manufacture of any replacement or new parts, or the design of any modification.
- 34.4.2.5.10 'for the Services of the United Kingdom Government' means anything done, in relation to Articles owned or used by the Authority, under the authority of, or to the order of, a Minister of the Crown in pursuance of authority vested in the Minister by Parliament.

Ownership

- 34.4.3 All Intellectual Property Rights in the Information subject to this Clause 34.4 shall, subject to any rights of the Crown or any third party and to the terms of this Clause 34.4, belong to the Contractor.

Rights of Use

- 34.4.4 Subject to the provisions of this Clause 34.4 and to the rights of third parties the Authority and any other United Kingdom Government Department shall have,

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during the period of the Contract and at all times thereafter, the right, anywhere in the world for the Services of the United Kingdom Government, to copy, in whole or in part, and use any Information to which this Clause 34.4 applies:

Monitoring and Evaluation

34.4.4.1 to monitor work under the Contract and to inspect, test and evaluate the delivered Information and Articles;

In Service Support

34.4.4.2 to carry out Maintenance and Repair of Articles owned or in use by the Authority;

Jigs, Tools & Test Equipment

34.4.4.3 to design, develop and produce jigs, tools and test equipment for the in-service support of Articles;

Disposal of Articles

34.4.4.4 to dismantle, scrap or otherwise destroy any Articles;

Operation

34.4.4.5 to operate Articles.

Sales

34.4.5 If the Authority sells, hires, leases or otherwise disposes of any Article, the Authority may supply relevant user handbooks and maintainer information supplied under the Contract (or copies thereof) to the recipient and permit the recipient to copy and use such information for operation and maintenance of any such Article.

Conditions of Use

34.4.6 The rights set out in Clauses 34.4.4 and 34.4.5 of this Clause 34.4 may be exercised by the Authority itself, any other United Kingdom Government Department or any agent acting on behalf of, or a contractor in pursuance of a contract with, the Authority or any such Department.

34.4.7 The rights granted to the Authority, and to any other United Kingdom Government Department, under this Clause 34.4 are additional to any rights under any other contract. The rights include the right to copy and to issue any Information the subject of this Clause 34.4 as necessary to prospective tenderers for the purposes of establishing their interest in tendering and of preparing tenders for anything to be done or proposed to be done pursuant to Clause 34.4.4.

34.4.8 Except as provided in Clauses 34.4.9 and 34.4.10 below or otherwise provided in the Contract, the Contractor shall not be entitled to receive any royalty or other payment in respect of the exercise of the rights granted under Clauses 34.4.4 or 34.4.5 of this Clause 34.4 notwithstanding the existence of any Intellectual Property owned or controlled by the Contractor covering the Articles.

34.4.9 Subject to the rights of the Crown arising otherwise than under this Clause 34.4 and provided that the Contractor has met in a timely manner any obligations

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included in the Contract to inform the Authority of the existence of any relevant United Kingdom patent or registered design, the Contractor shall be entitled to claim payment under the provisions of Sections 55-59 of the Patents Act 1977 or the First Schedule to the Registered Designs Act 1949 in respect of any patented invention or registered design owned or controlled by the Contractor and used in the exercise of the rights granted under Clauses 34.4.4 and 34.4.5 of this Clause 34.4. The terms to be agreed or settled for the use of any such patented invention or registered design shall not include payment of compensation under Section 57A of the Patents Act 1977 or paragraph 2A of the First Schedule to the Registered Designs Act 1949 in respect of any invention or design covering the Articles, or described in any Information, that is deliverable under the Contract and is subject to this Clause 34.4.

- 34.4.10 Nothing in Clauses 34.4.8 and 34.4.9 of this Clause 34.4 shall affect the rights of the Contractor in or grant to the Authority or any other United Kingdom Government Department any rights in, any Intellectual Property not covering the Articles.

Contracted Repair and Maintenance

- 34.4.11 In the event that the Contract does not provide for repair, reworking or reconditioning of Articles involving Information other than that used for routine servicing, and where an order is to be placed for the conduct of such repair, reworking or reconditioning outside an establishment or depot of the Authority, the Authority undertakes to invite the Contractor to tender provided that he is still eligible to perform such work for the Authority.

Liability

- 34.4.12 In the event that Information to which this Clause 34.4 applies is used by or for the Authority otherwise than for the purpose for which the Information was supplied in accordance with the relevant Contract Data Requirement, the Contractor shall have no liability whatsoever for any direct or indirect consequences, including losses, damages or injuries caused to the Authority or any third party, arising from its use.

Release of Information and Confidentiality

- 34.4.13 The Authority shall ensure that Information released under this Clause 34.4 to any third party is limited to that necessary for the task on which the third party is engaged.
- 34.4.14 All Information which is provided to the Authority subject to this Clause 34.4 is disclosed in confidence and shall only be copied, disclosed and used in accordance with the provisions of this Clause 34.4. The Authority shall ensure that all disclosures of Information to any third party shall be under express conditions of confidentiality between the Authority and the third party, and shall procure at the request of the Contractor, a direct confidentiality agreement in the form of the Confidentiality Agreement (Appendix 1 to Schedule 15 to the Contract).

Clarification of Information

- 34.4.15 At the request of the Authority, or any other United Kingdom Government Department, at any time during the period for which the Contractor is required by this or any subsequent contract to retain the Information the Contractor shall

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subject to the availability of resources and within the United Kingdom, provide assistance to the Authority, the other Department or their agents or contractors in exercising the rights granted under this Clause 34.4. Such assistance shall be limited to that required for a third party of similar skill to the Contractor in the relevant area of technology to interpret any Information supplied under the terms of this Clause 34.4. The Contractor shall be entitled to payment by the Authority or other United Kingdom Government Department on fair and reasonable terms for such assistance provided.

Marking

34.4.16 Any Information supplied subject to this Clause 34.4 may be marked by the Contractor with a copyright and/or other restrictive legend provided that the legend acknowledges the Authority's rights under this Clause 34.4. Any such marking shall be perpetuated in any copies of the Information made by the Authority or any other United Kingdom Government Department or its agents or contractors.

Interpretation

34.4.17 The Clause headings in this Clause 34.3 are for convenience only and shall not affect the interpretation of the Clause.

34.4.18 This Clause 34.4 shall constitute an agreement to the contrary for the purposes of Section 48(5) of the Copyright, Designs, and Patents Act 1988.

34.5 Retention of Records

Application

34.5.1 This Clause 34.5 applies to deliverable Information identified in a Contract Data Requirement as being subject to this Clause 34.5.

34.5.2 For the purpose of this Clause 34.5, the following definitions apply:

34.5.2.1 'Contract Data Requirement' means CDR Number 2 and 3 referred to in the form at Appendices 2 and 3 (respectively) to Schedule 17 (Contract Data Requirements) of this Contract.

34.5.2.2 of this Contract.

34.5.2.3 'Information' means technical data relating to Articles, processes or materials whether in human readable form or in machine readable form, or in any other form (but excluding software subject to such other software clause or for which the Authority is otherwise licensed).

34.5.2.4 'Intellectual Property' includes patents, registered designs, design rights, topography rights, copyright, database rights and any other rights in Information.

Maintenance of Control Copy

34.5.3 During the period of the Contract and thereafter for not less than two years, or such other period as may be specified in the Contract:

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- 34.5.3.1 the Contractor shall maintain at least one copy (hereinafter called the 'Control Copy') of all deliverable Information to which this Clause 34.5 applies;
 - 34.5.3.2 the Control Copy shall be maintained in media and formats agreed to by the Authority, and it shall not be altered by the Contractor in any way which changes the build standard except as authorised in writing by the Authority. The Control Copy shall be deemed to be the property of the Authority, and the Authority may take possession of it notwithstanding any administration, receivership, winding-up or liquidation of the Contractor or any transfer of its assets to any third party; and
 - 34.5.3.3 copies of Information held on the Control Copy shall be supplied as required from time to time by the Authority at the Authority's expense.
- 34.5.4 If the Contractor enters into another contract with the Authority regarding maintenance of the Control Copy, the Contractor's obligation under Clause 34.5.3 of this Clause shall be governed by that contract at the end of the period referred to in Clause 34.5.3 of this Clause 34.5. Otherwise he may destroy or amend the Control Copy as he sees fit, but before destroying the Control Copy he shall offer to supply it to the Authority and give the Authority 60 days to request such supply.

Intellectual Property

- 34.5.5 Nothing in this Clause 34.5 shall affect the ownership of, or user rights in, any Intellectual Property.

34.6 Data-pack

- 34.6.1 The Authority shall have, in respect of any copyright work identified in CDR Number 4 at Schedule 17 (*Contract data Requirements*) of this Contract, a free licence;
 - 34.6.1.1 to copy the work and to circulate and use the work or any copy thereof within any United Kingdom Government Department (which term includes the United Kingdom Armed Forces) provided that no part of the work nor any copy thereof shall, except with the prior written permission of the Contractor or pursuant to Clause 34.6.1.2 or 34.6.1.3, be made available to any third party;
 - 34.6.1.2 to issue the work or any part of the work or any copy of the work or any part thereof to another supplier or potential supplier to the United Kingdom Government for the purpose of use only under a contract, or tendering for a proposed contract, for a United Kingdom Government purpose, provided that the supplier or potential supplier is placed under an obligation which restricts disclosure and use of such work to the said purposes;
 - 34.6.1.3 to issue the work or any part of the work or any copy of the work or any part thereof subject to any applicable export conditions to the government(s) of NATO states, Australia and New Zealand, for information only, in pursuance of information exchange arrangements for defence purposes, provided that the recipient government is placed under an obligation not to use such work for other than information purposes or disclose it to a third party.

34.6.2 The Contractor may mark or include in any copyright work to which this Clause 34.1 applies a copyright notice provided that such copyright notice acknowledges the Authority's rights under this Clause 34.6. Any such notice shall be perpetuated in any copies of such work made by the Authority or any other United Kingdom Government Department or its agents or contractors.

34.7 Background Intellectual Property

34.7.1 In respect of the Contractors pre-existing background intellectual property the Contractor grants the Authority rights to use such intellectual property for the purpose of the Contract during the Contract Period.

35 International Collaboration

35.1 Part B of Schedule 8 (Collaboration Agreements) shall apply in respect of any International Collaboration Agreements requested under this Contract by the Authority.

SECTION H: SECURITY PROVISIONS

36 Security – Secret Matters

36.1 In these Clauses 36 – 38 inclusive:

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

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

Official Secrets Acts

36.2 The Contractor shall:

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

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

Security Measures

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

36.3.1 who is not a British citizen;

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- 36.3.2 who does not hold the appropriate authority for access to the Secret Matter;
 - 36.3.3 in respect of whom the Authority has notified the Contractor in writing that the Secret Matter shall not be disclosed to or acquired by that person;
 - 36.3.4 who is not an Employee of the Contractor;
 - 36.3.5 who is an Employee of the Contractor and has no need to know the information for the proper performance of this Contract.
- 36.4 Unless it has the written permission of the Authority to do otherwise, the Contractor and his Employees shall, both before and after the expiry or termination of this Contract, take all reasonable steps to ensure that:
- 36.4.1 no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of this Contract;
 - 36.4.2 any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy Framework and, upon request, is delivered up to the Authority who shall be entitled to retain it.
- A decision of the Authority on the question of whether the Contractor has taken or is taking reasonable steps as required by this Clause 36 (Security – Secret Matters) shall be final and conclusive.
- 36.5 The Contractor shall:
- 36.5.1 provide to the Authority:
 - 36.5.1.1 upon request, such records giving particulars of those Employees who have had, at any time, access to any Secret Matter that is required to be kept in accordance with Clause 36.4.2;
 - 36.5.1.2 upon request, such information as the Authority may from time to time require so as to be satisfied that the Contractor and its Employees are complying with his obligations under this Clause 36, including the measures taken or proposed by the Contractor so as to comply with its obligations and to prevent any breach of them; and
 - 36.5.1.3 full particulars of any failure by the Contractor and its Employees to comply with any obligations relating to any Secret Matter arising under this Clause 36 immediately upon such failure becoming apparent; and
 - 36.5.2 ensure that, for the purpose of checking the Contractor's compliance with the obligation in Clause 36.4.2, a representative of the Authority shall be entitled at any time, to enter and inspect any premises used by the Contractor, which are in any way connected with this Contract and inspect any document or thing in any such premises, which is being used, or made for the purposes of this Contract. Such representative shall be entitled to all such information as he may reasonably require.
- 36.6 If at any time either before or after the expiry or termination of this Contract, the Contractor or any of its Employees discovers or suspects that an unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret

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Matter, the Contractor shall forthwith inform the Authority's Representative in writing of the matter with full particulars thereof.

Sub-Contracts

- 36.7 If the Contractor proposes to enter into a Sub-Contract after the Effective Date which will involve the disclosure of Secret Matter to the Sub-Contractor, the Contractor shall:
- 36.7.1 submit for approval of the Authority the name of the proposed Sub-Contractor, a statement of the work to be carried out and any other details known to the Contractor which the Authority shall reasonably require;
 - 36.7.2 incorporate into the Sub-Contract the terms of this Clause 36 and such secrecy and security obligations as the Authority shall direct;
 - 36.7.3 inform the Authority immediately it becomes aware of any breach by the Sub-Contractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the Sub-Contract.

Official-Sensitive Security Requirement

- 36.8 The Contractor shall protect all Information relating to the aspects designated OFFICIAL-SENSITIVE as identified in the Security Aspects Letter (SAL) to the Contract in accordance with the official security conditions contained in this Contract or annexed to the Security Aspects Letter.
- 36.9 The Contractor shall include the requirements and obligations set out in Clause 36.8 in any sub-contract placed in connection with or for the purposes of this Contract which requires disclosure of OFFICIAL-SENSITIVE Information to the subcontractor or under which any Information relating to aspects designated as OFFICIAL-SENSITIVE is created by the subcontractor. The Contractor shall also include in the sub-contract a requirement for the subcontractor to flow the requirements of this clause to its subcontractors and through all levels of the supply chain to the lowest level where any OFFICIAL-SENSITIVE Information is handled.

37 Personnel Security

- 37.1 The Contractor shall ensure that all its staff and all Sub-Contractors' staff and employees make themselves familiar with, and at all times shall conduct themselves in accordance with station rules and regulations as issued from time to time by the Authority.
- 37.2 The Authority reserves the right to refuse access to, or remove anyone from the station who fails to comply with the station rules and regulations.
- 37.3 Should an Employee of the Contractor or a Sub-Contractor be reasonably refused access to, or be removed from the station for failure to comply with station rules and regulations, the Contractor shall not be relieved from its obligations to provide the Contractor Deliverables.

Security Clearance

- 37.4 The Contractor shall be responsible for ensuring that each Employee is security cleared to the level required by the Authority.

Admission to Authority Sites

- 37.5 The Contractor shall provide reasonable notice to the Authority with details of such Employee and any other details the Authority may require together with details of the Authority Site to which access is required and the capacity in which such person is concerned with the provision of the Contractor Deliverables.
- 37.6 The Authority shall issue a pass for all Employees who are security cleared to an appropriate level for the Authority Site pursuant to Clause 37.4 on or before such person is intended to enter onto an Authority Site in connection with the provision of the Contractor Deliverables. Passes shall remain the property of the Authority and the Contractor shall ensure that passes shall be surrendered on demand or on termination or expiry of this Contract.
- 37.7 A person not in possession of a pass who is required by the Contractor or any Sub-Contractor to attend an Authority Site to provide emergency reactive services shall be allowed temporary admission to the Authority Site if the Contractor or Sub-Contractor (as appropriate), ensures that such individual is accompanied at all times whilst on the Authority Site by a member of the Contractor or Sub-Contractor's staff who has been issued with a pass pursuant to Clause 37.4.
- 37.8 Whilst engaged at the Authority's Site(s) the Contractor shall, and shall procure that any Sub-Contractor shall, ensure that all Employees and other accompanied emergency reactive workers pursuant to Clause 37.7 comply with the Authority's Policies relating to the conduct of staff and security arrangements, such policies having first been made available to the Contractor in a timely manner.
- 37.9 Notwithstanding the provisions of Clauses 37.5 to 37.7, the Authority may refuse any person admission to an Authority Site or require the removal of any person from an Authority Site:
- 37.9.1 if such person is not in possession of a pass pursuant to Clause 37.6 or is not an accompanied emergency reactive worker pursuant to Clause 37.7; and/or
 - 37.9.2 if such person, in the Authority's opinion, represents a risk to themselves or an Authority Related Party or property and the Authority has given written notice to the Contractor's Representative to this effect; and/or
 - 37.9.3 if the Authority has reasonable grounds for considering that the presence or conduct of such person at the Authority Site is undesirable and the Authority has given written notice to the Contractor's Representative to this effect; and/or
 - 37.9.4 for any other reason, providing that there has been a breach of this Contract that the person is directly responsible for, and the Authority has given written notice to the Contractor's Representative.
- 37.10 The Authority's decision on any matter arising under this Clause 37.9 shall be final and conclusive.

38 Co-operation for Security Investigation

- 38.1 The Contractor shall, and shall procure that each Sub-Contractor shall, notify the Authority's Representative immediately it becomes aware that an Employee or an accompanied emergency reactive worker pursuant to Clause 37.7 has breached Clause 36 (Security – Security Matters) and/or Clause 37 (Personnel Security).
- 38.2 The Contractor shall, and shall procure that its Sub-Contractors shall, give reasonable assistance to the Authority's Representative and/or any other representative or adviser of

the Authority for the purposes of carrying out any investigation that the Authority undertakes (acting reasonably).

- 38.3 In the event that an accident or other incident occurs and that a Service Inquiry or Significant Occurrence Investigation is convened in accordance with regulations from time to time in force to investigate such a matter, the Contractor shall make available to the Officer in Charge of that Inquiry all relevant information and facilities including access to employees and those of his agents or sub-contractors for the purpose of immediate and detailed investigations. If so requested by the Officer in Charge of the investigation, the Contractor shall undertake his own investigation into for example, flight safety accidents or incidents and shall submit written reports to that Officer.
- 38.4 In connection with any such inquiry, the Contractor shall take all reasonable steps to seek to ensure that any employee of the Contractor, his agent or Sub-Contractor, whose evidence may assist the Inquiry in reaching its findings, attends and gives evidence to the inquiry.
- 38.5 If any of the duties of this Contract shall be subcontracted, the Contractor shall include as a condition in the Sub-Contract a stipulation that the Sub-Contractor shall take all reasonable steps to seek to ensure that any employee of his whose evidence may assist a Board of Inquiry or Unit Inquiry in reaching its findings shall attend and give evidence to that Inquiry when called upon to do so.

SECTION I: SITE ISSUES

39 Access and Facilities to be provided by the Contractor

- 39.1 The Contractor shall provide to the Authority's Representatives, following reasonable notice, relevant accommodation/facilities, at no direct cost to the Authority, and all reasonable access to its premises for monitoring the Contractor's progress and quality standards in performing this Contract.
- 39.2 The Contractor shall, and shall procure that its Sub-Contractors shall, give reasonable assistance to the Authority's Representative and/or any other representative or adviser of the Authority for the purposes of carrying out any investigation that the Authority undertakes (acting reasonably).
- 39.3 As far as reasonably practical, the Contractor shall ensure that the provisions of Clause 39.1 are included in its Sub-Contracts in accordance with Clause 11 (Subcontracting). The Authority, through the Contractor, shall arrange access to such Sub-Contractors.

40 Authority Sites

Contractor's Rights over Authority Sites

- 40.1 During the term of this Contract, the Authority shall afford the following rights to the Contractor solely for the purpose of the provision of the Contractor Deliverables:
- 40.1.1 a non-exclusive licence to enter and remain upon those parts of the Authority Sites that the Contractor requires access to; and
- 40.1.2 such non-exclusive rights of access to and egress from the Authority Sites as are necessary for the Contractor to perform its obligations and exercise its rights under this Contract or its relevant contracts and in particular for the purposes of providing the Contractor Deliverables, provided that such routes may be varied by the Authority to such alternative routes as the Authority may reasonably

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specify from time to time if such variation does not have a material adverse effect on the provision of the Contractor Deliverables; and

- 40.1.3 use of services and utilities including water, waste water, gas, electricity, telephone and other services serving the Authority Sites as specified in Schedule 7 (Government Furnished Assets),

provided that:

- 40.1.3.1 the rights shall not in any circumstances entitle the Contractor to exclusive occupancy or exclusive possession of any part of the Authority Sites (save as may be required by the Contractor and approved by the Authority (such approval not to be unreasonably withheld or delayed) in order to comply with relevant health and safety legislation) on a temporary basis; and
- 40.1.3.2 the Contractor does not cause any material disruption to the operations or activities carried out by the Authority on or at the Authority Sites or any of the Authority's legal duties or other functions.

Contractor's Conduct on Authority Sites

- 40.2 The Contractor shall, and/or shall procure, that in providing the Contractor Deliverables at the Authority Sites it shall:

- 40.2.1 not act or omit to act in any way which shall give rise to a right for any person to obtain title to or any right or interest over an Authority Site or any part of it (save in accordance with the terms of this Contract);
- 40.2.2 not use or occupy the Authority Sites for any purpose other than the provision of the Contractor Deliverables;
- 40.2.3 not deposit or manufacture on the Authority Sites any materials which are not required for the provision of the Contractor Deliverables;
- 40.2.4 not store materials or park vehicles in the immediate external vicinity of the boundaries of the Authority Sites other than for reasonable periods necessary for loading and unloading;
- 40.2.5 not discharge any oil, grease or deleterious, dangerous, poisonous, explosive or radioactive matter from the Authority Sites into any rivers or any ditches or conduits on the Authority Sites and/or any Adjoining Property and not permit or suffer the blockage of any of such rivers, ditches and conduits by reason of anything done or omitted on the Authority Sites by the Contractor or Contractor Related Parties, and shall, subject to the Authority's obligations in Schedule 7 (Government Furnished Assets), comply at the Contractor's expense with any requirements of the Environment Agency or any other Relevant Authority which are required to remedy the breach of this Clause 40.2.5;
- 40.2.6 procure that those parts of such Authority Site which are from time to time occupied by the Contractor for the purpose of carrying out the provision of the Contractor Deliverables are maintained in a clean and tidy state (other than where caused by the acts or omissions of the Authority or other third parties) so far as practicable having regard to the nature of the Contractor Deliverables; and
- 40.2.7 not without the written consent of the Authority's Representative (not to be unreasonably withheld or delayed) erect any temporary structure.

41 Contractor's Personnel at Government Establishments

General

41.1 The following general provisions apply:

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

Liability In Respect Of Damage to Government Property

- 41.2 Without prejudice to the provisions of Clause 48 (Title and Risk) and Clause 50 (Issued Property), but subject to the provisions of Clauses 18 and 19, the Contractor shall, except as otherwise provided for in this Contract, make good or, at the option of the Authority, pay compensation for all damage occurring to any Government Property, which includes land or buildings, occasioned by the Contractor, or any of his Representatives, arising from its presence on a Government Establishment in connection with this Contract, provided that this Clause shall not apply to the extent that the Contractor is able to show that any such damage was not caused or contributed to by any circumstances within his or their reasonable control.
- 41.3 The total liability of the Contractor under Clause 41.1 shall not exceed the amount of £10,000,00 (ten million pounds) for any one incident. This Clause 41.3 is without prejudice to Clause 18.

Contractor's Property

- 41.4 Subject to the provisions of Clauses 18 and 19 all property of the Contractor shall be at the risk of the Contractor and his Representatives whilst it is on any Government Establishment, and the Authority shall accept no liability for any loss or damage howsoever occurring to or caused by such property, except where:
 - 41.4.1 any such loss or damage was caused or contributed to by any act, neglect or default of any Authority servant, agent or contractor then the Authority shall accept liability for such loss or damage to the extent to which such loss or damage is so caused or contributed to by such Authority servant, agent or contractor; and

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

Contractor's Regulations

- 41.5 The Contractor shall submit in writing to the Authority for approval, initially and as necessary from time to time, a list of those of his Representatives who may need to enter a Government Establishment for the purpose of, or in connection with, work under the Contract, giving such particulars as the Authority may require, including full details of birthplace and parentage of any such Representative who:
- 41.5.1 was not born in the United Kingdom; or
- 41.5.2 if he was born in the United Kingdom, was born of parents either or both of whom were not born in the United Kingdom.
- 41.6 The Authority shall issue passes for those Representatives who are approved by it in accordance with Clause 41.5 herein for admission to a Government Establishment and a Representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Authority and shall be surrendered on demand or on completion of the work.
- 41.7 Notwithstanding the provisions of Clauses 41.5 and 41.6 hereof if, in the opinion of the Authority, any Representative of the Contractor shall misconduct himself, or it shall not be in the public interest for any person to be employed or engaged by the Contractor, the Contractor shall remove such person without delay on being required to do so and shall cause the work to be performed by such other person as may be necessary.
- 41.8 The decision of the Authority upon any matter arising under Clauses 41.5 to 41.7 inclusive shall be final and conclusive.

Observance of Regulations

- 41.9 The following provisions apply:
- 41.9.1 The Contractor shall ensure that his Representatives have the necessary probity (by undertaking the Government's Baseline Personnel Security Standard) and, where applicable, are cleared to the appropriate level of security when employed within the boundaries of a Government Establishment.
- 41.9.2 Where the Contractor requires information on the Government's Baseline Personnel Security Standard (the Standard) or security clearance for his Representatives or is not in possession of the relevant rules, regulations or requires guidance on them, he shall apply in the first instance to the Project Manager named in the DEFFORM 111 Appendix to Contract.
- 41.9.3 On request, the Contractor shall be able to demonstrate to the Authority that the Contractor's processes to assure compliance with the standard have been carried out satisfactorily. Where that assurance is not already in place, the Contractor shall permit the Authority to inspect the processes being applied by the Contractor to comply with the Government's Baseline Personnel Security Standard.

- 41.9.4 The Contractor shall comply and shall ensure that his Representatives comply with the rules, regulations and requirements that are in force whilst at that Establishment which shall be provided by the Authority on request.

Transport Overseas

- 41.10 Where the Contractor's Representatives are required by the Contract to join or visit a Government Establishment overseas (but not under Deployment), transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided free of charge by the Authority whenever possible, normally by Royal Air Force or by MOD chartered aircraft. The Contractor shall make such arrangements through the Project Manager named in the DEFFORM 111 Appendix to Contract. When such transport is not available within a reasonable time, or in circumstances where the Contractor wishes his Representatives to accompany materiel for installation which he is to arrange to be delivered, the Contractor shall make his own transport arrangements. The Authority shall reimburse the Contractor's costs for such transport of his Representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Contractor's Representatives locally overseas which is necessary for the purposes of the Contract shall be provided wherever possible by the Authority and, where so provided, will be free of charge.

Medical Treatment Overseas

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

Injuries, Disease and Dangerous Occurrences

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

Dependants Of Contractor's Representatives

- 41.13 No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Contractor's Representatives. Medical or necessary dental treatment may, however, be provided for dependents or members of families on repayment at current Authority rates.

Provision Of Funds Overseas

- 41.14 The Contractor shall, wherever possible, arrange for funds to be provided to his Representatives overseas through normal banking channels (e.g. by travellers cheques). If banking or other suitable facilities are not available, the Authority shall, upon request by the Contractor, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made by the Establishment to which the Contractor's

Representatives are attached. All such advances made by the Authority shall be recovered from the Contractor.

Health and Safety Hazard Control

41.15 Without prejudice to the Contractor's obligations under Clause 46 (Supply of Data For Hazardous Articles, Materials and Substances), where the Contractor enters a Government Establishment for the purpose of providing the whole or any part of the Contractor Deliverables:

41.15.1 the Contractor shall notify the Authority's Officer in Charge of this Contract of:

- 41.15.1.1 any health and safety hazards associated with the delivery of that part of the Contractor Deliverable to be provided by it;
- 41.15.1.2 any foreseeable risks to the health and safety of all persons associated with such hazards; and
- 41.15.1.3 any precautions to be taken by it as well as any precautions which, in its opinion, ought to be taken by the Authority, in order to control such risks;

41.15.2 the Authority shall notify the Contractor of:

- 41.15.2.1 any health and safety hazards which may be encountered by the Contractor or any of his Representatives on the Government Establishment;
- 41.15.2.2 any foreseeable risks to the health and safety of the Contractor or any of his Representatives, associated with such hazards; and
- 41.15.2.3 any precautions to be taken by the Authority as well as any precautions which, in its opinion, ought to be taken by the Contractor, in order to control such risks;

41.15.3 the Contractor shall notify his Representatives of and, where appropriate, provide adequate instruction in relation to:

- 41.15.3.1 the hazards, risks and precautions notified by him to the Authority under sub-Clause 41.15.1;
- 41.15.3.2 the hazards, risks and precautions notified by the Authority to the Contractor under sub-clause 41.15.2; and
- 41.15.3.3 the precautions which, in his opinion, ought to be taken by his Representatives in order to control those risks;

41.15.4 the Contractor shall provide the Officer in Charge or the site project liaison officer or overseeing officer nominated in this Contract with:

- 41.15.4.1 copies of those sections of its own and, where appropriate, his Representatives', safety policies which are relevant to the risks notified under Clause 41.5.1; and
- 41.15.4.2 copies of any related risk assessments; and

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41.15.4.3 copies of any notifications and instructions issued by him to his Representatives under sub-Clause 41.15.3

41.15.5 the Authority shall provide the Contractor with:

41.15.5.1 copies of those sections of its own safety policies which are relevant to the risks notified under Clause 41.15.2; and

41.15.5.2 copies of any related risk assessments; and

41.15.5.3 copies of any notifications and instructions issued by it to its employees similar to those called for from the Contractor under sub-Clause 41.15.3.

41.15.6 where the Contractor identifies a health and safety hazard associated with Services provided by the Authority pursuant to Schedule 7 (Government Furnished Assets):

41.15.6.1 the Contractor shall notify the Authority of the hazard and the risk to the Contractor's or the Authority's personnel;

41.15.6.2 the Authority shall implement any urgent temporary actions agreed by the Parties to rectify the hazard within 5 (five) Business Days;

41.15.6.3 the Authority shall implement permanent changes to rectify the hazard as soon as practicable but no later than 3 (three) months from the notification in Clause 41.15.6.1 (Health and safety hazard control).

41.16 Accidents occurring to Contractor's Staff/Employees at Government Establishments shall be reported by the Contractor immediately to the Authority giving the following information:

41.16.1 name of injured party;

41.16.2 date, time and place of accident;

41.16.3 injuries, if any, and degree of severity;

41.16.4 places to which injured have been taken;

41.16.5 brief description of events leading to the accident;

41.16.6 other such information as the authority may reasonably request;

41.16.7 a comprehensive written report of the accident shall then be provided.

41.16.8 Following an accident/incident, the Contractor shall make available to the Officer in Charge of an investigation all relevant information and facilities, including access to his employees for the purpose of immediate and detailed investigations. If requested, the Contractor shall undertake an investigation and submit a written report.

SECTION J: PEOPLE ISSUES

42 Equality Child Labour and Employment Law

- 42.1 The Contractor shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including re-assignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.
- 42.2 Without prejudice to the generality of the obligation in Clause 42.1 above, the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent legislation in the country where the Contract is being performed.
- 42.3 The Contractor agrees to take reasonable efforts to secure the observance of the provisions of this Clause 42 by any of its employees, agents or other persons acting under its direction or control who are engaged in the performance of the Contract.
- 42.4 The Contractor agrees to take reasonable efforts to reflect this Clause 42 in any Sub-Contract that it enters into to satisfy the requirements of this Contract and to require its Sub-Contractors to reflect this Clause 42 in their subcontracts that they enter into to satisfy the requirements of this Contract.
- 42.5 In this Clause 42, "Child Labour Legislation" means those International Labour Law Conventions concerning economic exploitation of children through the performance of work which is likely to be hazardous or to interfere with a child's health or development, including but not limited to slavery, trafficking, debt bondage or forced labour, which are ratified and enacted into domestic law and directly applicable to the Contractor in the jurisdiction(s) in which it performs this Contract.
- 42.6 The Contractor shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where this Contract is being performed.
- 42.7 The Contractor agrees to take reasonable efforts to reflect this Clause 42 in any Sub-Contract that it enters into to satisfy the requirements of this Contract and to require its Sub-Contractors to reflect this Clause 42 in their sub-contracts that they enter into to satisfy the requirements of this Contract.

43 Transfer of Undertakings (Protection of Employment) (TUPE)

- 43.1 The Parties shall comply with the provisions of Schedule 10 (TUPE).

SECTION K: ASSET RELATED PROVISIONS

44 Redundant Materiel

- 44.1 In respect of Redundant Material the provisions of Part C Redundant Material of Schedule 11 (Ancillary Requirements) shall apply.

45 Packaging (For Articles other than Munitions)

Specifications for Packaging

- 45.1 Where specified in Schedule 2 (Statement of Work) the Contractor shall comply with the provisions of Part D (Packaging (For Articles other than Munitions) of Schedule 11 (Ancillary Requirements and Information).

46 Supply of Data For Hazardous Articles, Materials And Substances

- 46.1 The Contractor shall comply with the provisions of Part E (Supply of Data For Hazardous Articles, Materials And Substances) of Schedule 11 (Ancillary Requirements).

47 Second-Hand Materiel

47.1 If the Contractor wishes to meet the requirements of any part of this Contract by the supply or incorporation of any materiel which is second-hand and/or has been previously used in any application the provisions of Part F (Second Hand,Material) of Schedule 11 (*Ancillary Provisions*) shall apply.

48 Title and Risk

Repairable Articles and property owned by the Authority

48.1 In accordance with Clause 50.1 title or absolute property in Repairable Articles and all property owned by the Authority is and shall remain with the Authority.

48.2 In accordance with Condition 50.1, the risk of loss of, or damage to, Repairable Articles shall remain with the Contractor, save for Clauses 48.2.1 to 48.2.2 as follows;

48.2.1 Subject to Clause 41(Contractor's Personnel at Government Establishments), in circumstances where Repairable Articles are transported by Authority transportation, the risk of loss, or damage to, Repairable Articles shall pass to the Authority at the point of collection and receipt on Authority transportation and shall pass back to the Contractor upon receipt at the Contractor's or Sub-Contractor's premises, or when receipted back into the Authority's stores (where the provisions of 48.2 shall continue to apply).

48.2.2 Notwithstanding any other provision of this Contract, the risk of loss of or damage to, Repairable Articles shall pass to the Contractor once the Repairable Article has been receipted for repair at the Contractor's or Sub-Contractor's premises in accordance with Schedule 2 (Schedule 2 Statement of Work).

New Articles

48.3 Title or absolute property in new Articles under this Contract shall pass from the Contractor to the Authority at the point of receipt by the Authority where specified or as self-to-self by the Contractor where required to deliver a service.

48.4 The risk of loss of, or damage to, the new Articles shall be with the Contractor until the new Articles are;

48.4.1 delivered to Forward to satisfy a demand in accordance with Schedule 2 (*Statement of Work*), or

48.4.2 receipted by the Authority where specified; or

48.4.3 self-to-self by the Contractor where required to deliver a service; or

48.4.4 accepted as a embodied item when the Aircraft is delivered from Depth maintenance.

49 The Contractor's Use of Repairable Articles and New Articles at a Main Operating Base

49.1 Insofar as the Contractor is responsible for the storage, handling, management and tracking of Repairable Articles and New Articles, the Contractor shall store, handle, manage and track all Repairable Articles and New Articles in accordance with the processes and procedures set out in Schedules 2 (Statement of Work) and or Schedule 3 (Quality Standards and Requirements).

50 Issued Property

General

- 50.1 All Issued Property shall remain the property of the Authority. It shall be used in the execution of this Contract and for no other purposes, without the prior approval in writing of the Authority's Representative.
- 50.2 Neither the Contractor, nor any Sub-Contractor, nor any other person, shall have a lien on Issued Property, for any sum due to the Contractor, Sub-Contractor or other person, and the Contractor shall take all such necessary steps as may be necessary to ensure that the title of the Authority, and the exclusion of such lien, are brought to the notice of all Sub-Contractors and other persons dealing with any Issued Property.

Receipt

- 50.3 Subject to Clauses 50.4, 50.5 and 50.8, within 15 (fifteen) Business Days (or such other period as may be agreed between the Parties) of receipt of any Issued Property the Contractor shall:
- 50.3.1 check the Issued Property to verify where applicable, that it corresponds with the Issued Property provided in Schedule 7 (Government Furnished Assets);
 - 50.3.2 conduct a reasonable visual inspection; and
 - 50.3.3 conduct any additional inspection and testing as may be necessary to check that the Issued Property is not defective or deficient for the purpose for which it has been provided;
- and notify the Authority of any defects, deficiencies or discrepancies discovered.
- 50.4 Where Issued Property as per references GFE Serial 4 and 5 and GFF Serials 1 to 4 of Schedule 7 (*Government Furnished Assets*) are provided for the duration of the Contract, the Contractor shall notify the Authority immediately of any defects, deficiencies or discrepancies discovered during the Contract Period.
- 50.5 Where Issued Property is packaged it shall not be unpacked earlier than is necessary. The period identified at Clause 50.3 shall count from the date on which packages are opened.
- 50.6 The Authority shall within a reasonable time after receipt of any notice under Clauses 50.3, 50.4 and/or 50.5 above provide, replace, re-issue or authorise repair of Issued Property agreed to be defective or deficient and, if appropriate, the Authority shall revise the Contract Price, delivery schedule or both in accordance with Schedule 6 (Contract Change). If appropriate, it shall also issue written instructions for the return or disposal of the defective or deficient Issued Property.
- 50.7 In the event that the Authority fails to provide, replace or authorise repair of defective or deficient Issued Property within a reasonable time (that prevents the Contractor from meeting its obligations under the Contract) of receipt of a notice in accordance with Clauses 50.3, 50.4 and 50.5 above, fair and reasonable revisions of the Contract Price, delivery schedule or both shall be made as may be appropriate provided that the Contractor has taken all reasonable measures to mitigate the consequences of any such delay.
- 50.8 Clauses 50.3 to 50.7 do not apply in the following circumstances:

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- 50.8.1 where Issued Property is issued for the purposes of repair, overhaul, conversion or other work to be performed on the Issued Property, inspection of such property shall be as specified in this Contract;
- 50.8.2 where the Contractor can show that the Issued Property cannot be fully tested until it has been integrated with other items, inspection of such shall be as specified in this Contract and;
- 50.8.3 where Special Jigs and Tools etc. become Issued Property under Clause 54 (Special Jigs, Tooling and Test Equipment).

Custody

- 50.9 Subject to Clause 50.11 below and any limitation or exclusion of liability specified in Clause 50.12, the Contractor shall be responsible for the safe custody and due return of Issued Property, whether or not incorporated into the Articles, and shall be responsible for all loss or damage thereto, until re-delivered in accordance with the Authority's.
- 50.10 The Contractor shall be responsible for the calibration and maintenance of the Issued Property.
- 50.11 If requested, the Authority, within a reasonable time, and where practicable before delivery of the Issued Property, shall notify the Contractor of the value of the Issued Property.
- 50.12 The Contractor shall not be liable in respect of:
 - 50.12.1 defects or deficiencies notified to the Authority in accordance with Clause 50.3 and 50.5 or latent defects which the Contractor can show could not reasonably have been discovered by means of the activities described at Clause 50.4 (Issued Property).
 - 50.12.2 fair wear and tear in Issued Property resulting from its normal and proper use in the execution of this Contract (except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance by the Contractor);
 - 50.12.3 Issued Property rendered unserviceable as a direct result of ordinary performance of this Contract and;
 - 50.12.4 any loss or damage to Issued Property arising from a Force Majeure Event (subject to the provisions of Clause 23).

51 Accounting for the Property of the Authority

- 51.1 The Contractor shall:
 - 51.1.1 maintain a Public Store Account ("PSA"), as defined in DEFSTAN 05-099, which shall include a complete list of all property of the Authority, as defined in Clause 51.2, and record for that property all transactions or other accounting information.
 - 51.1.2 supply to the Authority's Representative quarterly reports on the current PSA holdings. At least one report in any twelve-month accounting period or part thereof shall be a reconciled report. This shall be submitted with the Annual Certificate Form AAC 32 as required in DEFSTAN 05-099. The other three reports submitted in the period may be un-reconciled advisory reports. The submission by the Contractor and receipt by the Authority of these reports shall not prejudice any rights or obligations of the Authority or the Contractor under this Contract;

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- 51.1.3 ensure that the PSA is available for inspection by the Authority at any reasonable time;
 - 51.1.4 on being given two months notice permit, and co-operate with, the Authority to conduct audits of the PSA in a manner to be determined by the Authority; where the Authority has reasonable grounds to doubt the integrity of the PSA to the extent that the Authority is not satisfied of the proper use of property of the Authority, an audit may be conducted without notice;
 - 51.1.5 retain the PSA for a period of three Years after disposal of the last item of the property of the Authority;
 - 51.1.6 if the Authority agrees that a Sub-Contractor shall have responsibility in the Sub-Contractor's PSA for property of the Authority issued in aid of this Contract, the Contractor shall include in any Sub-Contract with those Sub-Contractors only the provisions corresponding to those set out in this Clause 51 that apply to property of the Authority issued in aid of the Sub-Contract, in particular Clauses 51.1, 51.4, 51.7 and 51.10; and
 - 51.1.7 manage the Government Furnished Assets ("GFA") component of the PSA in accordance with the provisions of DEFSTAN 05-099; and implement any new edition of or amendment to DEFSTAN 05-099 subject to Clause 71 within three months of the publication date of the new edition. These amendments shall not have retrospective effect.
- 51.2 Once title in Special Jigs, Tools etc has passed to the Authority in accordance with Clause 54, the Contractor shall record that equipment in the PSA in accordance with DEFSTAN 05-99.
- 51.3 For the purposes of this Clause 51, "property of the Authority" means GFA and fixed assets, including property issued under Clause 50 and property of the Authority issued to the Contractor under any other authorising document as defined in Schedule 8 of this Contract (Government Furnished Assets) except for property vested in the Authority under Clause 48 (Title and Risk).
- 51.4 For the avoidance of doubt, it is a condition of this Contract that this Clause 51 shall apply to all property issued to the Contractor from the Effective Date, whether in aid of this Contract, any other contract or other agreement with the Authority. Property of the Authority issued prior to the Effective Date may be subject to separate contractual arrangements.
- 51.5 The obligations of the Contractor arising under this Clause 51 in respect of property of the Authority issued in aid of this Contract shall survive the expiry or earlier termination of this Contract and shall not be completed until all obligations are fulfilled including the provisions of Clause 51.1.5.
- 51.6 The obligations of the Contractor arising under this Clause 51 in respect of property of the Authority unconnected with this Contract shall survive the expiry or earlier termination of this Contract and shall not be completed until all obligations are fulfilled including the provisions of Clause 51.1.5 unless and until a subsequent contract containing Clause 51 is placed with the Contractor at which time obligations in respect of any remaining property of the Authority unconnected with this Contract shall be subsumed in the subsequent contract.
- 51.7 If, after the expiry or earlier termination of this Contract, no subsequent contract is placed containing Clause 51 within the period detailed at Clause 51.1.5 then the obligations of

the Contractor arising under this Clause 51 (Accounting for the Property of the Authority) in respect of property of the Authority unconnected with this Contract shall cease on expiry of the period detailed in Clause 51.1.5.

- 51.8 On expiry or termination of this Contract the Contractor shall forward a list of Issued Property still held to the Authority's Representative. Return or disposal of such Issued Property will be as specified in this Contract, or as instructed by the Authority on expiry or termination of this Contract. If no disposal instructions are specified in this Contract the Authority shall provide such instructions within two months of the Contractor's written request to do so
- 51.9 For the purposes of this Clause 51 (Accounting for the Property of the Authority), "property of the Authority" means GFA and fixed assets, including property issued under Clause 50 (Issued Property) and property of the Authority issued to the Contractor under any other authorising document.
- 51.10 The Authority reserves the right to amend Appendix 6 to Schedule 15 (Forms and Appendices) without further consultation where the amendments arise from the Authority's proper and reasonable accounting requirements. For the purposes of this Clause 51 (Accounting for the Property of the Authority), any amendment to Appendix 15 (*Forms and Appendices*) to Schedule 15 (*Forms and Appendices*) shall be subject to the provisions of Clause 71 (Contract Changes). If the Authority exercises this right:
- 51.10.1 the Contractor shall implement the amendment to Appendix 6 to Schedule 15 (Forms and Appendices) at the commencement of the Authority's next accounting year provided that a notice of six months or such other period as may expressly be agreed between the Authority and Contractor is given to the Contractor. These amendments shall not have retrospective effect; and
- 51.10.2 the Contractor shall inform the Authority as soon as practicable, but in any event within three months of notice having been given, if the Contractor cannot comply with the amendment to Appendix 6 to Schedule 15 (Forms and Appendices).

52 Marking of Articles

- 52.1 The Contractor shall mark Articles in accordance with the provisions of Part G (Marking of Articles) of Schedule 11 (Ancillary Provisions).

53 Transport

- 53.1 The Parties shall comply with their respective transportation obligations of Articles and Priming Equipment Packs in accordance with the provisions of Part H (Transport) of Schedule 11 (Ancillary Provisions).

54 Special Jigs, Tooling and Test Equipment

- 54.1 The Contractor shall provide all jigs, tools, patterns, moulds, dies, manufacturing gauges and test equipment, together with associated fixtures, fittings and software necessary for the manufacture of the Articles or for the provision of the Contractor Deliverables, unless supplied by the Authority in accordance with Schedule 7 (Government Furnished Assets).
- 54.2 If the Contract Price has yet to be agreed, the cost of Special Jigs, Tools Etc will not be accepted by the Authority as a direct charge to the Contract unless approved in writing. The Contractor may make a written application, in accordance with Schedule 6 (Contract Change) to the Authority's Representative that certain hardware or software, or both are special to the requirements of this Contract and that their provision should be met as a

direct charge to this Contract. If the Authority accepts the application it shall do in writing. The Contractor shall not seek approval for Special Jigs, Tools Etc where the Contract Price is established, or where these are available under other contracts it already holds with the Authority, either under the terms of this Condition or as Issued Property under Clause 50 (Issued Property). This Condition shall not apply to the refurbishment of any Jigs, Tools Etc already held as Issued Property.

Pricing

- 54.3 Where the Authority accepts the application referred to in Clause 54.2 , the provisions of Clause 71 (Contract Change) shall apply and any adjustment to the Contract Price shall include an appropriate amount to enable the Contractor to recover its expenditure on Special Jigs, Tools Etc. including the cost of maintenance and calibration under Clause 54.9.
- 54.4 The Contractor shall not claim assistance from other Government funds (e.g. Regional Development Grants or selective financial assistance) towards the cost of any Special Jigs, Tools Etc.

Passing of Property

- 54.5 Except where otherwise specified in this Contract, the Special Jigs, Tools Etc. shall become the property of the Authority:
- 54.5.1 in accordance with Clause 48.3 as if they were Articles; or
 - 54.5.2 where the Authority authorises the Contractor to utilise the Special Jigs, Tools Etc. for the production of articles for a third party in advance of their being used for the production of Articles under this Contract, upon delivery of the first article so produced for, the third party;
 - 54.5.3 in all other cases upon acceptance of the first Article, as defined within the Contract, or upon Contract completion, expiry or termination of this Contract, whichever is the earlier.
- 54.6 Where property in the Special Jigs, Tools Etc. passes to the Authority under clauses 54.4.2 or 54.5.3 and while they are still required to complete the Contract they shall be transferred to the Public Store Account as Contract Support Items and treated thereafter as Issued Property under the terms of Clause 50.

Acceptance

- 54.7 Acceptance of the Special Jigs, Tools Etc shall occur at the time the first Articles produced with the Special Jigs, Tools Etc. is accepted in accordance with Clause 87 (Acceptance).

Modifications

- 54.8 Notwithstanding the passing of property to the Authority pursuant to Clause 54.4 (Passing of Property) and their transfer to the Public Store Account under Clause 54.6, the Contractor shall be free to modify the Special Jigs, Tools Etc. as it may deem necessary in order to produce the Articles or to provide the Contractor Deliverables, and the Authority's approval of such modifications shall not be required.

Accounting and Control

- 54.9 The Contractor shall account for and control the Special Jigs, Tools Etc. in accordance with Clause 54.6 Pending the transfer to the Public Store Account, the Contractor shall:

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- 54.9.1 maintain a list of Special Jigs, Tools Etc. procured or manufactured by the Contractor;
- 54.9.2 make the list available to the Authority for inspection by the Authority's Asset Accounting Centre;
- 54.9.3 maintain the list for three years, after any disposal of the Special Jigs, Tools Etc. where not transferred to the Public Store Account in accordance with Clause 50 (Issued Property); and
- 54.9.4 forward the list to the Authority's Commercial Representative following first Article acceptance and prior to transfer of Special Jigs, Tools Etc. to the Public Store Account;

The Contractor shall remove from the list any Special Jigs, Tools Etc. transferred to the Public Store Account under Clause 54.6.

54.10 The Contractor shall be responsible for safe custody, maintenance and calibration necessary to retain the Special Jigs, Tools Etc. in good order, until transferred to the Public Store Account, delivered or disposed of in accordance with written disposal instructions given by the Authority.

Availability

- 54.11 Once property in the Special Jigs, Tools Etc. has passed to the Authority in accordance with Clause 54.4, the Contractor shall, if required, deliver the Special Jigs, Tools Etc. to such individual, company, factory or Government Establishment as may be named by the Authority. The Contractor shall not be entitled to any further payment for delivering the Special Jigs, Tools etc. other than for the recovery of packing and carriage costs reasonably incurred.
- 54.12 This Clause 54 shall not entitle the Authority to require the Contractor to dispose of the Special Jigs, Tools Etc. to the prejudice of the Contract or other contracts held by the Contractor with the Authority or with another customer, provided the Authority's approval for such use in connection with a contract with another customer, provided the Authority's approval for that use has been given in accordance with Clause 54.16.
- 54.13 Where the Contractor holds no contracts for such articles or services for which the Special Jigs, Tools Etc. will be used, but having received the Authority's approval in accordance with Clause 54.16, has made a firm written offer to a third party to supply such articles or perform those services, the Authority shall not be entitled to dispose of the Special Jigs, Tools etc. until such time as the Contractor's offer has expired and no commitment to supply those articles or perform those services remains.

Disposal

- 54.14 As soon as the Special Jigs, Tools Etc. cease to be required by the Contractor to meet the Authority's requirements or for use as specified in Clause 54.10 it shall report accordingly to the Authority. The Authority will inform the Contractor of its disposal and, where appropriate, the method of crediting the Authority with the proceeds of them less any cost of disposal incurred by the Contractor. The Authority's disposal instructions shall be given within 3 months, or other period stated in the Contract, from receipt of the Contractor's notification.
- 54.15 Should the Authority fail to issue disposal instructions within this period, a fair and reasonable amount will be agreed for storage and, as instructed by the Authority,

maintenance and calibration of the Special Jigs, Tools Etc., this sum to be a direct charge against the Contract or allocated as an indirect charge in accordance with the Contractor's approved Questionnaire on the Method and Allocation of Costs.

Use for other than the purposes of the Authority

54.16 The Contractor shall not use the Special Jigs, Tools Etc. for any purposes other than those of the Authority without first obtaining the written approval of the Authority's Commercial Representative and in accordance with the terms, including payment, for such other use as stated in a commercial exploitation, or other agreement between the Contractor and the Authority. In Sub-Contracts, which include the provisions of this Clause 54, the Contractor shall require that such written approval be obtained direct from the Authority by the Sub-Contractor.

55 Use of Asbestos

55.1 The Contractor shall comply with the provisions of Part I (Asbestos) of Schedule 11 (Ancillary Provisions).

56 Montreal Protocol Substances

56.1 The Contractor shall provide annually to the Authority a list setting out which of the substances listed in Part A of Schedule 11 (Ancillary Requirements) have been used in the Contractor Deliverables and/or any Packaging specifying:

56.1.1 the quantity of such substances; and

56.1.2 where in the Contractor Deliverables and/or any Packaging such substances have been used.

57 Items Considered Beyond Repair

57.1 The Contractor shall carry out repairs in accordance with Schedule 2 (*Statement of Work*).

57.2 Notwithstanding Clause 57.1, where an Article is deemed to be beyond repair in accordance with Paragraph 6.9 of Schedule 2 (Statement of Work), the Contractor shall declare the Article irreparable together with advice regarding the impact if any on the Key Performance Indicators and await the instructions of the Authority. From the time of notice to the Authority the asset will be included as a moderated item in accordance with Schedule 4 (Performance Management).

58 Not Used

59 Timber and Wood-Derived Products

59.1 In respect of Timber and Wood-Derived Products the Contractor shall comply with the provisions of Part J (Timber and Wood-Derived Products) of Schedule 11 (Ancillary Requirements).

SECTION L: CONTRACT SPECIFIC PROVISIONS

60 Not Used

61 Management and Reporting

61.1 The Parties shall comply with the provisions of Schedule 9 (Contract Management Plan).

- 61.2 The submission by the Contractor and receipt by the Authority of reports on the progress of this Contract shall not prejudice any rights or obligations of the Authority or the Contractor under this Contract.

62 Quality Assurance

- 62.1 The Contractor shall comply with the provisions of Schedule 3 (Quality Standards and Requirements).

63 Design Approved Organisation Scheme (DAOS)

- 63.1 In providing the Contractor Deliverables the Contractor shall at all times comply with and operate in accordance with the requirements for Contractors in Regulatory Articles for a Design Organisation as set out in RAs 5101(3), 5102, 5103, 5105(1) and 5106.

SECTION M: TERMINATION

64 Termination for Contractor Default

Persistent Breach

- 64.1 If a breach of this Contract by the Contractor has continued for a period of 30 (thirty) Business Days or occurred Frequently for a period of 30 (thirty) Business Days from first occurrence, the Authority may serve a notice on the Contractor:
- 64.1.1 specifying that it is a formal warning notice;
 - 64.1.2 giving reasonable details of the breach; and
 - 64.1.3 stating that such breach is a breach which, if it recurs Frequently or continues, may result in a termination of the whole or part of this Contract in accordance with this Clause 64.
- 64.2 If, following service of such a formal warning notice, the breach specified has continued or recurred Frequently after the date falling 30 (thirty) Business Days after the date of service of such notice, then the Authority may serve another notice on the Contractor specifying that it is a final warning notice:
- 64.2.1 stating that the breach specified has been the subject of a prior formal warning notice served on the Contractor; and
 - 64.2.2 stating that if such failure continues or recurs Frequently within a 30 (thirty) Business Day period after the date of service of the final warning notice then such breach shall constitute a "Persistent Breach" and this Contract may be terminated in accordance with Clause 64.4.

Right to Terminate

- 64.3 If a Contractor Default has occurred, the Authority shall be entitled to terminate the whole or any part of this Contract in accordance with the provisions of Clause 64.4 and subject to the provisions of Clauses 64.5 to 64.7 (inclusive).
- 64.4 If a Contractor Default has occurred, and, in the case of a Persistent Breach, the Authority has complied with the requirements of Clauses 64.1 and 64.2 above, and the Authority wishes to terminate the whole or any part of this Contract pursuant to Clause 64, it must serve a notice (the "Termination Notice") on the Contractor stating:

- 64.4.1 that the Authority is terminating this Contract or part thereof for Contractor Default;
- 64.4.2 where relevant, the part of this Contract that the Authority is terminating;
- 64.4.3 the type and nature of Contractor Default that has occurred, giving reasonable details; and
- 64.4.4 that this Contract or part thereof shall (subject to Clauses 64.5 to 64.7(Rectification) (inclusive) terminate on the day falling 30 (thirty) Business Days after the date the Contractor receives the Termination Notice (the "Contractor Default Termination Date").

Rectification

- 64.5 Where a Termination Notice cites a Contractor Default of the type and nature falling under clause (a) of the definition of Contractor Default in Schedule 1 (Definitions and Abbreviations), the Contractor shall, upon receipt of the Termination Notice within 30 (thirty) Business Days in consultation with the Authority provide a draft plan that sets out the timescales and steps that the Contractor proposes to undertake to remedy the Contractor Default identified in the relevant Termination notice.
- 64.6 Upon receipt of the draft plan from the Contractor the Authority shall within 10 (ten) Business Days either approve or reject the draft plan; and
 - 64.6.1 If the Authority approves the draft plan then the Contractor shall immediately commence work to remedy the Contractor Default and the draft plan shall be the "Rectification Plan": or
 - 64.6.2 If the Authority rejects the draft plan then it shall provide detailed comments (including consultation with the Contractor) as to why it believes the draft plan will not remedy the Contractor Default and the Contractor shall resubmit a revised draft plan within 10 (ten) Business Days.
 - 64.6.3 Upon receipt of the revised draft plan from the Contractor the Authority shall within 5 (five) Business Days either approve or reject the revised draft plan.
 - 64.6.4 If the Authority approves the revised draft plan then the Contractor shall immediately commence work to remedy the breach and the draft plan shall be the "Rectification Plan"
 - 64.6.5 If the Authority rejects the revised draft plan as it believes the revised plan will still not remedy the breach then the Authority may terminate the Contract forthwith (and the Contractor Default Termination Date shall be the day falling 30 (thirty) Business Days (or such later date to be determined at the Authority's discretion) after the date the Authority notified the Contractor in writing that the revised draft plan has been rejected and of its decision to terminate the Contract. Where the Authority agrees with such proposed remedy, and the remedy is implemented as agreed, the Termination Notice in question shall be deemed to be revoked
- 64.7 Where the Authority agrees a Rectification Plan and the Rectification Plan is not implemented as agreed, the Contractor Default Termination Date shall be the day falling 45 (forty five) Business Days after the date by which the remedy was agreed to be implemented.

64.8 Following the issue of a Termination Notice pursuant to Clause 64.6.5 and where the Authority is terminating the whole of this Contract, this Contract shall (subject to Clauses 64.5 to 64.7(inclusive)) terminate on the Contractor Default Termination Date.

Partial Termination

64.9 Where the Authority is terminating part of this Contract, the Parties shall, subject to Clause 68 (Continuing Obligations), owe each other no further obligations in respect of such part of this Contract as is specified in the Termination Notice from the Contractor Default Termination Date.

64.10 For the avoidance of doubt, where Clause 64.9 applies, the Parties shall continue to fulfil their respective obligations, in respect of those parts of this Contract that are not identified in the Termination Notice as being terminated, providing that the Contractor can still fulfil their obligations and the parts of the Contract that have been terminated do not impact on the fulfilment of those obligations.

Termination Following a Prohibited Act

64.11 In exercising its rights and remedies in respect of an occurrence of Prohibited Act in accordance with the paragraph (d) of the definition of Contractor Default in Schedule 1 (Definitions and Abbreviations), the Authority shall:

64.11.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the Prohibited Act; and

64.11.2 give all due consideration, where appropriate, to action other than termination of this Contract, including without being limited to:

64.11.2.1 requiring the Contractor to procure the termination of a Sub-Contract where the Prohibited Act was demonstrated to have been undertaken by or on behalf of a Sub-Contractor or anyone acting on its or their behalf; or

64.11.2.2 requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Sub-Contractor or anyone acting on its behalf) where the Prohibited Act is demonstrated to have been that of such employee, and the Contractor shall (and shall use reasonable endeavours to procure that its Sub-Contractors shall) give all due consideration to the Authority's proposal under this Clause 64.11.2.

Termination Following Withholding of Hazardous Data

64.12 In exercising its rights and remedies in accordance with paragraph (h) of the definition of Contractor Default in Schedule 1 (Definitions and Abbreviations), the Authority shall act in a reasonable and proportionate manner having regard to the gravity of the failure and to the existence of the Authority's option under Clause 64.13.

64.13 As an alternative to terminating this Contract in accordance with paragraph (h) of the definition of Contractor Default in Schedule 1 (Definitions and Abbreviations), the Authority shall have the option to require the Contractor to rectify the relevant breach immediately at no additional cost to the Authority.

Termination following a Breach of Tax Compliance

- 64.14 In accordance with paragraph (e) of the definition of Contractor Default, and Clause 70 (Tax Compliance), the Authority shall be entitled to terminate this Contract in the event that:
- 64.14.1 the warranty given by the Contractor pursuant to Clause 70.2 (Warranty) is materially untrue; or
 - 64.14.2 the Contractor commits a material breach of its obligations to notify the Authority of any OOTNC as required by Clause 70.3 (Duty of the Contractor to notify OOTNC); or
 - 64.14.3 the Contractor fails to provide details of proposed mitigating factors in accordance with the provisions of Clause 70.3.2.

Duties of the Authority – Tax Compliance

- 64.15 In exercising its rights or remedies under Clause 70 (Tax Compliance), the Authority shall:
- 64.15.1 act in a reasonable and proportionate manner taking into account, among other things:
 - 64.15.1.1 the gravity and duration of the OOTNC and any sanctions imposed by a court or tribunal; and
 - 64.15.1.2 any remedial action taken by the Contractor to prevent reoccurrence of the OOTNC; and
 - 64.15.2 without prejudice to Clause 64.15, seriously consider, where appropriate, action other than termination of this Contract to deal with the failure by the Contractor to comply with Clause 70 (Tax Compliance).

Termination following a Change of Control of Contractor

- 64.16 The Authority may terminate the Contract by giving written notice to the Contractor within six (6) months pursuant to Clause 72.6 (Change of Control of Contractor). The Authority shall act reasonably in exercising its right of termination under Clause 72.6 (Change of Control of Contractor).
- 64.17 If the Authority exercises its right to terminate in accordance with Clause 64.16 the Contractor shall be entitled to request the Authority to consider making a payment representing any commitments, liabilities or expenditure incurred by the Contractor in connection with this Contract up to the point of termination. Such commitments, liabilities or expenditure shall be reasonably and properly chargeable by the Contractor, and shall otherwise represent an unavoidable loss by the Contractor by reason of the termination of this Contract. Any payment under this Clause 64.17 must be fully supported by documentary evidence.

Termination following a Breach of Security Matters

- 64.18 In accordance with paragraph (k) of the definition of Contractor Default in Schedule 1 (Definitions and Abbreviations), the Authority shall be entitled to terminate this Contract, in accordance with the provisions of this Condition 64.18, if:
- 64.18.1 the Contractor is in breach of any obligation under Clause 36 (Security – Secret Matters); or

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

where the Authority considers the circumstances of the breach jeopardise the secrecy or security of the Secret Matter.

65 Termination for Convenience

- 65.1 The Authority shall, in addition to its power under any other of the provisions of this Contract, have the power to determine this Contract at any time by giving to the Contractor at least 60 (sixty) Business Days' written notice, and upon the expiration of such notice period this Contract shall terminate, without prejudice to the rights of the Parties already accrued as at the Termination Date, but subject to the operation of the following provisions of this Clause 65 and Clause 67.
- 65.2 In the event of such notice being given, the Authority shall, at any time before the expiration of the notice, be entitled to exercise and shall, as soon as may be reasonably practicable within that period, exercise such of the following powers as it considers expedient:
- 65.2.1 to direct the Contractor, where provision of any element of the Contractor Deliverables has not been commenced, to refrain from commencing provision;
 - 65.2.2 to direct the Contractor to complete the provision of any element of the Contractor Deliverables and/or to concentrate its efforts on the completion of any elements of the Contractor Deliverables where provision of the same (or any activities that are integral to such provision) has (or have) already commenced;
 - 65.2.3 to direct the Contractor to, as soon as may be reasonably practicable after the receipt of such notice, take such steps as will ensure that the rate of provision of the Contractor Deliverables (or the rate of performance of any activities that are integral to such provision) is reduced as rapidly as possible;
 - 65.2.4 to direct the Contractor to determine on the best possible terms such Sub-Contracts and orders for materials, parts, components and/or services as have not been completed, observing in connection with any direction given under Clauses 65.2.1 to 65.2.3 inclusive as far as may be possible.
- 65.3 Notwithstanding the provisions of Clause 67 (Financial Consequences of Termination), if in any particular case hardship to the Contractor should arise from the operation of this Clause 65 it shall be open to the Contractor to refer the circumstances to the Authority who, on being satisfied that such hardship exists shall make such allowance, if any, as in its opinion is reasonable, and the decision of the Authority on any matter or thing arising out of this Clause 65.3 may be referred to arbitration in accordance with Clause 82 (Disputes).

66 Termination for Force Majeure

- 66.1 Where the Force Majeure Event continues for a period in excess of 120 (one hundred and twenty) Business Days after the commencement of the Force Majeure Event (Clause 23.1 refers), and its consequence remains such that the Affected Party is unable to comply with its obligations under this Contract then, the Parties may jointly terminate this Contract in accordance with Clauses 66.2 to 66.4 (inclusive) below;

- 66.2 Following the period of 120 (one hundred and twenty) Business Days, as defined in Clause 66.1, the Parties shall arrange to meet to discuss the enduring Force Majeure Event. The Affected Party shall;
- 66.2.1 evidence to the extent the Force Majeure Event continues to frustrate its ability to comply with its obligations under this Contract, and shall
- 66.2.2 forecast to what extent the Force Majeure Event is likely to have on its ability to comply with its obligations under this Contract.
- 66.3 Further to the review of the evidence provided under Clause 66.2, should the Parties jointly agree to terminate the Contract due to the enduring Force Majeure Event, then the Parties may mutually terminate this Contract by giving 20 (twenty) Business Days' written notice to the other Party.
- 66.4 Where this Contract is terminated pursuant to Clause 66.3 the provisions of Clause 67.6 through to 67.10 (inclusive) shall apply.

67 Financial Consequences of Termination

Termination for Contractor Default

- 67.1 Where this Contract or any part thereof is terminated pursuant to Clause 64 (Termination for Contractor Default), the provisions of Clauses 67.2 to 67.4 (inclusive) shall apply except where such termination is as a result of an Insolvency Event in which case the Contractor shall not be entitled to any further payment from the Authority.
- 67.2 Where Clause 67.1 (Termination for Contractor Default) applies, the Contractor shall not be entitled to be paid any sums until the Authority has assessed the cost of the alternative arrangements referred to in Clause 67.3 (Termination for Contractor Default). If following such assessment, the amount of such loss is less than the amount outstanding to the Contractor (subject to any other provision of this Contract affecting the level of such payment) for any aspect of the Contractor Deliverables that it has, as at the Termination Date, delivered to the Authority in accordance with this Contract then the Authority shall pay the difference to the Contractor. The Authority shall complete such assessment, and the Parties shall complete the reconciliation process, within 3 (three) months of the Termination Date and payment shall be made within 5 (five) Business Days of such completion (unless otherwise agreed).
- 67.3 Where Clause 67.1 (Termination for Contractor Default) applies, and the Authority makes alternative arrangements for the provision of the Contractor Deliverables (which may, for the avoidance of doubt, include the Authority carrying out the Contractor Deliverables itself), the Authority shall be entitled to recover from the Contractor the cost of making such alternative arrangements.
- 67.4 Where the Authority is entitled to terminate this Contract pursuant to Clause 64 (Termination for Contractor Default) as a result of the occurrence of a Prohibited Act and/or a breach of Clause 70 (Tax Compliance) and the Authority has terminated, the Authority shall, in addition to its rights set out in Clauses 67.2 and 67.3 (Termination for Contractor Default) inclusive (but without any double-counting) be entitled to:
- 67.4.1 recover from the Contractor the amount of any loss resulting from such termination; and
- 67.4.2 recover from the Contractor the amount or value of any gift, consideration commission entailed by such Prohibited Act.

- 67.5 Where this Clause 67.5 (Termination for Contractor Default) applies but this Contract has not been terminated, to recover from the Contractor any loss sustained as a result of such Prohibited Act and/or breach of Clause 70 (Tax Compliance).

Termination for Convenience

- 67.6 Where this Contract is terminated pursuant to Clause 65 (Termination for Convenience) or Clause 66 (Termination for Force Majeure), the provisions of Clauses 67.7 to 67.9 (inclusive) shall apply.

- 67.7 Where Clause 67.6 applies (and subject always to the Contractor's compliance with any direction given by the Authority pursuant to Clause 65.2 (Termination for Convenience):

67.7.1 the Authority shall take over from the Contractor at a fair and reasonable price (to the extent the Contractor has not already been paid) all unused and undamaged materiel and any Contractor Deliverables that consist of physical items and are in the course of manufacture, that are:

67.7.1.1 in the possession of the Contractor at the Termination Date; and

67.7.1.2 properly provided by or supplied to the Contractor for the performance of this Contract, except such materiel and Contractor Deliverables that consist of physical items as the Contractor shall, with the agreement of the Authority, elect to retain;

67.7.2 the Contractor shall prepare and deliver to the Authority within an agreed period, or in default of agreement within such period as the Authority may specify, a list of:

67.7.2.1 all such unused and undamaged materiel; and

67.7.2.2 Contractor Deliverables that consist of physical items and are in the course of manufacture,

that are liable to be taken over by or previously belonged to the Authority, and shall deliver such materiel and Contractor Deliverables in accordance with the directions of the Authority (who shall pay to the Contractor fair and reasonable handling and delivery charges incurred by the Contractor in complying with such directions); and

67.7.3 in respect of Contractor Deliverables (and any elements thereof) that do not consist of physical items, the Authority shall pay the Contractor (to the extent the Contractor has not already been paid) fair and reasonable prices for each such Contractor Deliverable (or any element thereof) that is provided or partially provided in accordance with this Contract,

In assessing a fair and reasonable price in Clauses 67.7.1 to 67.7.3 inclusive the Parties shall have due regard to the provisions of Schedule 5 (Pricing and Payment) and the Parties shall carry out a final reconciliation for that purpose as set out in Schedule 5 (Pricing and Payment) .

- 67.8 Where 67.5 applies, the Authority shall (subject to Clause 67.9 and to the Contractor's compliance with any direction given by the Authority pursuant to Clause 65.2 (Termination for Convenience)) indemnify the Contractor against any commitments, liabilities or expenditure incurred by the Contractor by reason of the termination of this Contract, subject to:

- 67.8.1 the Contractor taking all reasonable steps to mitigate such loss; and
 - 67.8.2 the Contractor submitting a fully itemised and costed list of such loss , with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination of this Contract pursuant to Clause 65.2 (Termination for Convenience).
- 67.9 The Authority shall not be liable under Clause 67.8 to pay any sum which exceeds the total Contract Price that would have been payable to the Contractor if this Contract had not been terminated prior to the Expiry Date.

Miscellaneous Provisions

- 67.10 Each Party shall (subject to the provisions of Paragraph 8 (Recovery of Sums Due) of Schedule 5 (Pricing and Payment) pay to the other any amounts payable pursuant to this Clause 67 within 20 (twenty) Business Days of the Termination Date (or, if later, within 20 (twenty) Business Days of the amount being identified by both Parties as being payable, where it was not possible to determine on the Termination Date that such amount was payable) and for that purpose the Parties shall carry out a final Reconciliation.

68 Continuing Obligations

- 68.1 Save as otherwise expressly provided in this Contract or as already taken into account in the calculation of any payment on termination pursuant to this Contract:
- 68.1.1 termination of this Contract shall be without prejudice to any accrued rights or obligations under this Contract prior to termination; and
 - 68.1.2 termination of this Contract shall not affect the continuing rights and obligations of the Contractor and the Authority under:
 - 68.1.2.1 Clause 34 (Intellectual Property Rights);
 - 68.1.2.2 Single Source as per Schedule 5 (Pricing and Payment);
 - 68.1.2.3 Clause 27 (Contractor's Records);
 - 68.1.2.4 Clause 36 (Security – Secret Matters);
 - 68.1.2.5 Clause 43 (Transfer of Undertakings (Protection of Employment) TUPE
 - 68.1.2.6 Clause 51 (Accounting for the Property of the Authority);
 - 68.1.2.7 Paragraph 11 (Certificate of Conformity) of Schedule 11 (Ancillary Requirements);
 - 68.1.2.8 Clause 67 (Financial Consequences of Termination);
 - 68.1.2.9 Clause 15 (Payment)
 - 68.1.2.10 Clause 82 (Disputes);
 - 68.1.2.11 Clause 83 (Law and Jurisdiction (Foreign Suppliers))
 - 68.1.2.12 Schedule 13 (Exit Management); and

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

SECTION N: GENERAL CONTRACT PROVISIONS

69 Not Used

70 Tax Compliance

Definitions

- 70.1 In this Clause 70, unless the context otherwise requires, the following words and expressions have the following meanings:
- 70.1.1 “**DOTAS**” means the Disclosure of Tax Avoidance Schemes rules, which require a promoter of tax schemes to:
- 70.1.1.1 tell HM Revenue & Customs of any specified notifiable arrangements or proposals; and
- 70.1.1.2 provide prescribed information on those arrangements or proposals within set time limits as:
- 70.1.1.2.1 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
- 70.1.1.2.2 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
- 70.1.2 “General Anti-Abuse Rule” means:
- 70.1.2.1 the legislation in Part 5 of the Finance Act 2013; and
- 70.1.2.2 any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
- 70.1.3 “**Halifax Abuse Principle**” means the principle explained in the CJEU Case C-255/02 Halifax and others;
- 70.1.4 “**Relevant Tax Authority**” means HM Revenue & Customs, or if applicable, a tax authority in the jurisdiction in which the Contractor is established;
- 70.1.5 “Occasion of Tax Non-Compliance (OOTNC)” means:
- 70.1.5.1 any tax return of the Contractor submitted to a relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
- 70.1.5.1.1 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

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legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

70.1.5.1.2 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 DOTA or any equivalent or similar regime; or

70.1.5.2 any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date of this Contract or to a civil penalty for fraud or evasion.

Warranty

70.2 The Contractor represents and warrants that at the Effective Date of this Contract, it has notified the Authority in writing of any OOTNC or any litigation that it is involved in that is in connection with any OOTNC.

Duty of the Contractor to notify OOTNC

70.3 If, at any point during the performance of this Contract, an OOTNC occurs, the Contractor shall:

70.3.1 notify the Authority in writing of such fact within 20 (twenty) Business Days of its occurrence; and

70.3.2 promptly provide the Authority with:

70.3.2.1 details of the steps which the Contractor is taking to address the OOTNC and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

70.3.2.2 such other information in relation to the OOTNC as the Authority may reasonably require.

70.4 For the avoidance of doubt, the obligation of Clause 70.3 (Duty of the Contractor to notify OOTNC) also applies to OOTNC in non-UK jurisdictions. If the OOTNC occurred in non-UK jurisdictions, the notification must be accompanied by a full explanation of the OOTNC and any relevant tax laws and administrative provisions so the Authority can understand the nature and seriousness of the OOTNC.

70.5 The duty to notify does not substitute the Contractor's obligations under Schedule 5 (Pricing and Payment) when used.

71 Contract Changes

71.1 This Contract may not be amended except by the written agreement of the duly authorised representatives of each of the Parties as detailed in Schedule 6 (Contract Change).

71.2 The written agreement of the Parties shall be obtained only by a serially numbered amendment being issued to the Contractor by the Authority (and such amendment shall come into force only when the Contractor has despatched to the Authority, on a DEFFORM 10B, an unqualified acceptance of the Authority's proposed amendment).

- 71.3 Any purported amendment to this Contract which does not satisfy the terms of this Clause 71 shall be of no effect.
- 71.4 Where an amendment to this Contract covers changed or additional requirements and/or involves a change in the Contract Price, such change shall be agreed prior to any authority to proceed being given by the Authority, except where Paragraph 7 of Schedule 6 (Contract Change) applies.
- 71.5 The Parties shall comply with the provisions of Schedule 6 (Contract Change) in respect of any Changes.

72 Change of Control of Contractor

- 72.1 The Contractor shall notify the Authority's Representative at the address given in Clause 72.3 below, as soon as practicable, in writing of any intended, planned or actual change in control of the Contractor. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanction arising from issuing such a notice.
- 72.2 For the purposes of this Clause 72, "control" means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person:
- 72.2.1 by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or
 - 72.2.2 by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Contractor.
 - 72.2.3 and a change of control occurs if a person who controls the Contractor ceases to do so or if another person acquires control of the Contractor.
- 72.3 Each notice of change of control shall be taken to apply to all contracts with the Authority. Notices shall be submitted to the Authority's Representative and:
- Mergers and Acquisitions Section
Suppliers Relation Team
Poplar 1 #2119
MOD Abbey Wood
Bristol
BS34 8JH
- 72.4 The Authority's Representative shall consider the notice of change of control and advise the Contractor in writing of any concerns the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to Contract Award
- 72.5 Notification by the Contractor of any intended, planned or actual change of control shall not prejudice the existing rights of the Authority or the Contractor under this Contract nor create or imply any rights of either the Contractor or the Authority additional to the Authority's rights set out in this Clause 72.
- 72.6 Further to Clause 72, where the Contractor proposes a change of ownership to an Unsuitable Third Party, or where the Contractor is otherwise in breach of the provisions of this Clause 72, the Authority may terminate the Contract in accordance with the provisions of Clause 64.16 (*Termination following a Breach of Change of Control of Contractor*).

73 Transfer of Contract

- 73.1 Neither Party shall give, bargain, sell, assign, or otherwise dispose of this Contract or any part thereof, or the benefit or advantage of this Contract or any part thereof, without the previous consent in writing of the other Party.
- 73.2 Where the Contractor is in breach of the provisions of Clause 73.1, the Authority may terminate the Contract in accordance with the provisions of Clause 64.16 (Termination following a Breach of Change of Control of Contractor).
- 73.3 Subject to the Contractor obtaining the prior written consent of the Authority in accordance with Clause 73.1, the Contractor may assign to a third party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest incurred by the Authority under any Contract clause concerning the late payment of debts).
- 73.4 Any assignment of the right to receive payment of the Contract Price (or any part thereof) under Clause 73 shall be subject to:
- 73.4.1 Reduction of any sums in respect of which the Authority exercises its right of recovery under Paragraph 8 (Recovery of Sums Due) of Schedule 5 (Pricing and Payment), or any narrative clause concerning recovery of sums due;
 - 73.4.2 all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
 - 73.4.3 the Authority receiving notification under both Clause 73.5 and Clause 73.6.2 below.
- 73.5 In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under Clause 73, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- 73.6 The Contract shall ensure that the Assignee:
- 73.6.1 is made aware of the Authority's continuing rights under Clauses 73.4.1 and 73.4.2 of this Clause 73; and
 - 73.6.2 notifies the Authority of the Assignee's contact information and bank account details, to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with Clauses 73.4.1 and 73.4.2.
- 73.7 The provisions of this Contract, including any clauses concerning payment, shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

74 Legislative Risk

- 74.1 The Contractor shall comply with all relevant Legislation at the Effective Date and shall pay all fees, charges and costs required to be paid under any Legislation pertaining to the provision of any of the Contractor Deliverables.
- 74.2 If the Contractor believes that a change in Legislation has occurred that could not have been reasonably foreseen by the Contractor, after the Effective Date of the Contract or is likely to occur before the expiry of the Contract it shall notify the Authority in writing as soon as practicable and such notice shall stipulate:

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- 74.2.1 the nature of the change in Legislation;
- 74.2.2 the date the Legislation shall come into force;
- 74.2.3 any necessary change to the Contractor Deliverables; and
- 74.2.4 any fees, charges or costs payable as a result of the change in Legislation.

74.3 In the event of a change in Legislation that is assessed by the Contractor to result in a change to Schedule 2 (Statement of Work) or any other part of this Contract or an increase in the Contract Price, this Contract shall be amended in accordance with the Change procedure at Clause 71 (Contract Change) provided that the Contractor:

- 74.3.1 provides evidence that the Contractor has used reasonable endeavours (including (where practicable) the use of competitive quotes) to minimise any increase in costs and maximise any reduction in costs; and
- 74.3.2 demonstrates that any expenditure that has been avoided, which was anticipated to be incurred, has been taken into account in the amount which in its opinion has resulted or is required under Clause 74.2.4.

74.4 In the event of any dispute as to whether a change in Legislation has occurred that could not have reasonably been foreseen by the Contractor at the Effective Date of the Contract, the Parties shall submit to the procedure set out in Clause 82 (Disputes).

75 Disruption

75.1 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own employees or others', which affects or might affect its ability at any time to perform its obligations under this Contract.

75.2 The Contractor shall have robust contingency plans in place, in accordance with the Business Continuity Plans, to ensure that the provision of the Contractor Deliverables is maintained in the event of any disruption (including disruption to information technology systems) to the operations of the Contractor and/or any Sub-Contractor. Such contingency plans shall be available for the Authority to:

- 75.2.1 inspect; and/or
- 75.2.2 subject to the Authority giving the Contractor reasonable advance notice, and subject to the Authority exercising this right a maximum of 3 (three) times in any 1 (one) Year in respect of the same plan practically test at any reasonable time, and shall be updated and revised as necessary by the Contractor throughout the Contract Period.

76 Waiver

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

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

77 Notices

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- 77.1 All notices, orders, or other forms of communication required to be given in writing ("**Notices**") under or in connection with this Contract shall:
- 77.1.1 be given in writing;
 - 77.1.2 be authenticated by signature or by such other method as agreed between the Parties;
 - 77.1.3 be marked for the attention of the appropriate Authority's Representative or Contractor's Representative; and
 - 77.1.4 be marked in a prominent position with the relevant Contract number.
- 77.2 Notices should be delivered by:
- 77.2.1 hand;
 - 77.2.2 first-class prepaid post (or airmail, in the case of Notices to or from overseas);
 - 77.2.3 facsimile; or
 - 77.2.4 electronic mail.
- 77.3 Notices shall be deemed to have been received:
- 77.3.1 if delivered by hand, on the day of delivery if it is the recipient's Business Day and otherwise on the first Business Day of the recipient immediately following the day of delivery;
 - 77.3.2 if sent by first-class prepaid post (or airmail, if appropriate), on the third Business Day (or on the tenth Business Day, in the case of airmail) after the day of posting; and
 - 77.3.3 if sent by, facsimile, or other electronic means:
 - 77.3.3.1 if transmitted between 09.00 and 17:00 hours on a Business Day (recipient's time), on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
 - 77.3.3.2 if transmitted at any other time, at 09.00 on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument.
- 77.4 The addresses (including electronic addresses) of each Party and their Representatives to which all Notices shall be sent are set out in DEFFORM 111 (Appendix to Contract), or such other address as either Party may by written Notice specify to the other for the purpose of this Clause 77.
- 77.5 Where either Party requests written confirmation of any communication which does not constitute a Notice, such request shall not unreasonably be refused.
- 78 Contractor's Status**
- 78.1 Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Authority and Contractor.

78.2 Save as expressly provided otherwise in this Contract, the Contractor shall not be, nor be deemed to be, an agent of the Authority and the Contractor shall not hold itself out as having authority or power to bind the Authority in any way.

78.3 Neither Party shall place or cause to be placed any order with suppliers or otherwise incur liabilities in the name of the other Party or any representative or the other Party.

79 Third Party Rights

79.1 Except as provided in Clause 79.2 and notwithstanding anything to the contrary elsewhere in this Contract, no right is granted to any person who is not a Party to this Contract to enforce any term of this Contract in its own right and the Parties declare that they have no intention to grant any such right.

79.2 Where, and only where, this Contract expressly states that a third party shall be entitled to enforce a term of this Contract:

79.2.1 the said third party shall be entitled to enforce that term in its own right;

79.2.2 the Contractor shall inform the said third party as soon as is reasonably practicable of the existence of the relevant right, together with any other terms (including the terms of this Clause 79) relevant to the exercise of that right; and

79.2.3 the third party's rights shall be subject to:

79.2.3.1 the resolution of any relevant Dispute pursuant to Clause 82 (Disputes); and

79.2.3.2 Clause 83 (Law and Jurisdiction (Foreign Suppliers)).

80 Whole Agreement

80.1 This Contract constitutes the entire agreement between the Parties relating to the subject matter of this Contract. This Contract supersedes all prior negotiations, representations, and undertakings, whether written or oral,

81 Severability

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

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

81.1.2 the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision with 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.

82 Disputes

82.1 The Parties shall attempt to resolve in good faith any Dispute arising out of or relating to this Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any Alternative Dispute Resolution procedure on which the Parties may agree.

- 82.2 In the event that the Dispute is not resolved by negotiation (or, where the Parties have agreed to use an Alternative Dispute Resolution procedure, by the use of such procedure) the Dispute shall be referred to arbitration in accordance with Clauses 82.3 to 82.6 (inclusive).
- 82.3 The Party initiating the arbitration shall give a written notice (the "Notice of Arbitration") to the other Party. The Notice of Arbitration shall specifically state:
- 82.3.1 that the Dispute is referred to arbitration; and
- 82.3.2 the particulars of this Contract out of or in relation to which the Dispute arises.
- 82.4 Unless otherwise agreed in writing by the Parties, the arbitration and this Clause 82 (Disputes) shall be governed by the London Court of Arbitration (LCIA) and by the provisions of the Arbitration Act 1996.
- 82.5 It is agreed between the Parties that, for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided for in Section 39 of the Arbitration Act 1996.
- 82.6 The arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the Parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the parties to the arbitration.

83 Law and Jurisdiction (Foreign Suppliers)

- 83.1 This Contract shall be governed and interpreted in accordance with English law.
- 83.2 Any dispute arising out or in connection with this Contract shall be determined within the English jurisdiction and to the exclusion of all foreign jurisdictions save that a foreign jurisdiction may apply solely for the purposes of giving full effect to this Clause 83 (Law and Jurisdiction (Foreign Suppliers)) and for the enforcement of any judgement order or award given under the English jurisdiction. Each party to this Contract irrevocably submits to the jurisdiction provided for under this Clause 83 (Law and Jurisdiction (Foreign Suppliers)).
- 83.3 Each Party hereby warrants to each other that entry into this Contract does not and performance thereof will not in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it and that this Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under mortgage, contract or other liability, charge or encumbrance upon any of its properties or assets.
- 83.4 Each party hereby agree with each other Party that the provisions of this Clause 83 (Law and Jurisdiction (Foreign Suppliers)) shall survive any termination of this Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.
- 83.5 The Contractor irrevocably appoints the solicitors or other persons in England and Wales, specified in this Contract as its agents to accept on its behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction arising out of or relating to

this Contract or any issue connected therewith. For the purposes of this Clause 83.5 (Law and Jurisdiction (Foreign Suppliers)) the address shall be 16 Charles II Street, London SW1Y 4QU.

84 Not Used

85 Contractors on Deployed Operations (CONDO)

85.1 The provisions of Schedule 14 (Contractors on Deployed Operations) shall apply in respect of the provision of Contractor Related Parties for Deployed Operations.

86 Contract Up-Issue

86.1 This Contract shall be formally up-issued in whole by agreement with both Parties in accordance with the provisions of Schedule 6 (Contract Change).

87 Acceptance

87.1 Subject to Clause 87.2, acceptance of a Contractor Deliverable occurs at the time, and in accordance with the procedure specified in the Contract, or, if none is so specified:

87.1.1 where the Contract specifies a time limit within which to reject, that time has elapsed;

87.1.2 where the Contract specifies no time limit within which to reject, a reasonable time has elapsed since delivery has occurred; or

87.1.3 when it has been delivered and the Authority does any act in relation to it which is inconsistent with the Contractor's ownership.

87.2 In respect of documentation delivered by the Contractor to the Authority the following provisions shall apply:

87.2.1 Upon receipt of a document requiring acceptance by the Authority the Authority shall within ten (10) Business Days confirm either:

87.2.1.1 confirm that the document is accepted by the Authority; or

87.2.1.2 if not accepted provide comments on the relevant document to the Contractor in sufficient detail to allow the contractor to provide updates to the initially submitted document and resubmit to the Authority

87.2.2 Upon receipt of the relevant resubmitted document the Authority shall within five (5) Business Days confirm either:

87.2.2.1 that the document is accepted by the Authority; or

87.2.2.2 if not accepted provide comments on the relevant document to the Contractor in sufficient detail to allow the contractor to provide updates to the previously submitted document and the Contractor may then at its discretion resubmit to the Authority and the provisions of Clause 87.2.2 shall apply, or the Contractor may submit the rejection of the relevant document for resolution under the provisions of Clause 82 (Disputes).

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- 87.3 Unless otherwise specified in the Contract, the Authority shall not be deemed to have accepted a Contractor Deliverable unless it has had a reasonable opportunity to examine it after delivery for the purpose to ascertain whether it is in conformity with the Contract.
- 87.4 Acceptance shall be governed by this Clause 87 to the exclusion of any common law or Statutory provision relating to acceptance of goods.
- 87.5 Where software is to be supplied as a requirement of the Contract it will be subject to the provisions of this Condition 87 as if it were a Contractor Deliverable.