

**DATED** 2020

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

**and**

**[CONTRACTOR [LIMITED]] (2)**

---

**BATCM/0322  
MULTI-MODE RADIO (MMR)  
CONTRACT**

---



**OFFICIAL**

ITN Initial Tender Submission Version 1.0

## Contents

1	Definitions and Interpretation .....	1
2	Precedence .....	3
3	The Contractor's Obligations .....	3
4	Contract Period, Tasking Procedure and Options .....	5
5	Contractor Warranties and Undertakings .....	8
6	MORPHEUS Contracts .....	13
7	Interdependent Contracts .....	13
8	Co-operation and Partnering .....	13
9	Contract Management and Governance .....	14
10	Necessary Consents .....	14
11	Contractor Related Parties .....	16
12	Not Used .....	16
13	Sub-Contracting .....	16
14	Matters to be included in Sub-Contracts .....	18
15	Not Used .....	21
16	Subcontracting to Supported Businesses and SMEs .....	21
17	Sub-Contracting Plan. ....	22
18	Import and Export Licences .....	24
19	Not Used .....	28
20	Payment under CP&F .....	28
21	Not Used. ....	29
22	Unique Identifiers .....	29
23	The Use of the Electronic Business Delivery Form .....	29
24	Disputed Amounts .....	31
25	Payment of Bills using the Bankers Automated Clearing Service System .....	32
26	Recovery of Sums Due .....	32

27	VAT .....	32
28	Performance Monitoring .....	33
29	Technical Assistance to the Authority .....	33
30	Authority Performance Failures .....	34
31	Indemnity and Liabilities .....	38
32	[Not Used] .....	41
33	States of Emergency, Periods of Tension, Transition to War and Hostilities .....	41
34	Not Used .....	41
35	Not Used .....	41
36	Authority Data.....	41
37	Authority Disclosed Data .....	43
38	The Contractor's Records.....	44
39	Financial Management Information.....	45
40	Disclosure of Information.....	45
41	Not Used .....	50
42	Transparency .....	50
43	Accuracy of Information.....	50
44	Protection of Personal Data.....	50
46	Intellectual Property Rights.....	59
47	Security – Secret Matters .....	59
48	Personnel Security .....	63
49	Co-operation for Security Investigation .....	65
50	Access to the Contractor's Premises .....	65
51	Authority Sites and/or Other Contractor's Premises.....	66
52	The Contractor's Property and Personnel at Government Establishments and Other Contractor's Premises .....	68
53	Transfer of Undertakings (Protection of Employment) (TUPE) [Not Used] .....	71
54	Child Labour and Employment Law .....	71

55	Equality .....	71
56	Packaging (for Articles other than Munitions).....	72
57	Supply of Hazard Data .....	85
58	Delivery, Acceptance, Rejection and transfer of Title and Risk .....	88
59	Issued Property .....	91
60	Accounting for property of the Authority.....	94
61	Marking of Articles .....	96
62	Transport.....	96
63	Special Jigs, Tooling and Test Equipment.....	96
64	Montreal Protocol Substances.....	99
65	Diversion Orders .....	99
66	Counterfeit Material .....	99
67	Quality Assurance – Requirement for a Certificate of Conformity .....	100
68	Procedure for Initial Spares for New Equipment .....	101
69	Radio Transmissions .....	103
70	Termination for Contractor Default.....	103
71	Termination for Convenience.....	105
72	Financial consequences of Termination.....	106
73	Exit Plan .....	109
74	Continuing Obligations .....	109
75	Continuing Assistance .....	110
76	Change.....	111
77	Amendments to Contract .....	112
78	Law and Jurisdiction .....	113
79	Transfer.....	113
80	Novation .....	114
81	Change of Ownership.....	114
82	Disruption .....	115

83	Waiver .....	115
84	Discrepancies, Errors and Omissions .....	116
85	Severability .....	116
86	Whole Agreement.....	116
87	Tax Compliance .....	116
88	Representatives .....	117
89	Notices .....	118
90	Dispute Resolution (English Law) .....	119
91	Contractor's Status .....	120
92	Conflicts of Interest and Impartiality .....	120
93	Rights of Third Parties .....	121
94	Law (English).....	121
95	Counterparts [Not Used] .....	121
96	Modern Slavery, Child Labour and Inhumane Treatment.....	121

## **LIST OF SCHEDULES:**

**SCHEDULE 1 - DEFINITIONS**

**SCHEDULE 2 - STATEMENT OF REQUIREMENT**

**SCHEDULE 3 – CONTRACTORS PROPOSAL**

**SCHEDULE 4 – ACCEPTANCE PROCEDURE**

**SCHEDULE 5 – PRICING AND PAYMENT**

**SCHEDULE 6 – CONTRACT CHANGE PROCEDURE**

**SCHEDULE 7 – NOT USED**

**SCHEDULE 8 – GOVERNMENT FURNISHED ASSETS**

**SCHEDULE 9 – NOT USED**

**SCHEDULE 10 – TASKING PROCEDURE**

**SCHEDULE 11 – CONTRACTORS COMMERCIALY SENSISTIVE INFORMATION**

**SCHEDULE 12 – SECURITY CONDITIONS AND SECURITY ASPECTS LETTER**

**SCHEDULE 13 – GOVERNANCE AND CONTRACT MANAGEMENT**

**SCHEDULE 14 – INTELLECTUAL PROPERTY RIGHTS**

**SCHEDULE 15 – EXIT MANAGEMENT**

**SCHEDULE 16 – BUSINESS CONTINUITY PLAN**

**SCHEDULE 17 – PARENT COMPANY GARUNTEE**

THIS CONTRACT is made on

202[•]

**BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR DEFENCE** (the “**Authority**”); and
- (2) **[CONTRACTOR [LIMITED]]**, [registered in England (**number [•]**), whose registered office is at [•]/[of [•]] (the “**Contractor**)”].

**BACKGROUND:**

- (A) On **[insert date<sup>1</sup>]** the Authority advertised in the Official Journal of the European Union (reference **[insert OJEU number]**) (“**OJEU Notice**”), inviting prospective suppliers to submit proposals for the **[insert description of procurement]**.
- (B) On the basis of the Contractor’s response to the advertisement and a subsequent tender process, the Authority selected the Contractor as its preferred supplier.
- (C) The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.
- (D) [The Contractor has agreed to procure the provision of the Parent Company Guarantee<sup>2</sup> in support of the Contractor’s obligations to the Authority.]

**PART 1 - DEFINITIONS AND INTERPRETATION**

**1 Definitions and Interpretation**

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

- 1.1.1 the terms and phrases defined in Schedule 1 (*Definitions*) shall have the meanings given to them in that Schedule;
- 1.1.2 the acronyms set out in Schedule 1 (*Definitions*) shall have the meanings given to them in that Schedule;
- 1.1.3 the masculine includes the feminine and vice versa, and words importing the neuter include the masculine and the feminine and vice versa;
- 1.1.4 the singular includes the plural and vice versa;
- 1.1.5 the words "include", "includes", "including" and "included" shall be construed as if they were immediately followed by the words "without limitation" except where explicitly stated otherwise;
- 1.1.6 the expression “person” means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of

---

<sup>1</sup> Date and references to be inserted after issue of the OJEU Notice and prior to Contract finalisation.

<sup>2</sup> [A parent company guarantee or equivalent security may be required from the successful Bidder or each member of any consortium that is formed to deliver this Contract. This Contract will be amended accordingly to reflect any proposed security package for the successful Bidder.]

a state or joint venture and includes their successors and permitted assignees or transferees;

- 1.1.7 unless stated to the contrary, any reference to this Contract or to any other document shall include any variation, amendment or supplement to such document;
- 1.1.8 references to any enactment, order, regulation, or other similar instrument (including any EU instrument) shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, supplemented, replaced or consolidated by any subsequent enactment, order, regulation or instrument (including any EU instrument);
- 1.1.9 the heading to any provision in this Contract shall not affect the interpretation of that provision;
- 1.1.10 any decision, act, or thing which the Authority is required or authorised to take or do under this Contract may be taken or done only by any person authorised, either generally or specifically, by the Authority to take or do that decision, act, or thing on behalf of the Authority as set out in the table contained in Part 2 of Schedule 13 (*Contract Management and Governance*);
- 1.1.11 unless excluded within the terms of this Contract or where otherwise required by law:
- (i) references to submission of documents in writing shall include electronic submission; and
  - (ii) any requirement for a document to be signed or references to signatures shall be construed to include electronic signature, provided that a formal method of authentication as previously agreed between the Parties is employed and such agreed method is recorded in this Contract; and
  - (iii) a reference in this Contract to any Clause, part, paragraph, Schedule, Appendix or Annex is, except where expressly stated to the contrary, a reference to such Clause, part, paragraph or Schedule of or Appendix or Annex to this Contract; and
- 1.1.12 references to a "holding company" "or "parent undertaking" shall have the meanings and be construed in accordance with section 1159 and section 1162 of the Companies Act 2006 and for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), a company shall be treated as a member of another company even if its shares in that other company are registered in the name of:
- (i) another person (or its nominee), by way of security or in connection with the taking of security; or
  - (ii) its nominee.



## **2 Precedence**

- 2.1 If there is any inconsistency between the provisions of the main body of this Contract and the Schedules, the Appendices and/or the Annexes, or between any of the Schedules, the Appendices and/or the Annexes, the conflict shall be resolved according to the following descending order of priority:
- 2.1.1 The main body of this Contract, Schedule 1 (*Definitions*), Schedule 4 (*Acceptance Procedure*), Schedule 5 (*Pricing and Payment Plan*), Schedule 6 (*Contract Change Procedure*) and Schedule 14 (*Intellectual Property Rights*);
  - 2.1.2 Schedule 2 (*Statement of Requirements*);
  - 2.1.3 the remaining Schedules and their respective Appendices and Annexes; and
  - 2.1.4 Any other documents expressly referred to in the Contract.

## **PART 2 - CORE OBLIGATIONS**

### **3 The Contractor's Obligations**

- 3.1 The Contractor shall:
- 3.1.1 provide and/or shall ensure that all of the Contractor Deliverables are provided in accordance with and, in each case, having due regard to:
    - (i) Good Industry Practice;
    - (ii) all Necessary Consents;
    - (iii) Legislation;
    - (iv) British Standards which are appropriate and relevant to the provision of the Contractor Deliverables;
    - (v) the Contractor's approved quality assurance systems in accordance with Serial 5, Table 1, Schedule 2 (*Statement of Requirement*) and
    - (vi) the documents referred to in Schedule 2 (*Statement of Requirements*)
  - 3.1.2 deliver all of the Contractor Deliverables using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money; and
  - 3.1.3 continue to perform all of its obligations under this Contract and shall not suspend the performance of the Contractor Deliverables notwithstanding:
    - (i) not used

- (ii) the existence of an unresolved Dispute; and/or
- (iii) any failure by the Authority to pay any sums due.

3.2 The Contractor shall perform the Contractor Deliverables:

- 3.2.1 in accordance with and so as to procure satisfaction of the Statement of Requirements;
- 3.2.2 Not Used;
- 3.2.3 in accordance with the Schedule 3 (Contractor's Proposal) and
- 3.2.4 in accordance with this Contract.

To avoid doubt, the obligations in Clauses 3.2.1, 3.2.3 and 3.2.4 (*The Contractor's Obligations*) are independent obligations. In particular:

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

3.3 Without prejudice to Clause 3.2.1 (*The Contractor's Obligations*), if it shall be found that the Contractor's Proposals as at the Effective Date do not fulfil the Statement of Requirements, the Contractor shall (at its own expense) amend the Contractor's Proposals and rectify the Contractor Deliverables to ensure that they meet the Statement of Requirements.

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

- 3.4.1 impose upon the Authority any obligation or any other requirement which is greater than the obligations and/or requirement contained in the remaining provisions of this Contract;
- 3.4.2 limit or reduce the Authority's rights and remedies contained in the remaining provisions of this Contract; and/or
- 3.4.3 otherwise have an adverse impact on the Authority.

3.5 Not used.

3.6 Not used

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

- 3.7.1 it shall be responsible for the consequences of any change to the Baseline Project Schedule (including any Losses of the Authority arising directly or indirectly from such change) unless such change is as the result of any

failure by the Authority to perform its obligations under this Contract giving rise to the requirement for the Authority to give relief, including a change to the Baseline Project Schedule pursuant to Clause 30 (*Authority Performance Failures*); and

- 3.7.2 it shall be responsible for complying with the Baseline Project Schedule as at the date of this Contract (or as varied in accordance with Schedule 6 (*Contract Change Procedure*)) subject to any variations to such Baseline Project Schedule as are expressly permitted in this Contract.

### **Competition/alternative sourcing**

- 3.8 The Contractor accepts that:

- 3.8.1 the Authority may invite competitive quotations from the Contractor and/or others and, as appropriate, place orders elsewhere, appointing Third Parties or carrying out work itself in respect of any or all of the Contractor Deliverables during the Contract Period, and in respect of any Contractor Deliverables which are the subject of an Exercised Option; and
- 3.8.2 nothing in this Clause 3.8 shall prevent the Authority (at any time) from reducing the amount of and/or amending the scope of any of the Contractor Deliverables through a Change:
- (i) in order that the Authority can carry out itself work which is the subject of the Contractor Deliverable; and/or
  - (ii) to end work which is the subject of a Contractor Deliverable which the Authority has determined (in its absolute discretion) is no longer required to be carried out.

### **Delivery of Parent Company Guarantee**

- 3.9 [The Parties acknowledge that on the date of this Contract the Contractor has delivered to the Authority an original, duly executed Parent Company Guarantee in the form set out in Schedule 17 (*Parent Company Guarantee*) together with a certified copy of the board minutes under which the Parent Company Guarantee is executed and a legal opinion (confirming that the Parent Company Guarantee is validly executed and enforceable).]

### **3A [NOT USED]**

### **3A/ NOT USED**

## **4 Contract Period, Tasking Procedure and Options**

### **Contract Period**

- 4.1 Subject to Clauses 4.2 to 4.13 (inclusive) (*Exercise of Options*), this Contract and the rights and obligations of the Parties shall take effect on the Effective Date and, except as set out in Clause 74 (*Continuing Obligations*), shall terminate on the earlier of:
- 4.1.1 the Expiry Date, and
  - 4.1.2 the Termination Date.

## Exercise of Options

- 4.2 In consideration of the Authority agreeing to enter into this Contract, the Contractor hereby grants to the Authority the right to exercise the Options.
- 4.3 In the event the Authority wishes to exercise an Option, the Authority shall issue a notice to the Contractor (such notice confirming that the Authority is considering exercising the relevant identified Option, (an “Option Notice”).
- 4.4 The Parties agree that any proposed Option Firm Prices can only be increased or decreased in the event that:
- 4.4.1 prior to exercise of the relevant Option, there is a material change to the scope of the Contractor Deliverables for the relevant Option and, in the case of an increase to the proposed Option Firm Price, where the Contractor can demonstrate a causal increase in the proposed Option Firm Price arising as a result of such material change and where a Change is subsequently agreed in accordance with the procedures in Clauses **Error! Reference source not found.** to 4.13 (inclusive) (*Exercise of Options*) and as set out in Schedule 6 (*Contract Change Procedure*), to vary the proposed Option Firm Price before it then forms part of the Option Firm Price; or
  - 4.4.2 in relation to an Exercised Option, where a Change is agreed in accordance with Schedule 6 (*Contract Change Procedure*) which changes the amount of the proposed Option Firm Price which relates to such Exercised Option.

## Option 1 - 2 Additional Equipment Buys

- 4.5 The scope of Options 1 - 2 “Additional Equipment Buys” are detailed in Table 9 Line Item 1-2 of Schedule 2 (*Statement of Requirement*) and are subject to the Firm Prices set out within Annex D of Schedule 5 (*Equipment and Ancillary Catalogue*).
- 4.6 The Contractor hereby grants the following irrevocable options to purchase additional quantities of the MMR System in accordance with the Terms and Conditions set out in this Contract, it being agreed that the Authority has no obligation to exercise such Options:
- 4.6.1 Option 1: MMR Systems and Ancillary items<sup>34</sup> up to the quantity detailed in Annex H to Schedule 2 (*Statement of Requirement*) at the Firm Prices agreed within Annex D to Schedule 5 (*Equipment and Ancillary Catalogue*<sup>5</sup>). The Authority may issue multiple Option Notices to exercise this Option an unlimited number of times, provided it does not exceed the quantities specified in this Clause and provided that the Authority issues the final

---

<sup>4</sup> Quantities to be specified within the Option Notice and is not limited to the total amount of MMR Systems and Ancillary Items that applies to this Option.

<sup>5</sup> Bidders will be asked to return Catalogue Pricelist as part of the ITN Pricing Template. The Authority will reserve the right to negotiate elements of the Pricing Template including Lead Times, Minimum Order Quantities as part of the Evaluation of this Clause in accordance with the Commercial Criteria.

Option Notice no later than [Bidder to Populate<sup>6</sup>] months prior to the Expiry Date.

- 4.6.2 Option 2: A quantity of up to 5500 (five thousand five hundred) MMR Systems and a Qty Ancillary Items<sup>7</sup> at the Firm Prices agreed within Annex D to Schedule 5 (*Catalogue Pricelist*). The Authority may issue multiple Option Notices to exercise this Option an unlimited number of times provided it does not exceed the quantities specified in this Clause and provided that the Authority issues the final Option Notice no later than [Bidder to Populate<sup>8</sup>] months prior to the Expiry Date.
- 4.7 The Authority shall issue an Option Notice<sup>9</sup> to the Contractor (if considering exercising the relevant identified Option 1 and/or 2, (an "Option Notice").
- 4.8 Within ten (10) Working Days (or such other period as the Parties may agree) from the date of receipt of the Option Notice from the Authority in accordance with Clause 4.3.1, the Contractor shall notify the Authority's Representative (together with all supporting detail as is deemed necessary by the Authority):
- (i) that the proposed Options within the Option Notice are confirmed (there being no material change to the scope of the Contractor Deliverables); or
  - (ii) of any other proposed changes that the Contractor considers are necessary to enable the applicable Option to form part of this Contract which arise as a direct result of any change to the scope of the Contractor Deliverables for the applicable Option; and
  - (iii) of any other information which the Contractor considers is relevant relating to the relevant Option
- 4.9 Upon receipt of the Contractor's confirmation that the Options with the Option Notice are confirmed (and that the Contractor has confirmed that no material change to the scope of the Contractor Deliverables), the Option shall become an Exercise Option and the Contractor shall deliver the additional quantities in accordance with the terms of the Exercised Option. Without prejudice to the Contractor's obligation to comply with the terms of the Exercised Option, if necessary, the Parties shall then proceed to add the Quantities detailed in the Option Notice to the Schedule of Requirement (Annex C) and make any other consequential amendment to the Contract.

### **Option 3 - Evolve to Open**

- 4.10 The scope of Option 3 (Evolve to Open) is as detailed in Table 10, Line Item 1-5 of Schedule 2 (*Statement of Requirement*) and the Maximum Price (to be converted into a Firm Price using the Firm Priced Labour Rates detailed within

---

<sup>6</sup> Bidder to populate the last possible date the Authority can request the Option Notice 1 by for Options based on the Lead Times stipulated in the Catalogue Pricelist, noting that the Delivery and Acceptance of the MMR System and Ancillary Items must be completed by the Contract Expiry Date.

<sup>7</sup> Quantities for Ancillary Items are commensurate with the Qty of MMR Systems and are to be specified within the Option Notice.

<sup>8</sup> Bidder to populate the last possible date the Authority can request the Option Notice by for Options 2 based on the Lead Times stipulated in the Catalogue Pricelist, noting that the Delivery and Acceptance of the MMR System and Ancillary Items must be completed by the Contract Expiry Date

<sup>9</sup> Bidders are to note that the Authority does not want to place any limitation on the amount of times the Authority can issue an Option Notice providing the quantities ordered, however the Bidder can propose any limitation as part of the Evaluation of this Clause in accordance with the Commercial Criteria.

Schedule 5 (*Pricing and Payment*) is detailed within Line Item 41 of the (*Schedule of Requirement*).

- 4.11 The final Option Notice must be issued no later than (12) twelve months prior to Expiry Date.
- 4.11.1 Upon the issuing of an Option Notice by the Authority to exercise Option 3 (Evolve to Open) the Parties shall proceed as if the agreed (or determined) terms of the relevant Option were a Contractor Change Proposal confirmed by the Authority in accordance with paragraph 8.1.1 of Schedule 6 (*Contract Change Procedure*) and the Parties shall enter into any documents required to give effect to the relevant Option and commence the implementation of the relevant Option as set out in paragraph 2.1 of Schedule 6 (*Contract Change Procedure*); and
- 4.11.2 the rights and obligations of the Parties in respect of the relevant Option, shall take effect from the date specified in the documents referred to in sub-clause 4.11.1 above (when such documents have been duly executed by the Parties and consequently the Option then becomes an Exercised Option) and shall form rights and obligations under this Contract.
- 4.12 In the event of any Dispute in relation to any Option which is the subject of an Option Notice, either Party shall be entitled to refer the matter for resolution in accordance with the Dispute Resolution Procedure.
- 4.13 Following the exercise of any of the Options pursuant to this Clause 4 (*Contract Period and Options*), any rights and obligations of the Parties existing under this Contract prior to the exercise of such Option shall continue to apply.

## **Tasking Procedure**

- 4.14 The Parties will comply with their respective rights and obligations in Schedule 10 (*Tasking Procedure*).
- 4.15 The Tasking Procedure can be used for any Contractor Deliverables that have been identified within Schedule 2 (*Statement of Requirement*) requiring authorisations through the Tasking Procedure at Schedule 10.

## **5 Contractor Warranties and Undertakings**

### **Contractor warranties**

- 5.1 The Contractor warrants and represents to the Authority that:
- 5.1.1 it has the [corporate<sup>10</sup>] power to enter into and to exercise its rights and perform its obligations under this Contract and any Sub-Contracts;
- 5.1.2 [it is validly incorporated, organised and subsisting in accordance with the law of its place of incorporation<sup>11</sup>];
- 5.1.3 this Contract is executed by its duly authorised representative<sup>12</sup>;

---

<sup>10</sup> To be considered in the context of the legal personality and constitution of the potential Contractors post ITN.

<sup>11</sup> To be considered in the context of the legal personality and constitution of the potential Contractors post ITN.

<sup>12</sup> Phrasing to be considered dependent on formalities required for execution by potential Contractors post ITN.

- 5.1.4 it has all necessary consents and regulatory approvals to enter into this Contract;
- 5.1.5 [at the date of the Contract the entire share capital in the Contractor is legally and beneficially owned by [•], a company incorporated in [England and Wales] (with Registered Number [•]) whose registered office is situated at [•] and that no arrangements are in place or are contemplated that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the Contractor;]<sup>13</sup>
- 5.1.6 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunals pending or to its knowledge, threatened against it or any of its Contractor Related Parties that might affect its ability to perform its obligations under this Contract;
- 5.1.7 its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Legislation, other law (in any jurisdiction), or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- 5.1.8 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar law affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- 5.1.9 all written statements and representations in any written submissions made by the Contractor as part of the procurement process, including without limitation its response to the Contract Notice and Tender Documentation (if applicable), its tender and any other documents submitted, remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Contractor has otherwise disclosed to the Authority in writing prior to the date of this Contract;
- 5.1.10 it is not subject to any contractual obligation, compliance with which shall or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
- 5.1.11 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- 5.1.12 it shall not commit, and in entering into this Contract it has not committed, any Prohibited Act and for this purpose only the words "or without" in the introduction of the definition of Prohibited Act shall be deleted;

---

<sup>13</sup> To be considered in the context of the legal personality and constitution of the potential Contractors post ITN.

- 5.1.13 it, nor to the best of its knowledge any Contractor Related Party nor any of the Contractor's employees, consultants, contractors, sub-contractors or agents, have at any time prior to the Effective Date:
- (i) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - (ii) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act;
- 5.1.14 it shall:
- (i) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirement and prevent the occurrence of a Prohibited Act; and
  - (ii) keep appropriate records of its compliance with its obligations under Clause 5.1.14(i) and make such records available to the Authority on request;
- 5.1.15 it shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 5.1.13, or has reason to believe that it has or any of the Contractor Related Party or any of the Contractor's employees, consultants, contractors, sub-contractors or agents have:
- (i) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - (ii) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - (iii) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act;
- 5.1.16 so far as it is aware, there is not, nor has there been, any infringement or alleged infringement of any Third Party's Intellectual Property Rights in connection with this Contract;
- 5.1.17 it has all necessary rights in and to the Contractor Background IPR and any other materials (including the Third Party IPR) made available by the Contractor (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Contractor's obligations under this Contract and/or the receipt of the Contractor Deliverables by the Authority;



- 5.1.18 it has used and will continue to use the degree of skill, care, diligence, best up-to-date practice and foresight in the performance of each of the Contractor Deliverables that would reasonably be expected of a fully qualified and competent professional contractor experienced in carrying out activities of a similar nature, scope, size, timescale and complexity to those comprised in the Contractor Deliverables;
- 5.1.19 without prejudice to Clauses 30.8 to 30.13 (inclusive) (*Discretionary GFA*), it has identified and listed in Schedule 8 (*Government Furnished Assets*) all GFA that it requires the Authority to provide and/or make available (including any and all information, data, documents and/or physical items that it requires the Authority to procure from any Other Contractor) to ensure the full and proper performance by the Contractor of the Contractor Deliverables;
- 5.1.20 In relation to any defects and/or other faults in the Contractor Deliverables which arise at any time during the Contract Period or within two (2) years after the end of the Contract Period due to any failure of the Contractor to comply with its obligations under this Contract, it shall:
- (i) remedy any such defects and/or other faults in the Contractor Deliverables as soon as reasonably practicable; and/or
  - (ii) indemnify the Authority for all costs incurred in carrying out any remedial work necessary to remedy such defects and/or other faults in the Contractor Deliverables.
- 5.1.21 Not Used.

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

### **Contractor undertakings**

- 5.2 The Contractor undertakes that for so long as this Contract remains in full force the Contractor shall:
- 5.2.1 give the Authority notice of any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator, administrator or adjudicator or mediator or Relevant Authority 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 any court, arbitrator, administrator or adjudicator or mediator or Relevant Authority, provided that notice shall be given within twenty (20) Working Days of the Contractor becoming aware such proceedings may be threatened or pending, and immediately after the commencement thereof;
  - 5.2.2 not undertake the performance of its obligations under this Contract otherwise than through itself or a Sub-Contractor;
  - 5.2.3 at all times allocate sufficient resources with the appropriate technical expertise to supply the Contractor Deliverables in accordance with this Contract;

- 5.2.4 save to the extent that obtaining and maintaining the same are Authority responsibilities and subject to Clause 76 (*Change*), obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Contract Deliverables;
- 5.2.5 ensure that:
- (i) it shall continue to have all necessary rights in and to the Contractor Background IPR, and any other materials (including the Third Party IPR) made available by the Contractor (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Contractor's obligations under this Contract and/or the receipt of the Contractor Deliverables by the Authority;
  - (ii) any products or services recommended or otherwise specified by the Contractor for use by the Authority in conjunction with the Contractor Deliverables shall enable the Contractor Deliverables to meet the requirements of the Authority; and
  - (iii) without prejudice to Clause 3.1.1(i) (*The Contractor's Obligations*), any documentation and training provided by the Contractor to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- 5.2.6 co-operate with the Authority or any Third Party (including any Other Contractor) designated by the Authority and provide such Information (as defined in Schedule 14 (*Intellectual Property Rights*), licences, data, documents and/or physical items and any advice and/or assistance in connection with the Contractor Deliverables, in each case, as may be reasonably required by the Authority and/or such Third Party (including any Other Contractor) to enable:
- (i) the Authority and/or any such Third Party (including any Other Contractor) to create and maintain technical or organisational interfaces with any of the Contractor Deliverables and, on the expiry or termination of this Contract for any reason, to enable the timely transition of the Contractor Deliverables to the Authority and/or to any Follow-On Contractor;
  - (ii) Not Used
- provided always that the Contractor shall not, without the previous approval of the Authority, whether directly or indirectly, contact any such Other Contractor or any Third Party notified to the Contractor from time to time,
- 5.2.7 to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by Third Parties (including any Other Contractors) or any Sub-Contractor in respect of any Contractor Deliverables and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Contractor;

- 5.2.8 unless it is unable to do so, assign to the Authority on the Authority Representative's written request and at the cost of the Contractor any such warranties and/or indemnities as are referred to in Clause 5.2.7;
- 5.2.9 provide the Authority with such assistance as the Authority may reasonably require during the Contract Period in respect of the supply of the Contractor Deliverables;
- 5.2.10 gather, collate and provide such information and co-operation as the Authority's Representative may reasonably request for the purposes of ascertaining the Contractor's compliance with its obligations under this Contract; and
- 5.2.11 ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Contractor's obligations under this Contract.

#### **Status of Contractor warranties and undertakings**

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

#### **6 MORPHEUS Contracts**

- 6.1 Not used.

#### **7 Interdependent Contracts**

- 7.1 Not used.

#### **8 Co-operation and Partnering**

- 8.1 Each Party agrees to co-operate with the other Party in the fulfilment of the purposes and intent of this Contract. Neither Party shall be under any obligation to perform any of the other's obligations under this Contract.
- 8.2 The Parties shall work together in an open and honest environment with the aim of achieving successful partnering and continuous improvement in:
  - 8.2.1 value for money for the Authority; and
  - 8.2.2 the quality and standard of service to the Authority,
 in relation to this Contract.

#### **Value for money**

- 8.3 The Contractor shall support the Authority in demonstrating that any proposed Changes in accordance with Clause 76 (*Change*) will provide value for money and shall, in demonstrating to the Authority value for money in relation to any proposed Change, provide evidence including:

- 8.3.1 competition;
- 8.3.2 aggregation of any proposed Change with any other Contractor Deliverable;
- 8.3.3 batch pricing;
- 8.3.4 reduction of costs;
- 8.3.5 reduction of risks;
- 8.3.6 improvement in performance; and/or
- 8.3.7 any other reasonable information in support of demonstrating value for money as requested by the Authority in relation to any Change.

## **9 Contract Management and Governance**

- 9.1 The Parties shall comply with the provisions of Schedule 13 (*Governance and Contract Management*) throughout the Contract Period.
- 9.2 Not used.
- 9.3 Not used.
- 9.4 Not used.
- 9.5 Not used.
- 9.6 Not used.
- 9.7 Not used.
- 9.8 Not Used.
- 9.9 Not Used.
- 9.10 Not Used.

## **10 Necessary Consents**

- 10.1 The Contractor shall, without prejudice to its obligations under Clause 18 (*Import and Export Licences*):
  - 10.1.1 obtain, maintain, renew and amend (in each case, as required) all Necessary Consents which may be required for the provision of the Contractor Deliverables under this Contract, including the entering into of any legally binding agreements necessary for the grant of the Necessary Consents;
  - 10.1.2 use all reasonable endeavours to assist the Authority to obtain all Necessary Consents:
    - (i) that as a matter of law, only the Authority is eligible to obtain; and
    - (ii) in connection with:

- (A) an Authority GFA obligation to provide an item to the Contractor and where such GFA obligation is expressly set out in Schedule 8 (*Government Furnished Assets*) and
  - (B) an item of Discretionary GFA which the Authority has agreed to provide to the Contractor subject to and in accordance with Clauses 30.8 to 30.13 (inclusive) (*Discretionary GFA*);
- 10.1.3 be responsible for implementing each Necessary Consent (save to the extent that only the Authority is, as a matter of law, able to implement the whole or the relevant part of such Necessary Consent) within the period of its validity in accordance with its terms and relevant law;
- 10.1.4 provide to the Authority, when required, a copy of:
  - (i) any application for a Necessary Consent or any variation, relaxation or waiver (with a copy of all accompanying drawings and other documents);
  - (ii) any Necessary Consent; and
  - (iii) any legally binding agreement entered in to for the purposes of obtaining a Necessary Consent,

where such agreement permits such disclosure;
- 10.1.5 comply with the conditions attached to any Necessary Consents and the terms of any associated legally binding agreement and procure that no such Necessary Consent or associated legally binding agreement is breached by it or any Contractor Related Party; and
- 10.1.6 use all reasonable endeavours to preserve the Necessary Consents, and procure, where it is able to do so, that such Necessary Consents are not revoked or quashed and that all Necessary Consents continue in full force and effect for such time as is necessary for the Contractor to provide the Contractor Deliverables to the Authority.
- 10.2 References in this Contract to Necessary Consents shall be construed as referring to the Necessary Consents as from time to time varied, relaxed or waived.
- 10.3 The Authority shall, subject to the Contractor's compliance with Clause 10.1.2 (*Necessary Consents*), use all reasonable endeavours to obtain all Necessary Consents:
  - 10.3.1 that as a matter of law, only the Authority is eligible to obtain; and
  - 10.3.2 in connection with:
    - (i) an Authority GFA obligation to provide an item to the Contractor and where such GFA obligation is expressly set out in Schedule 8 (*Government Furnished Assets*); and
    - (ii) an item of Discretionary GFA which the Authority has agreed to provide to the Contractor subject to and in accordance with Clauses 30.8 to 30.13 (inclusive) (*Discretionary GFA*).

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

## **11 Contractor Related Parties**

### **Responsibility for Contractor Related Parties**

- 11.1 Subject to 30 (*Authority Performance Failures*) and 52 (*The Contractor's Property and Personnel at Government Establishments*), the Contractor shall be responsible and liable for the acts and omissions of the Contractor Related Parties as if they were the acts and omissions of the Contractor.
- 11.2 The Contractor shall ensure and/or procure that all Contractor Related Parties employed and/or engaged in connection with this Contract are appropriately qualified, trained and experienced.
- 11.3 Not Used.
- 11.4 Not Used.
- 11.5 Not Used.
- 11.6 Not Used.
- 11.7 Not Used.
- 12 Not Used**
- 12.1 Not used.

## **PART 3 - SUB-CONTRACTING**

### **13 Sub-Contracting**

- 13.1 Sub-Contracting any part of this Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under this Contract.
- 13.2 The Contractor shall exercise due skill and care in the selection and appointment of any Sub-Contractors to ensure that the Contractor is able to:
- 13.2.1 manage any Sub-Contractors in accordance with Good Industry Practice;
  - 13.2.2 comply with its obligations under this Contract in the delivery of the Contractor Deliverables; and
  - 13.2.3 assign, novate or otherwise transfer to the Authority or any Follow-On Contractor any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Contract.

## Termination of Sub-Contracts

- 13.3 The Contractor shall inform the Authority immediately it becomes aware of any breach by any Sub-Contractor of any of the requirements set out or referred to in Clause 45B (*Cyber*), Clause 47.7 (*Security - Secret Matters*), Clause 57.9 (*Supply of Hazard Data*), Clause 70 (*Termination for Contractor Default*) (as it applies to Prohibited Acts (including any breach of (and/or the occurrence of the circumstances contemplated in) Clauses 5.1.13, 5.1.14 and/or 5.1.15 (*Contractor Warranties*)), Clause 81 (*Change of Ownership*) and/or Clause 87 (*Tax Compliance*) and (without prejudice to any other rights of the Authority under this Contract) if requested to do so by the Authority, shall terminate the relevant Sub-Contract.<sup>14</sup>
- 13.4 The Authority may, at its sole discretion, require the Contractor to terminate the provision by a Sub-Contractor of the whole or part (as the case may be) of the Contractor Deliverables:
- 13.4.1 where:
- (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 70 (*Termination for Contractor Default*) or Clause 71 (*Termination for Convenience*);
  - (ii) the relevant Sub-Contractor and/or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Contractor Deliverables or otherwise;
  - (iii) the relevant Sub-Contractor fails to comply in the performance of its Sub-Contract with legal obligations in the fields of environmental, social or labour law; and/or
  - (iv) the Authority has found grounds for exclusion of the Sub-Contractor in accordance with Clause 13.5 (*Exclusion of Sub-Contractors*); and
- 13.4.2 where there is a Change of Ownership of the relevant Sub-Contractor, unless:
- (i) the Authority has given its prior written consent to the particular Change of Ownership, which subsequently takes place as proposed; or
  - (ii) the Authority has not served its notice of objection within six (6) months of the later of the date the Change of Ownership took place or the date on which the Authority was given notice of the Change of Ownership.

## Exclusion of Sub-Contractors

---

<sup>14</sup> Clause to be kept under review for any additional clauses that, if breached by the Sub-Contractor, the Authority may (at its absolute discretion) require the Contractor to terminate the Sub-Contract.

- 13.5 Where the Authority considers that circumstances apply that do or would have constituted grounds for the exclusion of a Sub-Contractor under Regulation 37 of the Defence and Security Public Contracts Regulations 2011 having regard to Regulation 23 of the Defence and Security Public Contracts Regulations 2011, then:
- 13.5.1 if the Authority finds there are compulsory grounds for exclusion, the Contractor shall replace or shall not appoint the Sub-Contractor; or
  - 13.5.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Contractor to replace or not to appoint the Sub-Contractor and the Contractor shall comply with such a requirement.

#### **14 Matters to be included in Sub-Contracts**

- 14.1 Without prejudice to the provisions of Clause 17 (*Sub-Contracting Plan*), the Contractor shall ensure that all Sub-Contracts which it enters into after the Effective Date shall at all times include:
- 14.1.1 provisions that the Authority's rights referred to in this Clause 14 (*Matters to be included in Sub-Contracts*), which are otherwise enforceable under the Contracts (Rights of Third Parties) Act 1999, are not rendered unenforceable;
  - 14.1.2 a provision requiring the Sub-Contractor to include a clause to the same effect as this Clause 14.1 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract;
  - 14.1.3 provisions which will enable the Contractor to discharge its obligations under this Contract;
  - 14.1.4 a requirement that either party to the Sub-Contract may release to the Authority any of those parts of the Sub-Contract as are necessary to be sufficient to demonstrate compliance with the provisions of this Clause 14 (*Matters to be included in Sub-Contracts*) and that any such release shall not amount to a breach of any provision of confidentiality contained within the Sub-Contract;
  - 14.1.5 a provision restricting the ability of the Sub-Contractor to sub-contract all or any part of the Contractor Deliverables provided to the Contractor under the Sub-Contract without first seeking the written consent of the Authority;
  - 14.1.6 a provision requiring the Sub-Contractor to provide or obtain information equivalent to the information the Contractor is required to provide under Clause 17 (*Sub-Contracting Plan*),
  - 14.1.7 NOT USED
  - 14.1.8 a provision that where any Sub-Contractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion and that where there is an undue delay in considering and/or verifying that invoice, that such invoice shall be regarded as valid and



undisputed for the purposes of Clause 14.1.9 (*Matters to be included in Sub-Contracts*);

- 14.1.9 a provision which requires payment to be made to the Sub-Contractor by the Contractor within a specified period not exceeding thirty (30) days from receipt of a valid, undisputed invoice as defined by the Sub-Contract requirements;
- 14.1.10 Not Used;
- 14.1.11 a provision enabling the Authority or any other person on behalf of the Authority and the Contractor to exercise the same rights in relation to the Sub-Contractors and their Employees as the Authority is entitled to exercise pursuant to Clause 48 (*Personnel Security*);
- 14.1.12 a provision enabling the Contractor to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-Contract to the Authority or any Follow-On Contractor without restriction (including any need to obtain any consent or approval) or payment by the Authority;
- 14.1.13 the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute as set out in Clause 5.2.11 (*Contractor Warranties and Undertakings*);
- 14.1.14 a provision giving the Contractor a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law;
- 14.1.15 a provision giving the Contractor a right to exclude the Sub-Contract or where the circumstances in Clause 13.5 (*Exclusion of Sub-Contractors*) exist; and
- 14.1.16 where relevant to the deliverables under the particular Sub-Contract, the provisions of:
  - (i) Not Used;
  - (ii) Clause 16 (*Sub-Contracting to Supported Businesses and SMEs*);
  - (iii) Clause 18 (*Import and Export Licences*);
  - (iv) Not Used;
  - (v) Clause 36 (*Authority Data*);
  - (vi) Clause 37 (*Authority Disclosed Data*);
  - (vii) Clause 38 (*The Contractor's Records*);
  - (viii) Clause **Error! Reference source not found.** (*Financial Management Information*);
  - (ix) Clause 40 (*Disclosure of Information*);
  - (x) Not Used;

- (xi) Clause 42 (*Transparency*);
- (xii) Clause 44 (*Protection of Personal Data (Where Personal Data is not being processed on behalf of the Authority)*);
- (xiii) Clause 45A (*Official-Sensitive Security Requirements*);
- (xiv) Clause 45B (*Cyber*);
- (xv) Clause 46 (*Intellectual Property Rights*);
- (xvi) Clause 47 (*Security – Secret Matters*);
- (xvii) Clause 48 (*Personnel Security*);
- (xviii) Clause 49 (*Co-operation for Security Investigation*);
- (xix) Clause 50 (*Access to the Contractor's Premises*);
- (xx) Clause 51 (*The Contractor's Conduct on Authority Sites and/or Other Contractor's Premises*);
- (xxi) Clause 52 (*The Contractor's Property and Personnel at Government Establishments*);
- (xxii) Clause 54 (*Child Labour and Employment Law*);
- (xxiii) Clause 55 (*Equality*);
- (xxiv) Clause 56A (*Supply of Information for NATO Codification and Defence Inventory Introduction*);
- (xxv) Clause 56B (*Codification Requirement for Item Identification*);
- (xxvi) Clause 57 (*Supply of Hazard Data*);
- (xxvii) Clause 57A (*Use of Asbestos*);
- (xxviii) Clause 59 (*Issued Property*);
- (xxix) Clause 60 (*Accounting for property of the Authority*);
- (xxx) Clause 63 (*Special Jigs, Tooling and Test Equipment*);
- (xxxi) Clause 64 (*Montreal Protocol Substances*);
- (xxxii) Clause 65 (*Diversion Orders*);
- (xxxiii) Clause 66 (*Counterfeit Material*);
- (xxxiv) Clause 67 (*Quality Assurance – Requirement for a Certificate of Conformity*);
- (xxxv) Clause 69 (*Radio Transmissions*);
- (xxxvi) Clause 70 (*Termination for Contractor Default*);

(xxxvii) Clause 71 (*Termination for Convenience*);

(xxxviii) Clause 72 (*Financial Consequences of Termination*);

(xxxix) Clause 81 (*Change of Ownership*);

(xl) Clause 82 (*Disruption*);

(xli) Clause 87 (*Tax Compliance*);

(xlii) Clause 92 (*Conflicts of Interest and Impartiality*); and

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

14.2 The Contractor shall ensure that all Sub-Contracts include the power to determine the Sub-Contract in accordance with the terms which apply to any termination of this Contract, pursuant to Clause 71 (*Termination for Convenience*), provided that:

14.2.1 references in the provisions of Clause 71 (*Termination for Convenience*) to “Authority”, “Contractor” and “Contract” shall be construed (as appropriate) as references to “Contractor”, “Sub-Contractor” and “Sub-Contract” (respectively) for the purposes of the corresponding Sub-Contract provisions;

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

14.2.3 the Contractor shall not exercise the power taken in those Sub-Contracts until the Authority has exercised its power under Clause 71 (*Termination for Convenience*) and each such Sub-Contract shall restrict the Contractor’s right to exercise that power in the manner described in this Clause 14.2.3 (*Matters to be included in Sub-Contracts*) by including in such provision the words “Provided that this power shall not be exercised unless the main contract shall have been determined by the Secretary of Defence pursuant to the provisions of clause 71 of that contract”.

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

14.4 Not Used

15 **Not Used**

16 **Subcontracting to Supported Businesses and SMEs**

**Supported Businesses**

- 16.1 When placing Sub-Contracts, the Contractor is asked to give consideration, as far as possible, to placing work on a competitive basis with Sub-Contractors that are Supported Businesses.
- 16.2 The Contractor can find details of Supported Businesses in the United Kingdom on the Supported Business Directory that is prepared by British Association for Supported Employment at Unit 4, 200 Bury Road, Tottington, Lancashire BL8 3DX (Telephone: 01204 880733) or <https://www.base-uk.org/supported-business-directory>

### **SMEs**

- 16.3 The Contractor shall maximise the use of SMEs in the performance of the Contractor Deliverables, where doing so will not adversely affect cost, technical performance or programme timescales.
- 16.4 Not used.
- 16.5 Not used.
- 16.6 Not used.
- 16.7 The Contractor shall provide to the Authority details of spend with SMEs on an annual basis, using DEFFORM 139, the first such spend details to be provided on or before the last day of the thirteenth (13<sup>th</sup>) month following the Effective Date and then in each subsequent year during the Contract Period on or before the anniversary of such date.

## **17 Sub-Contracting Plan.**

- 17.1 The Parties acknowledge that:
- 17.1.1 the Contractor has selected Sub-Contractors for the provision of the Contractor Deliverables in accordance with a sub-contracting plan (in this Clause 17 (Competition in Sub-Contracts) the "Sub-Contracting Plan") in the Agreed Form ; and
- 17.1.2 the provisions contained in the Sub-Contracting Plan do not limit or otherwise effect the Contractor's other obligations contained in this Contract (including Clause 14 (Matters to be included in Sub-Contracts) and this Clause 17 (Competition in Sub-Contracts)).
- 17.2 Where the Contractor (and/or any Sub-Contractor) proposes to change a Sub-Contractor, engage an additional Sub-Contractor, change, modify, vary and/or extend a current Sub-Contract and/or let an additional Sub-Contract, the Contractor shall, without prejudice to and in addition to its obligations under Clauses 17.7 and 17.8 (Competition in Sub-Contracts), submit to the Authority's Representative its proposed plan for the work to be performed or for the supplies to be provided under that Sub-Contract (or proposed Sub-Contract (as the case may be)), including, in the case of an additional Sub-Contract, information about the proposed Sub-Contractor equivalent to the information the Contractor is required to provide under Clause 17.4 (Competition in Sub-Contracts). Where the Sub-Contract is intended to be placed on a fixed or firm price basis agreed at the outset following single tender action the plan shall be that information submitted in support of the Contractor's price proposals and referenced in a contract pricing statement.
- 17.3 Not Used

- 17.4 The Sub-Contracting Plan should also identify each sub-system, package of work, service and/or purchase of components and/or raw materials etc. for which the Contractor does not intend to seek competitive tenders or for which the Contractor does intend to seek competitive tenders but the value of the Sub-Contract or order is not expected to be in excess of two hundred thousand pounds (£200,000) (including work and supplies etc. it intends to undertake or provide). In each of these cases, the Sub-Contracting Plan shall provide the following information:
- 17.4.1 the name and address of the proposed Sub-Contractor or own facility concerned;
  - 17.4.2 the country of origin of the Sub-Contractor
  - 17.4.3 whether the Sub-Contractor is an SME;
  - 17.4.4 the sub-system, package of work, services, components and/or raw materials being purchased under the Sub-Contract or order;
  - 17.4.5 the approximate value of the Sub-Contract or order;
  - 17.4.6 the means by which prices are to be determined as fair and reasonable;
  - 17.4.7 the delivery programme;
  - 17.4.8 other relevant factors
  - 17.4.9 Not Used
- 17.5 Within twenty (20) Working Days of receipt of the information referred to in Clause 17.4 (Competition in Sub-Contracts) or Clause 17.8 (Competition in Sub-Contracts), or as otherwise agreed, the Authority's Representative will advise whether the Contractor's proposals are accepted. Where the proposals are not accepted, further consultation will take place so as to enable the Contractor to elaborate further but in the event of continued disagreement, the Authority's decision on whether the relevant sub-system, package of work, service and/or purchase of components and/or raw materials etc. is to be placed with a Sub-Contractor shall be final. The Authority's Representative will also notify the Contractor whether and in what manner it wishes to be associated with the pricing of the Sub-Contract or order.
- 17.6 Not Used
- 17.7 The Contractor shall notify the Authority in writing if it wishes to replace a Sub-Contractor or contract with additional Sub-Contractors after the Effective Date by submitting an updated version of the Sub-Contracting Plan (as contemplated by Clause 17.2 (Competition in Sub-Contracts)) showing the proposed changes, such updated Sub-Contracting Plan shall provide the information and details referred to in 17.4.1 to 17.4.8 (inclusive) (Competition in Sub-Contracts) in relation to the proposed replacement Sub-Contractor or additional Sub-Contractors to the Authority for approval, and the Contractor shall not replace such Sub-Contractor and/or contract with additional Sub-Contractors without the prior written approval of the Authority.
- 17.8 If requested by the Authority within ten (10) Working Days of receipt of the Contractor's notice issued pursuant to Clause 17.7 (Competition in Sub-Contracts), the Contractor shall also provide any further information reasonably requested by the Authority.

## **18 Import and Export Licences**

- 18.1 If, in the performance of this Contract, the Contractor needs to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, the responsibility for applying for the licence shall rest with the Contractor. The Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance in obtaining any necessary UK import or export licence.

### **Obtaining a licence or authorisation from a foreign government – Contractor obligations**

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

18.2.1 ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable (which for the purposes of this Clause 18 (*Import and Export Licences*) shall also include information, technical data and software), unless otherwise agreed with the Authority, identify in the application:

- (i) the end user as: The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, and the address is : Ministry of Defence Whitehall London, SW1A 2HB (and all UK Locations)
- (ii) the end use as: For the Purposes of The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland,

18.2.2 include in the submission for the licence or authorisation a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".

- 18.3 If the Contractor or any Sub-Contractor in the performance of this Contract needs to export materiel not previously supplied by or on behalf of the Authority for which an export licence or import licence or authorisation from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that Sub-Contractor, provided always that for the purposes of this Clause 18 (*Import and Export Licences*) "materiel" shall mean information, technical data and items, including Articles, components of Articles and software.

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

- 18.5 During the Contract Period and for a period of up to two (2) years from the end of the Contract Period, however extended in accordance with the terms of this Contract, the

Authority may make a written request to the Contractor to seek a variation to the conditions to a foreign export licence or import licence or authorisation to enable the Authority to re-export or re-transfer a licensed or authorised item or licensed or authorised information from the UK to a non-licensed or unauthorised Third Party. If the Authority makes such a request, it will consult with the Contractor before making a determination of whether the Authority or the Contractor is best placed in all the circumstances to make the request. Where subsequent to such consultation the Authority notifies the Contractor that the Contractor is best placed to make such request:

- 18.5.1 the Contractor shall, or procure that the Sub-Contractors shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence or import licence or authorisation in accordance with the procedures of the licensing authority. Where the Contractor has an objection, the Parties shall meet within five (5) Working Days to resolve the issue and, should they fail to resolve the issue, the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export licensing, import licensing or authorisation (as the case may be) subject matter experts; and
- 18.5.2 the Authority shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.
- 18.6 Where the Authority determines that it is best placed to make such request, the Contractor shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the Authority to make the application for the requested variation.
- 18.7 Where compliance with Clauses 18.5 and 18.6 (*Obtaining a licence or authorisation from a foreign government – Contractor obligations*) requires an amendment to this Contract, such amendment will be made and any subsequent price variation will be determined in accordance with Schedule 6 (*Contract Change Procedure*) as an Authority Change.
- 18.8 Where the Authority invokes Clauses 18.5 and 18.6 (*Obtaining a licence or authorisation from a foreign government – Contractor obligations*), the Authority will pay the Contractor's fair and reasonable costs for such service based on the cost of providing it, such costs are to form part of the Contract Price.
- 18.9 Where the Contractor subcontracts work under this Contract, which is likely to be subject to foreign export control, import control or both, the Contractor shall use reasonable endeavours to incorporate in each Sub-Contract equivalent obligations to those set out in this Clause 18 (*Import and Export Licences*). Where it is not possible to include equivalent obligations to those set out in this Clause 18 (*Import and Export Licences*), the Contractor shall report that fact and the circumstances to the Authority.

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

- 18.10 Without prejudice to HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority shall provide the Contractor with sufficient information, certification, documentation and other reasonable assistance to

facilitate the granting of export licences or import licences or authorisations by a foreign Government in respect of the performance of this Contract.

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

**Contractor obligation to provide information**

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

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

18.12.2 any other related transfer or export control,

that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. For the avoidance of doubt, this does not include the Intellectual Property specific restrictions of the type referred to in Schedule 14 (*Intellectual Property Rights*).

- 18.13 If at any time during the Contract Period the Contractor becomes aware that all or any part of the Contractor Deliverables are subject to Clause 18.12.1 or 18.12.2 (*Contractor obligation to provide information*), it shall notify the Authority of this as soon as reasonably practicable by providing details in the DEFFORM 528 or other mutually agreed alternative format. Such notification shall be no later than thirty (30) days of knowledge of any affected Contractor Deliverable and in any event such notification shall be not less than thirty (30) days prior to delivery of the Contractor Deliverables.
- 18.14 If the information to be provided under Clause 18.13 (*Contractor obligation to provide information*) has been provided previously to the Authority by the Contractor under this Contract, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Clause 18.13 (*Contractor obligation to provide information*).
- 18.15 During the Contract Period, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clause 18.13 or 18.14 (*Contractor obligation to provide information*) of which it becomes or is aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.
- 18.16 For a period of up to two (2) years from the end of the Contract Period however extended in accordance with the terms of this Contract and in response to a specific request by the Authority's Representative, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clause 18.13 or 18.14 (*Contractor obligation to provide information*) of which it becomes aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.
- 18.17 Where following receipt of materiel from a Sub-Contractor or any of its other suppliers, restrictions are notified to the Contractor by that Sub-Contractor, supplier or other Third Party or are identified by the Contractor, the Contractor shall immediately inform the Authority by issuing an updated DEFFORM 528. Within five (5) Working Days of such notification, the Contractor shall propose to the Authority actions to mitigate the impact



of such restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. The Authority shall notify the Contractor within five (5) Working Days of receipt of a proposal whether it is acceptable and where appropriate this Contract shall be modified in accordance with its terms to implement the proposal.

- 18.18 If the restrictions prevent the Contractor from performing its obligations under this Contract and have not been removed, modified or otherwise satisfactorily managed within a reasonable time, the Authority may at its absolute discretion elect to amend this Contract in accordance with Clause 76 (*Change*) and/or 77 (*Amendments to Contract*) or as otherwise may be provided by this Contract or to terminate this Contract. Except as set out in Clause 18.19 (*Contractor obligation to provide information*), in the event of termination in these circumstances termination shall be on fair and reasonable terms having regard to all the circumstances including payments already made and payments that would otherwise be due under this Contract for work successfully carried out prior to such termination, costs incurred by the Contractor and benefits received by the Authority. The Parties, acting in good faith, will use all reasonable endeavours to agree such fair and reasonable terms failing which either Party may refer the matter to Dispute Resolution Procedure.
- 18.19 In the event that the restrictions notified to the Authority pursuant to Clause 18.13 (*Contractor obligation to provide information*) were known or ought reasonably have been known by the Contractor (but were not disclosed) at Contract Award or if restrictions notified to the Authority pursuant to Clause 18.15 or 18.17 (*Contractor obligation to provide information*) were known or ought reasonably to have been known by the Contractor at the date of submission of the most recent DEFFORM 528 submitted to the Authority in accordance with Clause 18.13 (*Contractor obligation to provide information*), termination under Clause 18.18 (*Contractor obligation to provide information*) will be in accordance with Clause 70 (*Termination for Contractor Default*) and the provisions of Clause 18.23 (*Interim Position*) will not apply.

#### **Authority obligation to provide information**

- 18.20 The Authority shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the Contractor as GFA. Where the Authority is to provide materiel necessary to enable the Contractor to perform this Contract or in respect of which the Contractor Deliverables are to be provided, and that materiel is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of Clause 18.12 (*Contractor obligation to provide information*) above, the Authority shall provide a completed DEFFORM 528 or will provide a new or updated DEFFORM 528 to the Contractor within thirty (30) days of the date of knowledge and in any case not later than thirty (30) days prior to the delivery of such materiel to the Contractor.
- 18.21 In the event that the Authority becomes aware that the DEFFORM 528 disclosure was incomplete or inaccurate or in the event additional such materiel is identified, then the Authority shall provide, as soon as reasonably practicable a new or revised DEFFORM 528. In the event that the Authority becomes aware that a prior disclosure included in DEFFORM 528 submitted to the Contractor was incomplete or inaccurate less than thirty (30) days prior to the delivery to the Contractor of any material to which the updated or new disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure.

18.22 Where:

- 18.22.1 restrictions are advised by the Authority to the Contractor in a DEFFORM 528 provided pursuant to Clause 18.20 or 18.21 (*Authority obligation to provide information*); or
- 18.22.2 any of the information provided by the Authority in any DEFFORM 528 proves to be incorrect or inaccurate,

the Authority and the Contractor shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the Contractor to perform its obligations under this Contract, the matter shall be handled under the terms of Clause 76 (*Change*) and/or 77 (*Amendments to Contract*) or as may otherwise be provided by this Contract as appropriate and if no alternative solution satisfies the essential terms of this Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate this Contract. Termination under these circumstances will be under the terms of Clause 71 (*Termination for Convenience*).

18.23 Not used

**PART 4 - PRICE/COSTS/PAYMENT**

**19 Not Used**

**20 Payment under CP&F**

- 20.1 In consideration of the Contractor performing the Contractor Deliverables, the Authority shall pay the Contract Price to the Contractor in accordance with Schedule 5 (*Pricing and Payment*) and the following provisions of this Clause 20 (*Payment under CP&F*).
- 20.2 Payment under this Contract of the Contract Price will be made by electronic transfer and prior to submitting any invoices under Clause 20.3 (*Payment under CP&F*) the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance Electronic Procurement Tool ("**CP&F**").
- 20.3 Where the Contractor submits an invoice to the Authority in accordance with Clause 20.2 (*Payment Under CP&F*), the Authority will consider and verify that invoice in a timely fashion.
- 20.4 The Authority shall, subject to Clause 24 (*Disputed Amounts*), pay the Contractor any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Authority has determined that the invoice is valid and undisputed.
- 20.5 Where the Authority fails to comply with its obligations in Clause 20.3 (*Payment under CP&F*) and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Clause 20.4 (*Payment under CP&F*) only (and not further or otherwise) after a reasonable time has passed.
- 20.6 Neither:

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

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

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

## **21 Not Used.**

## **22 Unique Identifiers**

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

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

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

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

## **23 The Use of the Electronic Business Delivery Form**

### **Form usage**

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

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

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

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

23.3.2 forward the form in a document envelope,

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

## **Form structure**

### For the provision of Articles

- 23.4 Where delivery is for a physical Non-Assured Article, the following criteria apply:
- 23.4.1 the nominal label size is A6 (102 mm x 152 mm) but A5 (148 mm x 210 mm) is acceptable. If required by package size, the Contractor may use other label sizes, but only if no degradation to the text, bar code legibility and quality occurs, as referred to in Clause 23.7 (*Bar Code Symbolology and Print Quality*);
  - 23.4.2 the Contractor must use the bar coded Unique Identifier as defined in Clause 22 (*Unique Identifiers*), unless specified otherwise in this Contract; and
  - 23.4.3 the Contractor must attach two labels to each package or consignment delivered. One label must be detachable for use in processing the information through the appropriate Authority receipting system.

### For the provision of Contractor Deliverables which are not physical Articles

- 23.5 Where performance is for Contractor Deliverables which are not physical Articles (including Assured Articles), the following criteria apply:
- 23.5.1 standard size is A4 (210 mm x 297 mm);
  - 23.5.2 the Contractor must use the bar coded Unique Identifier as defined in Clause 22 (*Unique Identifiers*), unless specified otherwise in this Contract; and
  - 23.5.3 the Contractor must provide one form either on completion of the Contractor Deliverables which are not physical Articles (including where Assured Articles form part of such Contractor Deliverables) or on completion of each agreed stage of the Contractor Deliverables which are not physical Articles (including where Assured Articles form part of such stage of the Contractor Deliverables).

## **Bar code symbolology and print quality**

- 23.6 The bar code symbolology used shall meet the Requirement of STANAG 4329, "NATO Standard Bar Code Symbolologies", specifically Code 39 (ISO/IEC 16388), unless otherwise specified.
- 23.7 The barcode print quality shall be as defined in ISO/IEC 16388 (Information technology - Automatic identification and data capture techniques - Code 39 bar code symbolology specification). The Overall Grade shall be at least Grade B at point of printing and not less than Grade C, at final point of receipt.

## **Methods of printing**

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

## **24     Disputed Amounts**

- 24.1 The Authority may withhold payment of any amount it believes, acting reasonably, the Contractor is not entitled to pursuant to this Contract ("**Disputed Amount**") pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount. The Authority shall notify the Contractor of the reasons for withholding the Disputed Amount (together with supporting evidence) on or before the day on which the Disputed Amount would (but for this Clause 24.1 (*Disputed Amounts*)) otherwise fall due.
- 24.2 The Authority shall pay any undisputed amounts on or before the day on which they fall due.
- 24.3 Within ten (10) Working Days following receipt by the Contractor of any notice served by the Authority pursuant to Clause 24.1 (*Disputed Amounts*) (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to this Contract), the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice and the grounds for such agreement or disagreement. If the Contractor indicates that it does agree, the Authority shall be entitled:
- 24.3.1 to retain on a permanent basis any amounts withheld pursuant to Clause 24.1 (*Disputed Amounts*); and
- 24.3.2 to reclaim from the Contractor the amount of any over-payment which may have been made to the Contractor, and reserves the right to claim interest on any such amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which the over-payment was made until that amount has been paid in full and whether before or after judgment.
- 24.4 If the Contractor responds pursuant to Clause 24.3 (*Disputed Amounts*) that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to Clause 24.1 (*Disputed Amounts*) (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to this Contract), the matter or matters in question shall be determined under the Dispute Resolution Procedure.
- 24.5 If the determination of any Dispute conducted pursuant to Clause 24.4 (*Disputed Amounts*) shows that:
- 24.5.1 the Authority has withheld any amount which the Contractor was entitled to be paid; or
- 24.5.2 the Contractor has claimed under Clause 20 (*Payment under CP&F*) any amount which it was not entitled to be paid,

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

**25     Payment of Bills using the Bankers Automated Clearing Service System**

25.1    Not Used

**26     Recovery of Sums Due**

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

26.2    Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under this Contract or under any other contract with the Authority, or with any other Government Department.

**27     VAT**

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

27.2    If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily for UK VAT purposes) in respect of its business activities at the time of any provision, and the circumstances of any provision are such that the Contractor is liable to pay the tax due to HM Revenue and Customs ("HMRC"), the Authority shall pay to the Contractor, in addition to the Contract Price (or any other sum due to the Contractor), a sum equal to the output VAT chargeable on the tax value of the provision of the Contractor Deliverables, and all other payments under this Contract according to the law at the relevant tax point.

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

27.4    Where the provision of the Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables. The Contractor shall be responsible for ensuring that it takes into account any changes in VAT Legislation and VAT law regarding registration.

27.5    Where the Contractor Deliverables are deemed to be provided to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply

takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor, in addition to the Contract Price (and any other sum due to the Contractor under this Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables within thirty (30) Working Days of a written request for payment of any such sum by the Contractor.

- 27.6 In relation to the Contractor Deliverables supplied under the Contract the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (and/or similar EU and non-EU input taxes). However, these input taxes will be allowed where it is proven to the Authority that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement either party may resolve this matter by reference to the Dispute Resolution Procedure.
- 27.7 Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with Clause 27.2 (VAT), the Authority will pay the VAT assessed by HMRC. In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment and/or penalties directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under this Contract or any other contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three (3) Working Days of a written request from the Authority's Representative for such correspondence.

## **PART 5 - PERFORMANCE AND REMEDIES**

### **28 Performance Monitoring**

- 28.1 The Parties shall comply with the provisions of Schedule 5(*Pricing and Payment*).
- 28.2 Without prejudice to Schedule 5 (*Pricing and Payment*), and Schedule 13 (*Contract Management and Governance*), the Authority, the Authority's Representative and any agents or consultants of the Authority (such agents and consultants to be subject to the Contractor's consent, not to be unreasonably withheld or delayed) may, between the hours of 8:30 am to 17:30 pm on any Monday to Friday (which is a Working Day (under limb (a) of that definition) and with reasonable prior notice (having regard to any co-location working which the Contractor hereby confirms will require a short notice period of no more than one (1) hour), undertake inspection of any of the Contractor Deliverables, and make any audit or check of any aspect of the Contractor's performance of this Contract as required by the Authority or where the same shall have been requested by the National Audit Office. The Contractor shall promptly provide all reasonable co-operation in relation to any inspection, audit or check.
- 28.3 Without prejudice to Clause 29.1, the Authority may undertake its own performance monitoring at any time for any purpose in relation to this Contract (and for any UK Government purposes as requested by the Authority from time to time with the consent of the Contractor (such consent not to be unreasonably withheld or delayed)), including in order to ensure that the Contractor Deliverables are being provided in accordance with this Contract.

### **29 Technical Assistance to the Authority**

- 29.1 The Contractor acknowledges that the Authority:

- 29.1.1 may (from time to time) use the services of personnel from other Government Departments to assist with managerial, technical and/or other support in relation to this Contract.
- 29.1.2 may (from time to time) use the services of specialist commercial organisations to provide managerial, technical and/or other support in relation to this Contract such specialist organisations being, as at the date of this Contract, those listed in Part 1 of Schedule 13 (*Contract Management and Governance*) Assistance<sup>15</sup> together with any person with whom either or both of the Parties may be required to liaise and/or communicate for the purposes of this Contract and the wider aims of the Authority in connection with the Contractor Deliverables and/or the MORPHEUS Programme,

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

### **30 Authority Performance Failures<sup>16</sup>**

- 30.1 Subject to the provisions of Clauses 30.8 to 30.13 (inclusive) (*Discretionary GFA*) and Clause 37 (*Authority Disclosed Data*) if and to the extent that a GFA Failure is the direct cause of the Contractor's inability to provide the Contractor Deliverables or perform any of its other obligations under this Contract, then subject to Clause 30.2 (*Authority Performance Failures*) the Contractor is entitled, save where the GFA Failure has been caused by any act or omission of the Contractor or any Contractor Related Party under this Contract, to apply for relief from those of its obligations that it is unable to perform as a direct result of such GFA Failure. If such act or omission of the Contractor or any Contractor Related Party and/or any default, negligence has contributed to the GFA Failure, the Contractor's entitlement to relief shall be reduced by an amount proportional to such contribution to the GFA Failure.
- 30.2 To obtain relief pursuant to Clause 30.1 (*Authority Performance Failures*) the Contractor shall:
- 30.2.1 as soon as practicable, and in any event within twenty (20) Working Days after it became aware that the GFA Failure has adversely affected or is likely to adversely affect the ability of the Contractor to provide the Contractor Deliverables or to perform its obligations, give to the Authority a notice of its claim for relief from its obligations under this Contract;
- 30.2.2 as soon as practicable and in any event within ten (10) Working Days of service on the Authority of the notice referred to in Clause 30.2.1 (*Authority Performance Failures*) notify the Authority of full details which are available in respect of the GFA Failure and the relief claimed;

---

<sup>15</sup> To be completed as part of Contract finalisation.

<sup>16</sup> Bidders should identify any **additional** GFA they consider is relevant to the performance of their services as part of their response to the ITN. The Authority's position as to what GFA it considers relevant to this Contract and any Discretionary GFA it has available for the operation of this Contract are set out in Schedule 8 of this Contract (*Government Furnished Assets*). See also paragraph 5 of Schedule 5 of the ITN.



- 30.2.3 comply with the provisions of this Clause 30 (*Authority Performance Failures*), the provisions of Schedule 13 (*Contract Management and Governance*) and the provisions of Schedule 5 (*Pricing and Payment*);
- 30.2.4 demonstrate to the reasonable satisfaction of the Authority that:
- (i) the GFA Failure was the direct cause of the Contractor's inability to provide the Contractor Deliverables or perform any of its other obligations under this Contract); and
  - (ii) the relief claimed could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice, without incurring material expenditure; and
- 30.2.5 continue to perform its obligations under this Contract subject to the constraints of the GFA Failure.
- 30.3 If and to the extent that the Contractor has complied with its obligations under this Clause 30 (*Authority Performance Failures*), then:
- 30.3.1 the Authority shall not be entitled to exercise its rights arising as a result of the GFA Failure to terminate this Contract; and
- 30.3.2 the Authority shall give the Contractor such relief from its obligations as the Authority considers is reasonable for such a GFA Failure, in accordance with the procedures described in Schedule 5 (*Pricing and Payment*)
- 30.4 If information referred to in this Clause 30 (*Authority Performance Failures*) provided by the Contractor after the dates referred to in this Clause 30 (*Authority Performance Failures*) then the Contractor shall not be entitled to any relief in respect of the period for which the information is delayed
- 30.5 The Contractor shall notify the Authority if at any time it realises or becomes aware of any information relating to the GFA Failure, giving details of that information, to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.
- 30.6 If the Parties cannot agree the extent of any relief from the Contractor's obligations under this Contract or the Authority disagrees that any GFA Failure has occurred (or as to its consequences), or that the Contractor is entitled to any relief under this Clause 30 (*Authority Performance Failures*) the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.
- 30.7 The Contractor shall not be entitled to any common law or equitable rights (including rights to damages or to any other rights under contract, tort or otherwise) in relation to the occurrence or subsistence of any GFA Failure.

#### **Discretionary GFA<sup>17</sup>**

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

---

<sup>17</sup> The Authority cannot accept any liability for Discretionary GFA it provides to the Contractor.

- 30.8.1 provide a detailed description of the proposed Discretionary GFA;
  - 30.8.2 detail the period during which the proposed Discretionary GFA is required to be used by the Contractor and/or any Sub-Contractor;
  - 30.8.3 confirm how the Contractor and/or any Sub-Contractor intends to use such proposed Discretionary GFA;
  - 30.8.4 describe any benefits to the Authority arising as the result of the Authority providing such proposed Discretionary GFA; and
  - 30.8.5 identify any other relevant issues
  - 30.8.6 relating to the intended use by the Contractor and/or any Sub-Contractor of the proposed Discretionary GFA (including any impact on the provisions of this Contract and the performance by the Contractor of the Contractor Deliverables which may arise as the result of provision by the Authority of the proposed Discretionary GFA (including any proposed changes to Schedule 7 (*Performance*) and Schedule 8 (*Government Furnished Assets*) or the relevant Option)).
- 30.9 The Authority's Representative may (but shall not be obliged to) consider any Contractor notice issued in accordance with Clause 30.8 (*Discretionary GFA*). If the Authority's Representative does consider such notice, he may (but shall not be obliged to) respond to the Contractor by an Authority notice to be issued to the Contractor at any time following receipt of the relevant Contractor notice, such Authority notice (if issued by the Authority's Representative) shall:
- 30.9.1 require further information relating to the subject matter of the notice and/or invite the Contractor to discuss the proposal further at a time and place convenient to the Authority's Representative; and
  - 30.9.2 identify any additional contractual and/or other provisions which the Authority requires to be incorporated into the Contract as a condition of providing the proposed Discretionary GFA; or
  - 30.9.3 confirm that the Authority does not wish to provide the proposed Discretionary GFA.
- 30.10 The Contractor confirms that:
- 30.10.1 subject to Clause 30.10.2, Clauses 59.1, 59.2, 59.4 59.8 (other than the reference to such Clause being subject to Clause 59.11), 59.9, 59.12, 59.13, 59.14 and 59.15 (*Issued Property*), Clause 60 (*Accounting for property of the Authority*), Clause 62.2 (*Transport*), shall (as a minimum) apply to any Discretionary GFA which is provided by the Authority to the Contractor following a request pursuant to this Clause 30.8 (*Discretionary GFA*) and Clauses 59.3, 59.5, 59.6, 59.7, 59.10, 59.11 (*Issued Property*) shall not apply to any such Discretionary GFA;
  - 30.10.2 prior to providing any proposed Discretionary GFA:
    - (i) where any amendments to Clauses 59.1, 59.2, 59.4, 59.8 59.9, 59.12, 59.13, 59.14 and 59.15 (*Issued Property*), Clause 60 (*Accounting for property of the Authority*), Clause 62.2 (*Transport*)

(each as referred to in Clause 30.10.1 (*Discretionary GFA*)) are required by the Authority and/or where any additional contractual provisions are required by the Authority following or subsequent to the matters contemplated in Clauses 30.9.1 and 30.9.2 (*Discretionary GFA*), such amendments and/or additional contractual provisions shall be incorporated into this Contract by means of a Contractor Change Notice (provided always that the Authority subsequently agrees to such Contractor Change Notice) to be issued by the Contractor within a reasonable period following receipt of the Authority's notice and/or conclusion of the discussions referred to in Clauses 30.9.1 and 30.9.2 (*Discretionary GFA*) and the provisions of Schedule 6 (*Contract Change Procedure*) shall apply; and

- (ii) where no amendments or additional contractual provisions are required by the Authority as contemplated in Clause 30.10.2(i) above or after a Change, when the procedures outlined in Clause 30.10.2(i) above have been followed, the relevant proposed Discretionary GFA shall be set out in the table forming Part 3 (*Discretionary GFA*) to Schedule 8 (*Government Furnished Assets*) or the relevant Option, identifying:
  - (A) the nature of the Discretionary GFA;
  - (B) the date the Discretionary GFA is required by the Contractor and/or the Sub-Contractor;
  - (C) the period the Contractor and/or the Sub-Contractor requires the Discretionary GFA;
  - (D) any matters relating to the use by the Contractor and/or the Sub-Contractor of the Discretionary GFA; and
  - (E) any additional matters relating to the Discretionary GFA as may be agreed by the Parties (including any packaging or delivery instructions),

and the provisions of Clauses 30.12 and 30.13 (*Discretionary GFA*) and Clause 31.1.5(iii) (*Indemnity and Liabilities*) shall apply.

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

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

- 30.12.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in any Discretionary GFA which it provides to the Contractor; or
  - 30.12.2 the provision by the Authority of any Discretionary GFA and/or any requirement of the Authority for the Contractor to return any Discretionary GFA earlier than previously agreed by the Parties (in accordance with Clause 30.12 (*Discretionary GFA*)) and/or any failure to make available to the Contractor any Discretionary GFA (whether or not the provision of the Discretionary GFA was the subject of a Change).
- 30.13 Neither the provision by the Authority of any Discretionary GFA nor failure by the Authority to provide any Discretionary GFA shall:
- 30.13.1 give the Contractor any right under this Contract to an extension of time or additional payment or damages or any other relief or remedy whatsoever against the Authority;
  - 30.13.2 give rise to a GFA Failure (other than to the extent that the GFA Failure is a direct result of the Authority failing to comply with its obligations in Clause 10.3 (*Necessary Consents*) and where the Contractor has fully satisfied its obligations in Clause 10.1.2 (*Necessary Consents*));
  - 30.13.3 affect, modify, reduce or extinguish either the obligations of the Contractor under this Contract or the rights or remedies of the Authority under this Contract; or
  - 30.13.4 subject to Clauses 30.8.5 and 30.9.2 (*Discretionary GFA*), be taken to amend, add to, delete or waive any term or condition of this Contract.

### **31 Indemnity and Liabilities**

- 31.1 The Contractor shall, subject to Clauses 31.2 and 31.3 (*Indemnity and Liabilities*), be responsible for and release and indemnify the Authority and its employees, agents and contractors from and against all Losses which are suffered or incurred by the Authority (and/or its employees, agents and/or contractors) arising out of or in connection with:

- 31.1.1 death or personal injury;
- 31.1.2 breach of statutory duty applicable to this Contract;
- 31.1.3 Third Party actions, claims, and/or demands including costs, charges and expenses (including legal expenses on a standard basis),

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

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

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

- (i) a failure to provide all required and relevant information, advice, data, documents and/or other items and/or to carry out and complete any other required activity by the time specified and/or referred to in this Contract;
- (ii) Not Used;
- (iii) Not Used;
- (iv) any event, matter or circumstance arising out of or in connection with the content and/or performance of any Contractor Deliverable (including in connection with a contract and/or procurement and/or other event, matter and/or circumstance); and/or
- (v) any work and/or additional work required to be undertaken by the Authority and/or any Third Party entering into and/or proposing to enter into any such contract and/or procurement,

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

- (A) the default or non-performance by the Authority of any of its obligations under this Contract or the acts or omissions of any Third Party (which is not at the time of such act or omission a Sub-Contractor); or
- (B) the negligent act or omission or wilful misconduct of the Authority or its employees, agents or contractors (excluding the Contractor and any Contractor Related Party),

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

31.1.5 any:

- (i) breach of the warranties and representations contained at Clauses 5.1.13 to 5.1.14 (inclusive) (*Contractor Warranties*) and/or Clauses 5.2.5 and/or 5.2.6 (*Contractor Warranties*);<sup>18</sup>
- (ii) failure of the Contractor to comply with its obligations in Clause 73 (*Exit Plan*) and/or Clause 75 (*Continuing Assistance*) and/or Clause 59.8 (*Custody*); and/or
- (iii) provision by the Authority to the Contractor of Discretionary GFA; and

---

<sup>18</sup> Any additional relevant provisions to be included during the bidding process.

- 31.1.6 any claim made against the Authority by a Third Party for death, personal injury or damage to property arising out of or in connection with defective products, to the extent that the defect in the product is attributable to the acts or omissions of the Contractor, its employees or agents.
- 31.2 Except where otherwise expressly stated in this Contract, nothing contained in this Contract shall affect any liability the Contractor may have to a Third Party arising out of its default, performance or non-performance or its negligent act or omission or wilful misconduct and shall not be construed as an indemnity by the Authority against any claims originating with Third Parties, provided that if a claim is raised directly against the Authority but in respect of which the Authority is entitled to an indemnity from the Contractor, then the Authority shall, subject to Clauses 31.2.1 to 31.2.4 (*Indemnity and Liabilities*) below, allow the Contractor to have conduct of the claim at its own cost provided that the Contractor:
- 31.2.1 gives reasonable security to the Authority for any costs or liability arising out of the conduct of the claim by the Contractor;
  - 31.2.2 consults with and keeps the Authority reasonably informed of the conduct of the claim;
  - 31.2.3 does not settle or compromise or prejudice the defence to any such claim without the prior consent of the Authority (not to be unreasonably withheld or delayed); and
  - 31.2.4 does not bring the name of the Authority into disrepute in any way in its conduct of the action,
- and provided always that notwithstanding the foregoing the Authority shall at all times have the right to refuse to allow the Contractor to have conduct of the claim if the Authority considers that conduct of the claim should be retained by the Authority on grounds of national interest including national security.
- 31.3 Notwithstanding any other provisions of this Contract, neither Party shall be entitled to recover compensation or make a claim under this Contract in respect of any Losses that it has incurred to the extent that it has already been compensated in full in respect of such Losses pursuant to this Contract or otherwise.
- 31.4 The Contractor acknowledges that, without prejudice to the provisions of Clause 31.1 (*Indemnity and Liabilities*), the Authority may, amongst other things, recover from the Contractor the following Losses incurred by the Authority to the extent that they arise as a result of the default or non-performance by the Contractor of any of its obligations under this Contract or the negligent act or omission or wilful misconduct of the Contractor or its Sub-Contractors ("**Default**"):
- 31.4.1 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
  - 31.4.2 any wasted expenditure or charges;
  - 31.4.3 the additional cost of procuring Replacement Contractor Deliverables (and/or the whole or part (as the case may be) of such Replacement Contractor Deliverables):

- (i) during and for the remainder of what would have been (as at the date of the Termination Notice) the term of this Contract had it not been terminated pursuant to Clause 70 (*Termination for Contractor Default*); and
- (ii) during the period after the Termination Date in respect of which the exercise of any Option would have extended the term of this Contract (and assuming for the purposes of this Clause 31.4.3 (*Indemnity and Liabilities*), that the Authority has exercised all of the Options referred to in Clauses 4.2 to **Error! Reference source not found.** (inclusive) (*Contract Period and Options*)),

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

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

31.4.5 any fine or penalty incurred by the Authority pursuant to law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

## 32 **[Not Used]**

## 33 **States of Emergency, Periods of Tension, Transition to War and Hostilities**

33.1 The Contractor shall continue to provide the Contractor Deliverables required in peace, during any state of emergency including any pandemic (whether or not involving hostilities), periods of tension, in transition to war, during hostilities and in any period of surge. The Contractor shall provide all the Contractor Deliverables throughout such period of the state of emergency, tension, transition to war or hostility unless directed otherwise by the Authority. The Authority shall advise the Contractor of any changes or additions to the Contract requirement and the provisions of Clause 76 (*Change*) shall apply, provided that the agreement or determination of any Change pursuant to Clause 76 (*Change*) shall not relieve the Contractor of its obligation to comply with the Authority's directions under this Clause 33 (*States of Emergency, Periods of Tension, Transition to War and Hostilities*) in the period up to the agreement or determination of such Change.

## 34 **Not Used**

## 35 **Not Used**

## PART 6 - INFORMATION PROVISIONS

## 36 **Authority Data**

36.1 For the purposes of this Clause 36 (*Authority Data*), "**Authority Data**" means:

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

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

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

36.1.2 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 36 (*Authority Data*).

- 36.2 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 36.3 The Contractor shall not store, copy, disclose, modify, adapt or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract (and in accordance with the relevant licence rights set out in Schedule 14 (*Intellectual Property Rights*)) or as otherwise expressly authorised in writing by the Authority.
- 36.4 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format reasonably specified by the Authority from time to time and/or specified in the Statement of Requirement (in each case at no additional cost to the Authority).
- 36.5 The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- 36.6 The Contractor shall perform secure back-ups of all electronic Authority Data held on the Contractor's IT systems and shall ensure that up-to-date back-ups are stored in accordance with Good Industry Practice and the Business Continuity Plans and the Contractor shall procure (as reasonably required by the Authority) that the Sub-Contractors perform secure back-ups of all electronic Authority Data held on the Sub-Contractor's IT systems. The Contractor shall ensure that such back-ups are made available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than six (6) monthly intervals (or such other intervals as may be agreed by the Parties in writing).
- 36.7 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.
- 36.8 If the Authority Data is corrupted, lost or sufficiently degraded so as to be unusable as a result of the Contractor's failure to fulfil its obligations under this Contract and/or exercise reasonable skill and care, the Authority may:
  - 36.8.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data and the Contractor shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Authority's notice; and/or
  - 36.8.2 itself restore or procure the restoration of Authority Data in any manner reasonably available to it, and shall be repaid by the Contractor any reasonable expenses incurred directly in doing so.



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

#### **Malicious Software**

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

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

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

- 36.11 Notwithstanding Clause 36.10 (*Malicious Software*), if Malicious Software is found, the Parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses.

- 36.12 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 36.11 (*Malicious Software*) shall be borne by the Parties as follows:

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

- (i) by the Contractor and/or any Contractor Related Party, including where such Malicious Software originates from the Contractor System, any Third Party software supplied by the Contractor or the Authority Data (whilst the Authority Data was under the control of the Contractor) unless the Contractor can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the Contractor; or
- (ii) by a Third Party as a result of a security vulnerability in the Contractor System or any Third Party software supplied by the Contractor and/or a failure by the Contractor to comply with Clause 37.10 (*Malicious Software*); and

36.12.2 otherwise by the Authority.

### **37 Authority Disclosed Data**

- 37.1 Subject to Clauses 37.4 and 37.5 (*Authority Disclosed Data*), the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any data disclosed by the Authority prior to and/or after the Effective Date and neither the Authority nor any of their agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

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

- 37.1.2 any failure to make available to the Contractor prior to and/or after the Effective Date any materials, documents, drawings, plans or other information relating to this Contract.
- 37.3 The Contractor acknowledges that any data (including all information provided by the Authority to the Contractor for the purposes of assisting the Contractor to carry out the Contractor Deliverables or providing contextual or other information relating to the Contractor Deliverables and/or the MORPHEUS Programme and/or other related contracts and procurements) is data for the purposes of this Clause 37 (*Authority Disclosed Data*) and, for the avoidance of doubt, in addition to the restriction of liability of the Authority as set out in this Clause 37 (*Authority Disclosed Data*), the Contractor shall, subject to Clause 37.5 (*Authority Disclosed Data*), not be entitled to any relief from its obligations under this Contract (including relief otherwise permitted under Clause 30 (*Authority Performance Failures*)) in the event that any of such data disclosed by the Authority is as described in Clause 37.1.1 (*Authority Disclosed Data*) and/or is not made available to the Contractor as described in Clause 37.1.2 (*Authority Disclosed Data*).
- 37.4 Nothing in this Clause 37 (*Authority Disclosed Data*) shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the Contractor in respect of any statements made fraudulently or fraudulent omissions to make statements prior to and/or after the Effective Date.
- 37.5 Where any data (as described in Clause 37.4 (*Authority Disclosed Data*)) is to be supplied by the Authority as GFA and where such data is expressly identified in Schedule 8 (*Government Furnished Assets*) as data which the Contractor is permitted to rely on for the purposes of this Clause 37.5 (*Authority Disclosed Data*), a failure by the Authority to supply such data or any inaccuracy, omission, unfitness for any purpose or inadequacy of such data may be a GFA Failure and the provisions of Clause 30 (*Authority Performance Failures*) shall apply and any remedies of the Contractor which are agreed or determined are due to the Contractor in accordance with Clause 30 (*Authority Performance Failures*) shall be the Contractor's only remedies relating to the provision and/or content of and/or non-provision of such data.

### **38 The Contractor's Records**

- 38.1 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):
- 38.1.1 of all incidents relating to health, safety, the environment and security which occur during the Contract Period to the extent that the Authority is not legally obliged to do so as owner of the Authority Sites;
- 38.1.2 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;
- 38.1.3 of all claims made under any policy of insurance that the Contractor is required to maintain pursuant to Clause 32 (*Insurances*);
- 38.1.4 of all Disputes dealt with pursuant to the Dispute Resolution Procedure that arise during the Contract Period;

- 38.1.5 of all certification and/or authorised documentation relating to the attainment of Necessary Consents, Third Party quality standards and/or evidence of compliance with any specified Def Stan requirements;
- 38.1.6 relating to hazardous substances pursuant to Clause 57 (*Supply of Hazard Data*); and
- 38.1.7 any of the Contractor owned Intellectual Property Rights, the Contractor's use of Authority owned Intellectual Property Rights and records relating to applicable Third Party Intellectual Property Rights,

(the "**Records**") and without prejudice to Clause 40 (*Disclosure of Information*) and Clause 46 (*Intellectual Property Rights*) make the Records available to be examined and if necessary, copied, by or on behalf of the Authority, as the Authority may reasonably require when requested upon reasonable notice.

38.2 The Authority shall be entitled to disclose the Records set out in Clause 38.1 (*The Contractor's Records*) to potential Follow-On Contractors as the Authority may reasonably require.

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

38.3.1 the end of the Contract Period; or

38.3.2 the final payment,

whichever occurs latest.

## **39 Financial Management Information**

39.1 The Contractor shall, as a minimum:

39.1.1 report the Financial Management Information to the Authority as detailed in and in the format required in the Monthly Performance Report in accordance with Schedule 2 (*Statement of Requirement*) .

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

39.1.3 provide the Financial Management Information to the Authority's Representative

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

(ii) after a change that exceeds two hundred and fifty thousand pounds (£250,000); and

(iii) monthly and in accordance with the Monthly Performance Report (as detailed in Schedule 2 (*Statement of Requirement*)).

39.1.4 retain the Financial Management Information and supporting financial records in accordance with Clause 38.3 (*The Contractor's Records*).

## **40 Disclosure of Information**

40.1 Subject to Clauses 40.4 to 40.8 (*Disclosure of Information*), each Party:

- 40.1.1 shall treat in confidence all Information it receives from the other;
  - 40.1.2 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;
  - 40.1.3 shall not use any of that Information otherwise than for the purpose of this Contract; and
  - 40.1.4 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.
- 40.2 The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with this Contract:
- 40.2.1 is disclosed to its Employees and Sub-Contractors, only to the extent necessary for the performance of this Contract; and
  - 40.2.2 is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing work or having work performed for the Authority under this Contract or any Sub-Contract.
- 40.3 The Contractor shall ensure that its Employees and Sub-Contractors are aware of its arrangements for discharging the obligations at Clauses 40.1 and 40.2 (*Disclosure of Information*) before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.
- 40.4 Clauses 40.1 and 40.2 (*Disclosure of Information*) shall not apply to any Information to the extent that either Party:
- 40.4.1 exercises rights of use or disclosure granted otherwise than in consequence of, or under, this Contract;
  - 40.4.2 has the right to use or disclose the Information in accordance with other conditions of this Contract; or
  - 40.4.3 can show:
    - (i) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of this Contract or any other agreement between the Parties;
    - (ii) that the Information was already known to it (without restrictions on disclosure or use) prior to it receiving it under or in connection with this Contract;
    - (iii) that the Information was received without restriction on further disclosure from a Third Party who lawfully acquired it and who is himself under no obligation restricting its disclosure; or

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

provided the relationship to any other Information is not revealed.

40.5 Neither Party shall be in breach of this Clause 40 (*Disclosure of Information*) where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this Clause 40 (*Disclosure of Information*).

40.6 The Authority may disclose the Information:

- 40.6.1 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;
- 40.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 40.6.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate:
  - (i) in the course of carrying out its public functions; and/or
  - (ii) in the case of any Contractor Deliverables, to assist any Other Contractor to perform and/or comply with its obligations to the Authority;
- 40.6.4 on a confidential basis to a professional adviser, consultant or other person engaged by any Central Government Body and/or the Authority (including benchmarking organisation) for any purpose relating to or connected with this Contract;
- 40.6.5 on a confidential basis for the purpose of the exercise of its rights under this Contract; or
- 40.6.6 on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 40 (*Disclosure of Information*).

40.7 Before sharing any Information in accordance with Clause 40.6 (*Disclosure of Information*), the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.

- 40.8 The Authority shall not be in breach of the Contract where it can show that any disclosure of Information is made solely and to the extent necessary to comply with the FOI Act or the Environmental Information Regulations 2004 ("**the Regulations**"). To the extent permitted by the time for compliance under the FOI Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the FOI Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the FOI Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the FOI Act or the Regulations. For the avoidance of doubt, nothing in this Clause 40.8 (*Disclosure of Information*) shall affect the Contractor's rights at law.
- 40.9 Nothing in this Clause 40 (*Disclosure of Information*) shall affect the Parties' obligations of confidentiality where information is disclosed orally in confidence.

#### **Controlled Information**

- 40.10 This Clause 40.10 (*Controlled Information*) and Clauses 40.11 to 40.13 (inclusive) (*Controlled Information*) shall apply in respect of any Controlled Information communicated to and/or held by the Contractor, in addition to and notwithstanding Clauses 40.1 to 40.9 (inclusive) (*Disclosure of Information*), or any other confidentiality Clause of this Contract.
- 40.11 The Contractor shall:
- 40.11.1 hold the Controlled Information and not use it other than for the purpose of discharging its obligations under this Contract;
  - 40.11.2 not copy the Controlled Information except as strictly necessary for the purpose of discharging its obligations under this Contract;
  - 40.11.3 not disclose the Controlled Information to any Third Party unless so authorised in writing beforehand by the Authority;
  - 40.11.4 protect the Controlled Information diligently against unauthorised access and against loss; and
  - 40.11.5 act diligently to ensure that:
    - (i) Controlled Information is disclosed to its Employees only to the extent necessary for the purpose of discharging its obligations under this Contract; and
    - (ii) Employees to whom Controlled Information is disclosed are made aware of and required to comply with the terms of these Clauses 40.10 to 40.13 (inclusive) (*Controlled Information*).
- 40.12 Where Controlled Information is provided to the Contractor, it shall:
- 40.12.1 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;

- 40.12.2 maintain such register for the duration of this Contract and for two (2) Years following expiry or earlier termination of this Contract in accordance with its terms;
  - 40.12.3 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 40.12.2 (*Controlled Information*); and
  - 40.12.4 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.
- 40.13 Nothing in these Clauses 40.10 to 40.13 (inclusive) (*Controlled Information*) shall diminish or extinguish any right of the Contractor to copy, use or disclose any information that is not Controlled Information to the extent that it can show:
- 40.13.1 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;
  - 40.13.2 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;
  - 40.13.3 that the information concerned was lawfully provided by a Third Party without restriction on use or further disclosure; or
  - 40.13.4 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**

- 40.14 The Contractor shall not by itself, its Employees or agents (and shall ensure that its Sub-Contractors shall not):
- 40.14.1 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;
  - 40.14.2 photograph or film in or upon any Authority Sites and/or any Other Contractor's Premises;
  - 40.14.3 erect or exhibit on any part of the Authority Sites and/or any Other Contractor's Premises any signs or trade boards; or
  - 40.14.4 exhibit or attach to any part of the Authority Sites and/or any Other Contractor's Premises any notice or advertisement,
- unless:
- (i) the Authority has given its prior written consent; or

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

41 **Not Used**

42 **Transparency**

- 42.1 Notwithstanding any other term of this Contract, the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.
- 42.2 Before publishing the Transparency Information to the general public in accordance with Clause 42.1 (*Transparency*), the Authority shall redact any information that would be exempt from disclosure if it was the subject of a request for information under the FOI Act or the Environmental Information Regulations 2004 ("**the Regulations**"), including the Contractor Commercially Sensitive Information.
- 42.3 The Authority may consult with the Contractor before redacting any information from the Transparency Information in accordance with Clause 42.2 (*Transparency*). The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the FOI Act or the Regulations.
- 42.4 For the avoidance of doubt, nothing in this Clause 41 (*Transparency*) shall affect the Contractor's rights at law.
- 42.5 Not Used.

43 **Accuracy of Information**

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

44 **Protection of Personal Data**

- 44.1 In the performance of this Contract, both Parties shall comply with their obligations as a Data Controller under the Data Protection Legislation.
- 44.2 Both Parties acknowledge that there is no processing of Personal Data associated with or intrinsic to the performance of the Contract. The incidental exchange of Personal Data for the purpose of communication to give effect to the Contract or the business relationship is not considered to be processing of Personal Data by either Party on behalf of the other.
- 44.3 The Contractor shall continually assess whether in performing the Contractor Deliverables the Contractor is required to process Personal Data on behalf of the Authority and, if it assesses that it is so required, it shall immediately notify the Authority.



- 44.4 The Parties agree that they shall amend the Contract to include DEFCON 532B (Edn 04/20) and appropriate contractual clauses, including but not limited to clauses dealing with notification in the event of a Personal Data Breach and requests from Data Subjects for access to their Personal Data, immediately following such assessment and in accordance with Clause 77 (*Contract Amendments*).

#### **45A Official-Sensitive Security Requirements**

- 45A.1 The Contractor shall protect (including protection from deliberate and/or opportunistic attack) all Information relating to the aspects designated as “OFFICIAL” and “OFFICIAL SENSITIVE” as identified in the Security Aspects Letter in accordance with the security conditions contained at Schedule 12 (*Security Conditions*).
- 45A.2 The Contractor shall include the requirement and obligations set out in Clause 45A.1 (*Official-Sensitive Security Requirements*) in any Sub-Contract placed in connection with or for the purposes of this Contract which requires disclosure of OFFICIAL-SENSITIVE Information to the Sub-Contractor or under which any Information relating to aspects designated as OFFICIAL-SENSITIVE is created by the Sub-Contractor. The Contractor shall also include in the Sub-Contract a requirement for the Sub-Contractor to flow the requirement of this Clause 45A (*Official-Sensitive Security Requirements*) to its Sub-Contractors and through all levels of the supply chain to the lowest level where any OFFICIAL-SENSITIVE Information is handled.

#### **45B Cyber**

##### **Definitions**

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

45B.1.1 “**Associated Company**” means:

- (a) any associated company of the Contractor from time to time within the meaning of Section 449 of the Corporate Tax Act 2010 or any subordinate legislation; and
- (b) any parent undertaking or subsidiary undertaking of the Contractor from time to time within the meaning of section 1162 Companies Act 2006 and it is further agreed that where the ownership of shares in any such undertaking have been pledged or transferred to a Third Party by way of security, the original parent shall still be considered a member of the subsidiary undertaking;

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

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

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

- (a) unauthorised access to an information system or electronic communications network;
  - (b) disruption or change of the operation (including but not limited to takeover of control) of an information system or electronic communications network;
  - (c) destruction, damage, deletion or the change of MOD Identifiable Information residing in an information system or electronic communications network;
  - (d) removal or limiting the possibility to use MOD Identifiable Information residing in an information system or electronic communications network; or
  - (e) the appropriation, publication, dissemination or any other use of non- public MOD Identifiable Information by persons unauthorised to do so;
- 45B.1.5 **“Cyber Security Instructions”** means Def Stan 05-138, together with any relevant ISN and specific security instructions relating to this Contract issued by the Authority to the Contractor;
- 45B.1.6 **“Cyber Security Model”** or **“CSM”** means the process by which the Authority ensures that MOD Identifiable Information is adequately protected from a Cyber Security Incident and includes the CSM Risk Assessment Process, Def Stan 05-138 and the CSM Supplier Assurance Questionnaire;
- 45B.1.7 **“CSM Risk Assessment Process”** means the risk assessment process which forms part of the Cyber Security Model and is used to measure the Cyber Risk Level for this Contract and any Sub-Contract;
- 45B.1.8 **“CSM Supplier Assurance Questionnaire”** means the supplier assessment questionnaire which forms part of the Cyber Security Model and is to be used by the Contractor to demonstrate compliance with this Clause 45B (*Cyber*);
- 45B.1.9 **“Data”** means any data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media.
- 45B.1.10 **“Def Stan 05-138”** means the Defence Standard 05-138 as amended or replaced from time to time;
- 45B.1.11 **“Electronic Information”** means all information generated, processed, transferred or otherwise dealt with under or in connection with this Contract, including but not limited to Data, recorded or preserved on any information system or electronic communications network;
- 45B.1.12 **“Good Industry Practice”** means in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgment and the making of any expenditure that would reasonably be expected from a skilled person in the same type of undertaking under the same or similar circumstances;

- 45B.1.13 “**ISN**” means Industry Security Notices issued by the Authority to the Contractor whether directly or by issue on the gov.uk website at: <https://www.gov.uk/government/publications/industry-security-notices-isns>;
- 45B.1.14 “**JSyCC WARP**” means the Joint Security Co-ordination Centre MOD Defence Industry Warning, Advice and Reporting Point or any successor body notified by way of ISN;
- 45B.1.15 “**MOD Identifiable Information**” means all Electronic Information which is attributed to or could identify an existing or proposed Authority capability, defence activities or personnel and which the Authority requires to be protected against loss, misuse, corruption, alteration and unauthorised disclosure;
- 45B.1.16 “**NSA/DSA**” means, as appropriate, the National or Designated Security Authority of the Contractor that is responsible for the oversight of the security requirement to be applied by the Contractor and for ensuring compliance with applicable national security regulations;
- 45B.1.17 “**Sites**” means any premises from which Contractor Deliverables are provided in connection with this Contract or from which the Contractor or any relevant Sub-Contractor manages, organises or otherwise directs the provision or the use of the Contractor Deliverables and/or any sites from which the Contractor or any relevant Sub-Contractor generates, processes, stores or transmits MOD Identifiable Information in relation to this Contract;
- 45B.1.18 “**Sub-Contract**” means any Sub-Contract at any level of the supply chain, whether awarded directly by the Contractor or indirectly by any lower tier Sub-Contractor or Associated Company, which is entered into as a consequence of or in connection with this Contract;
- 45B.1.19 “**Sub-Contractor**” means a Sub-Contractor of the Contractor or any Associated Company whether a direct Sub-Contractor or at any lower level of the supply chain who provides any Contractor Deliverables in connection with this Contract;
- 45B.1.20 “**Supplier Cyber Protection Service**” means the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire.

#### **Authority obligations**

##### **45B.2 The Authority shall:**

- 45B.2.1 determine the Cyber Risk Level appropriate to this Contract and, where the Contractor has not already been notified of the Cyber Risk Level prior to the date of this Contract, shall provide notification of the relevant Cyber Risk Level and the appropriate Cyber Security Instructions to the Contractor as soon as is reasonably practicable; and
- 45B.2.2 notify the Contractor as soon as reasonably practicable where the Authority reassesses the Cyber Risk Level relating to this Contract.

#### **Contractor obligations**

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

- 45B.3.1 comply with Def Stan 05-138;
- 45B.3.2 complete the CSM Risk Assessment Process in accordance with the Authority's instructions, ensuring that any change in the Cyber Risk Level is notified to any affected Sub-Contractor, and complete a further CSM Risk Assessment Process or CSM Supplier Assurance Questionnaire where a change is proposed to the Contractor's supply chain which has or may have an impact on the Cyber Risk Level of this Contract or on receipt of any reasonable request by the Authority;
- 45B.3.3 carry out the CSM Supplier Assurance Questionnaire no less than once in each year of this Contract, commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire;
- 45B.3.4 having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge its obligations under this Clause 45B (*Cyber*) in accordance with Good Industry Practice, provided always that where there is a conflict between the Contractor's obligations under Clause 45B.3.1 and this Clause 45B.3.4 (*Contractor obligations*), the Contractor shall notify the Authority in accordance with the notification provisions in Def Stan 05-138 as soon as it becomes aware of the conflict and the Authority shall determine which standard or measure shall take precedence;
- 45B.3.5 comply with all Cyber Security Instructions notified to it by the Authority as soon as reasonably practicable;
- 45B.3.6 notify the JSyCC WARP in accordance with ISN 2014/02 as amended or updated from time to time and the Contractors NSA/DSA, and in the case of a Sub-Contractor also notify the Contractor, immediately in writing as soon as they know or believe that a Cyber Security Incident has or may have taken place providing full details of the circumstances of the incident and any mitigation measures already taken or intended to be taken;
- 45B.3.7 in coordination with its NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the Authority and its agents and representatives and its NSA/DSA to take all steps to mitigate the impact of the Cyber Security Incident and minimise the likelihood of any further similar Cyber Security Incidents. For the avoidance of doubt, this shall include complying with any reasonable technical or organisational security measures deemed appropriate by the Contractor's NSA/DSA in the circumstances and taking into account the Cyber Risk Level;
- 45B.3.8 consent to the Authority recording and using information obtained in relation to this Contract for the purposes of the Cyber Security Model whether on the Supplier Cyber Protection Service or elsewhere. For the avoidance of doubt such information shall include the cyber security accreditation of the Contractor and/or Sub-Contractor as appropriate; and
- 45B.3.9 include provisions equivalent to Clause 45B.7.1 (*Breach of obligations*) in all Sub-Contracts imposing provisions equivalent to this Clause 45B.3 (*Contractor obligations*) (the "**Equivalent Provisions**") and, where a Sub-Contractor breaches terms implementing this Clause 45B.3 (*Contractor*

*obligations*) in a Sub-Contract, the Contractor shall and shall procure that its Sub-Contractors shall, in exercising their rights or remedies under the relevant Sub-Contract:

- (i) notify the Authority of any such breach and consult with the Authority regarding any remedial or other measures which are proposed as a consequence of such breach, taking the Authority's view into consideration; and
- (ii) have regard to the Equivalent Provisions,

PROVIDED ALWAYS THAT where the Contractor has notified the Authority that it or one or more of its Sub-Contractors cannot comply with Clauses 45B.3.1 to 45B.3.9 (*Contractor obligations*), the Authority and Contractor will seek to agree a Cyber Security Implementation Plan and where the Authority has agreed a Cyber Security Implementation Plan with the Contractor, the Contractor shall, and shall procure that its Sub-Contractors shall, comply with such Cyber Security Implementation Plan until implementation is agreed to have been achieved whereupon Clauses 45B.3.1 to 45B.3.9 (*Contractor obligations*) shall apply in full. In the event that a Cyber Security Implementation Plan cannot be agreed the matter shall be resolved in accordance with the Dispute Resolution Procedure.

#### **Management of Sub-Contractors**

##### **45B.4**

- 45B.4.1 The Authority agrees that the Contractor shall be entitled to rely upon the self-certification by a Sub-Contractor of its compliance with its obligations pursuant to Clause 45B.3.1 (*Contractor obligations*). In the event that a Sub-Contractor is found to be in breach of its obligations in Clause 45B.3.1 (*Contractor obligations*), and where the Contractor has relied upon the Sub-Contractor's self-certification, the Contractor shall not be held to be in breach of this Clause 45B.4 (*Management of Sub-Contractors*).
- 45B.4.2 Where the Contractor becomes aware that a Sub-Contractor is not complying with its obligations, the Contractor shall notify the Authority and provide full details of the Sub-Contractor's non-compliance as soon as reasonably practicable and shall consult with the Authority as to the appropriate course of action which may include but not be limited to the agreement of a remedial plan or termination of the Sub-Contract having regard to Clause 45B.3.9 (*Contractor obligations*).
- 45B.4.3 Having regard to the Authority's views, the Contractor shall take all reasonable measures to address any non-compliance of a Sub-Contractor in accordance with the reasonable timescales required by the Authority. Where the Contractor fails to do so, this shall amount to a breach of this Clause 45B.4 (*Management of Sub-Contractors*) and the provisions of Clause 45B.7.2 or 45B.7.3 (*Breach of obligations*) as appropriate shall apply.
- 45B.4.4 The Contractor shall, and shall procure that its Sub-Contractors shall, include provisions equivalent to this Clause 45B.4 (*Management of Sub-Contractors*) in all Sub-Contracts which flow down the obligations set out in Clause 45B.3.1 (*Contractor obligations*) of this Contract.

## Records

### 45B.5

- 45B.5.1 The Contractor shall keep and maintain, and shall ensure that any Sub-Contractor shall keep and maintain, until six (6) years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records including but not limited to:
- (i) details of all MOD Identifiable Information relating to the Contractor Deliverables provided under this Contract; and
  - (ii) copies of all documents required to demonstrate compliance with Def Stan 05-138 and this Clause 45B (*Cyber*), including but not limited to any information used to inform the CSM Risk Assessment Process and to carry out the CSM Supplier Assurance Questionnaire, together with any certificates issued to the Contractor and/or Sub-Contractor.
- 45B.5.2 The Contractor shall, and shall ensure that any Sub-Contractor shall, on request provide the Authority, the Authority's Representatives and/or the Contractors NSA/DSA such access to those records as may be required in connection with this Contract.

## Audit

### 45B.6

- 45B.6.1 Except where an audit is imposed on the Authority by a regulatory body or there is a Cyber Security Incident in which case the Contractor agrees, and shall procure that its Sub-Contractors agree, that the Authority and its representatives, in coordination with the NSA/DSA or the NSA/DSA on behalf of the Authority, may conduct such audits as it considers in its absolute opinion necessary, the Authority, its representatives and/or the NSA/DSA may, not more than twice in any calendar year and for a period of six (6) years following the termination or expiry of this Contract, whichever is the later, conduct an audit for the following purposes:
- (i) to review and verify the integrity, confidentiality and security of any MOD Identifiable Information;
  - (ii) to review the Contractor's and/or any Sub-Contractor's compliance with its obligations under this Clause 45B (*Cyber*); and
  - (iii) to review any records created during the provision of the Contractor Deliverables, including but not limited to any documents, reports and minutes which refer or relate to the Contractor Deliverables for the purposes of Clauses 45B.6.1(i) and 45B.6.1(ii) (*Audit*).
- 45B.6.2 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor and/or Sub-Contractor or delay the provision of the Contractor Deliverables and supplier information received by the Authority in connection with the audit shall be treated as confidential information.

- 45B.6.3 The Contractor shall, and shall ensure that any Sub-Contractor shall, on demand provide the Authority and any relevant regulatory body, including the NSA/DSA, (and/or their agents or representatives), together the “**Auditors**”, with all reasonable co-operation and assistance in relation to each audit, including but not limited to:
- (i) all information requested by the Authority within the permitted scope of the audit;
  - (ii) reasonable access to any Sites controlled by the Contractor or any Associated Company or any Sub-Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of this Contract and, where such Sites and/or equipment are not within the control of the Contractor, shall secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and
  - (iii) access to any relevant staff.
- 45B.6.4 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) calendar days’ notice of its intention to conduct an audit.
- 45B.6.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 45B (*Cyber*), unless the audit identifies a material breach of the terms of this Clause 45B (*Cyber*) by the Contractor and/or Sub-Contractor in which case the Contractor shall reimburse the Authority for all the Authority’s reasonable costs incurred in the course of the audit.

#### **Breach of obligations**

#### **45B.7**

- 45B.7.1 In exercising its rights or remedies under this Clause 45B (*Cyber*), the Authority shall:
- (i) act in a reasonable and proportionate manner having regard to such matters as the gravity of any breach or potential breach and the Cyber Risk Level of this Contract; and
  - (ii) give all due consideration, where appropriate, to action other than termination of this Contract, including but not limited to a remedial period if this is appropriate in all the circumstances.
- 45B.7.2 Where the Cyber Risk Level of this Contract is assessed to be moderate or high, and the Contractor breaches the terms of this Clause 45B (*Cyber*), the Authority shall be entitled to terminate this Contract (whether in whole or in part) and the provisions of Clause 71.4B (*Termination for Contractor Default*) shall apply.
- 45B.7.3 Where the Cyber Risk Level of this Contract is assessed to be very low or low, and the Contractor breaches the terms of this Clause 45B (*Cyber*), the Authority shall be entitled:

- (i) to recover from the Contractor the amount of any Loss sustained in consequence of any breach of this Clause 45B (*Cyber*); and
- (ii) where the Contractor does not comply with any reasonable instructions issued by the Authority or the NSA/DSA within the time period specified to remedy such breach or prevent further breaches, the Authority shall be entitled to terminate this Contract (whether in whole or in part) and the provisions of Clause 71.4B (*Termination for Contractor Default*) shall apply.

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

## **General**

### **45B.8**

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

45B.8.2 Without prejudice to Clause 74.1.1 (*Continuing Obligations*), termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Clause 45B (*Cyber*) that have accrued up to the date of termination or expiry, including but not limited to the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination or expiry.

### **45B.8.3**

- (i) The Contractor agrees that the Authority has absolute discretion to determine changes to Def Stan 05-138 and/or the Cyber Risk Level. In the event that there is such a change to Def Stan 05-138 or the Cyber Risk Level, then either Party may seek an adjustment to the Contract Price for any associated increase or decrease in costs and the Contractor may request an extension of time for compliance with such revised or amended Def Stan 05-138 or Cyber Risk Level, provided always that the Contractor shall seek to mitigate the impact on time and cost to the extent which it is reasonably practicable to do so and further provided that such costs shall not be allowed unless they are considered to be appropriate, attributable to the Contract and reasonable in all the circumstances.
- (ii) Subject to Clause 45B.8.3(i) (*General*), where the Contractor seeks such adjustment or extension, the provisions of Schedule 6 (*Contract Change Procedure*) shall apply to determine the request for such adjustment or extension, provided always that:
  - (A) notwithstanding paragraph 5.1 of Schedule 6 (*Contract Change Procedure*), the Contractor shall deliver an Contractor Change Proposal to the Authority within eight



(8) weeks of the occurrence of the change in Def Stan 05-138 or Cyber Risk Level (or such longer period as may be agreed by the Parties) and such Contractor Change Proposal shall, without prejudice to paragraph 5.2 of Schedule 6 (*Contract Change Procedure*), identify the impact of that change and shall be accompanied by full details of the request for adjustment (and for the purposes of Schedule 6 (*Contract Change Procedure*), the notice given by the Authority pursuant to Clause 45B.8.3(i) (*General*) of the changes to Def Stan 05-138 and/or the Cyber Risk Level shall be deemed to be an Authority Change Notice and the request for such proposed changes shall be deemed to be the Authority Change the subject of such Authority Change Notice);

- (B) the Contractor shall not be entitled to refuse the proposed Authority Change pursuant to paragraph 3.3 of Schedule 6 (*Contract Change Procedure*) insofar as it relates to Def Stan 05-138 or the Cyber Risk Level whether or not the Contractor Change Proposal is rejected. In the event that the Contractor does not agree with the Authority's determination, then the provisions of the Dispute Resolution Procedure shall apply.

45B.8.4 The Contractor shall not recover any costs and/or other Losses under or in connection with this Clause 45B (*Cyber*) where such costs and/or other Losses are recoverable or have been recovered by the Contractor elsewhere in this Contract or otherwise. For the avoidance of doubt, this shall include but not be limited to the cost of implementing any upgrades or changes to any information system or electronic communications network whether in response to a Cyber Security Incident or otherwise, where the Contractor is able to or has recovered such sums in any other provision of this Contract or has recovered such costs and/or Losses in other contracts between the Contractor and the Authority or with other bodies.

## **PART 7 - INTELLECTUAL PROPERTY RIGHTS**

### **46 Intellectual Property Rights**

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

## **PART 8 - SECURITY PROVISIONS**

### **47 Security – Secret Matters**

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

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

- 47.1.2 “**Employee**” shall include any person who is an employee or director of the Contractor or who occupies the position of a director of the Contractor, by whatever title given; and
- 47.1.3 “**Security Policy**” has the meaning given it in Schedule 1 (*Definitions and Acronyms*).

#### **Official Secrets Acts**

- 47.2 The Contractor shall:
- 47.2.1 take all reasonable steps to make sure that all Employees engaged on any work in connection with this Contract have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the completion or termination of this Contract;
- 47.2.2 if directed by the Authority, make sure that any such Employees shall sign a statement acknowledging that, both during the term of this Contract and after its completion or termination, he is bound by the Official Secrets Acts 1911-1989 (and where applicable by any other legislation); and
- 47.2.3 make sure that any such Employees are aware that all provisions of the Security Aspects Letter and any other statutory provisions and/or guidance provided by the Authority to the Contractor from time to time, apply to such Employees and will continue so to apply after the completion or termination of this Contract.

#### **Security measures**

- 47.3 Unless it has the written authorisation of the Authority to do otherwise, neither the Contractor nor any of its Employees shall, either before or after the completion or termination of this Contract, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:
- 47.3.1 who is not a British citizen;
- 47.3.2 who does not hold the appropriate authority for access to the protected matter;
- 47.3.3 in respect of whom the Authority has notified the Contractor in writing that the Secret Matter shall not be disclosed to or acquired by that person;
- 47.3.4 who is not an Employee of the Contractor; or
- 47.3.5 who is an Employee of the Contractor and has no need to know the information for the proper performance of this Contract.
- 47.4 Unless it has the written authorisation of the Authority to do otherwise, the Contractor and its Employees shall, both before and after the completion or termination of this Contract, take all reasonable steps to ensure that:
- 47.4.1 no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of this Contract; and

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

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

47.5 The Contractor shall:

47.5.1 provide to the Authority:

- (i) upon request, such records giving particulars of those Employees who have had, at any time, access to any Secret Matter that is required to be kept in accordance with Clause 47.4.2 (*Security – Secret Matters*);
- (ii) upon request, such information as the Authority may from time to time require so as to be satisfied that the Contractor and its Employees are complying with its obligations under this Clause 47 (*Security – Secret Matters*), including the measures taken or proposed by the Contractor so as to comply with its obligations and to prevent any breach of them; and
- (iii) full particulars of any failure by the Contractor and its Employees to comply with any obligations relating to any Secret Matter arising under this Clause 47 (*Security – Secret Matters*) immediately upon such failure becoming apparent; and

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

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

**Sub-Contracts**

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

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

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

Party” shall mean “the Contractor” and “Second Party” shall mean the “Sub-Contractor”; and

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

### **Termination**

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

- 47.8.1 the Contractor is in breach of any obligation under this Clause 47 (*Security – Secret Matters*); or
- 47.8.2 the Contractor is in breach of any secrecy or security obligation imposed by any other contract with the Crown,

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

### **Acknowledgement by the Contractor**

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

- 47.9.1 it has received the Security Aspects Letter;
- 47.9.2 the Secret Matter has been brought to the attention of the person directly responsible for the security of this Contract;
- 47.9.3 the nature and details of the Secret Matter are understood; and
- 47.9.4 measures will be taken to safeguard the Secret Matter in accordance with the requirements of this Clause 47 (*Security – Secret Matters*).

### **Submission of security information**

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

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

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

## **48 Personnel Security<sup>19</sup>**

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

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

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

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

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

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

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

### **Security clearance**

48.5 The Contractor shall be responsible for ensuring that each Employee holds and maintains a valid security clearance during their employment or engagement in connection with this Contract. Where the Contractor's Employee needs to undertake work requiring access to "Secret" matter, the Contractor shall ensure that they have a valid security clearance at "Secret" level.

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

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

48.7 The Authority shall:

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

---

<sup>19</sup> To be considered in light of bidder's solutions.

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

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

- 48.8 A person not in possession of a pass who is required by the Contractor or any Sub-Contractor to attend an Authority Site and/or (to the extent that a pass is required) any Other Contractor's Premises (as the case may be) to provide emergency reactive services shall be allowed temporary admission to the Authority Site and/or (where permitted by the Other Contractor) the Other Contractor's Premises (as the case may be) provided that the Contractor shall, or shall procure that any Sub-Contractor shall, ensure that such individual is accompanied at all times whilst on the Authority Site and/or such Other Contractor's Premises (as the case may be) by a member of the Contractor or Sub-Contractor's staff who has been issued with a pass pursuant to Clause 48.5 (*Security clearance*).
- 48.9 Whilst engaged at the Authority's Sites and/or any Other Contractor's Premises (as the case may be), the Contractor shall, and shall procure that any Sub-Contractor shall, ensure that all Employees and other accompanied emergency reactive workers pursuant to Clause 48.8 (*Admission to Authority Sites and/or Other Contractor's Premises*) comply with the Authority's policies and/or those of the Other Contractor (as the case may be) as notified to the Contractor from time to time relating to the conduct of staff and security arrangements.
- 48.10 Notwithstanding the provisions of Clauses 48.6 to 48.9 (inclusive) (*Personnel Security*), the Authority and/or any Other Contractor (as the case may be) may refuse any person admission to an Authority Site and/or any Other Contractor's Premises (as the case may be) or require the removal of any person from an Authority Site and/or any Other Contractor's Premises (as the case may be):
- 48.10.1 if such person is not in possession of a pass pursuant to Clause 48.7 (*Admission to Authority Sites and/or Other Contractor's Premises*) or is not an accompanied emergency reactive worker pursuant to Clause 48.8 (*Admission to Authority Sites and/or Other Contractor's Premises*);
- 48.10.2 if such person, in the Authority's or Other Contractor's (as the case may be) opinion, represents a risk to themselves and/or an Authority Related Party and/or any other Third Party and/or property and the Authority has given written notice to the Contractor's Representative to this effect;
- 48.10.3 if the Authority and/or Other Contractor has reasonable grounds for considering that the presence or conduct of such person at the Authority Site and/or such Other Contractor's Premises (as the case may be) is undesirable and the Authority and/or Other Contractor has given written notice to the Contractor's Representative to this effect; and/or
- 48.10.4 for any other reason.

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

48.12 Where a person is refused admission:

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

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

#### **49 Co-operation for Security Investigation**

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

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

### **PART 9 - SITE ISSUES**

#### **50 Access to the Contractor's Premises**

##### **Authority's monitoring and inspection rights**

50.1 Without prejudice to the other provisions of this Contract including Schedule 2 (*Statement of Requirements*), Schedule 4 (*Acceptance Procedure*) and Schedule 7 (Performance), the Contractor shall ensure that the Authority and the representatives of the Authority shall have the right at all reasonable times and on reasonable notice (but not so as to materially delay or impede the progress of the provision of the Contractor Deliverables):

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

- 50.1.2 subject to obtaining the consent of the relevant Sub-Contractor, manufacturer or supplier (which the Contractor shall use all reasonable endeavours to obtain), to visit any property, site or workshop other than the Contractor's Premises where materials, plant or equipment are being manufactured, prepared or stored for use in connection with this Contract (for the purposes of general inspection and of attending any test or investigation being carried out), or any property other than the Contractor's Premises used by the Contractor as training or workshop facilities or as a place where work is being prepared or materials are being obtained in relation to this Contract.
- 50.2 The Contractor shall provide and shall ensure the Sub-Contractors provide to the Authority and the representatives of the Authority (in each case without any additional cost to the Authority) for the purposes of Clause 50.1 (*Authority's monitoring and inspection rights*):
- 50.2.1 all reasonable access to premises and such accommodation and facilities for representatives of the Authority as the Authority may reasonably require (provided that all accommodation shall be adequately furnished, lit, heated and ventilated and shall include suitable cloakroom and communication facilities) for an agreed reasonable period; and
- 50.2.2 that satisfactory facilities are made available and that reasonable assistance is given to representatives of the Authority,

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

#### **Authority's conduct on the Contractor's Premises**

- 50.3 In exercising any right under Clause 50.1 (*Authority's monitoring and inspection rights*), the Authority shall comply with all relevant safety procedures (which shall include any relevant health and safety plans), the Contractor's site rules from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the Contractor from time to time.
- 50.4 The Authority shall indemnify the Contractor for any material damage caused by it to the Contractor's Premises whilst exercising any right under this Clause 50 (*Authority's monitoring and inspection rights*).

### **51 Authority Sites and/or Other Contractor's Premises**

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

- 51.1 During the Contract Period, the Authority shall, in the case of the Authority Sites, afford the following rights to the Contractor and Contractor Related Parties and, in the case of any Other Contractor's Premises, use reasonable endeavours to procure for the benefit of the Contractor and Contractor Related Parties solely for the purpose of the provision of the Contractor Deliverables:
- 51.1.1 a non-exclusive licence to enter and remain upon those parts of the Authority Sites and/or any Other Contractor's Premises (as the case may be) that the Contractor and/or any Contractor Related Party requires access to; and



- 51.1.2 such non-exclusive rights of access to and egress from the Authority Sites and/or any Other Contractor's Premises (as the case may be) as are necessary for the Contractor and/or Contractor Related Parties to perform their obligations and exercise their rights under this Contract or their relevant contracts and in particular for the purposes of providing the Contractor Deliverables, provided that in the case of:
- (i) the Authority Sites, such routes may be varied by the Authority to such alternative routes as the Authority may reasonably specify from time to time if such variation does not have a material adverse effect on the provision of the Contractor Deliverables; or
  - (ii) in the case of any Other Contractor's Premises, such routes may be varied by such Other Contractor to such alternative routes as such Other Contractor may reasonably specify from time to time; and
- 51.1.3 use of services and utilities including water, waste water, gas, electricity, telephone and other services serving the Authority Sites as specified in Schedule 8 (Government Furnished Assets) and/or, in the case of any Other Contractor's Premises, as may be reasonably required by the Contractor and/or any Contractor Related Party, provided that:
- (i) the rights shall not in any circumstances entitle the Contractor or any Contractor Related Party to exclusive occupancy or exclusive possession of any part of the Authority Sites and/or any Other Contractor's Premises (as the case may be) (save as may be required by the Contractor and approved by the Authority and/or Other Contractor in order to comply with relevant health and safety legislation on a temporary basis); and
  - (ii) the Contractor and Contractor Related Parties do not cause any material disruption to the operations or activities carried out by:
    - (A) the Authority on or at the Authority Sites or any of the Authority's legal duties or other functions; and/or
    - (B) any Third Party on or at any Other Contractor's Premises or any such Third Party's legal duties or other functions.

**The Contractor's conduct on Authority Sites and/or Other Contractor's Premises**

- 51.2 The Contractor shall ensure, and/or shall procure, that in providing the Contractor Deliverables at the Authority Sites and/or any Other Contractor's Premises (as the case may be) it and/or any Contractor Related Party shall:
- 51.2.1 [Not Used]
  - 51.2.2 not use or occupy the Authority Sites and/or any Other Contractor's Premises (as the case may be) for any purpose other than the provision of the Contractor Deliverables and only to the extent that such Contractor Deliverables are required to be performed at such Authority Site and/or Other Contractor's Premises;
  - 51.2.3 [Not Used]

51.3 Not Used.

51.4 Not Used.

**52 The Contractor's Property and Personnel at Government Establishments and Other Contractor's Premises**

**Liability in respect of damage to Government and Third Party property**

52.1 Without prejudice to the provisions of Clause 59 (*Issued Property*), the Contractor shall, except as otherwise provided for in this Contract, make good or, at the option of the Authority, pay compensation for all damage occurring to any Government and/or Third Party property (which includes land or buildings), occasioned by the Contractor, or by any Contractor's Representative or Contractor Related Party, arising from his or their presence on a Government Establishment and/or Other Contractor's Premises in connection with this Contract, provided that this Clause 52.1 (*Liability in respect of damage to Government and Third Party property*) shall not apply to the extent that the Contractor is able to show that any such damage was not caused or contributed to by any circumstances within its reasonable control.

52.2 Not Used.

52.3 Not Used.

**The Contractor's property**

52.4 All property of the Contractor and Contractor Related Parties shall be at the risk of the Contractor whilst it is on any Government Establishment and/or any Other Contractor's Premises and the Authority shall accept no liability for any Loss or damage howsoever occurring to or caused by such property, except where any such Loss or damage occurred on a Government Establishment and such Loss or damage was caused or contributed to by any act, neglect or default of any Authority servant, agent or contractor then the Authority shall accept liability for such Loss or damage to the extent to which such Loss or damage is so caused or contributed to by such Authority servant, agent or contractor.

**Transport overseas**

52.5 Where the Contractor Related Parties are required by this Contract to join or visit a Government Establishment overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) may be provided by the Authority by Royal Air Force or by Authority chartered aircraft. The Contractor shall make such arrangements through the Authority's Representative. When such transport is not available within a reasonable time, the Contractor shall make his own transport arrangements.

**Medical treatment overseas**

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

### **Injuries, disease and dangerous occurrences**

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

### **Dependants of Contractor's Representatives**

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

### **Provision of funds overseas**

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

### **Health and safety hazard control**

- 52.10 Without prejudice to the Contractor's obligations under Clause 57 (*Supply of Hazard Data*), where the Contractor enters a Government Establishment and/or any Other Contractor's Premises for the purpose of providing the whole or any part of the Contractor Deliverables:

- 52.10.1 the Contractor shall notify the officer in charge or the site project liaison officer or overseeing officer or other person nominated by the Authority and/or Other Contractor (as the case may be) of:

- (i) any health and safety hazards associated with the delivery of that part of the Contractor Deliverable to be provided by it or Contractor Related Party;
- (ii) any foreseeable risks to the health and safety of all persons associated with such hazards; and
- (iii) any precautions to be taken by it as well as any precautions which, in its opinion, ought to be taken by the Authority or other person, in order to control such risks;

- 52.10.2 the Authority shall notify the Contractor of:

- (i) any health and safety hazards which may be encountered by the Contractor or any Contractor Related Party on the Government

Establishment and/or (to the extent that the same are brought to the attention of the Authority) any Other Contractor's Premises;

- (ii) any foreseeable risks to the health and safety of the Contractor or any Contractor Related Party, associated with such hazards; and
- (iii) any precautions to be taken by the Authority and/or any Third Party as well as any precautions which, in its opinion, ought to be taken by the Contractor, in order to control such risks;

52.10.3 the Contractor shall notify the Contractor Related Parties of and, where appropriate, provide adequate instruction in relation to:

- (i) the hazards, risks and precautions notified by him to the Authority under Clause 52.10.1 (*Health and safety hazard control*);
- (ii) the hazards, risks and precautions notified by the Authority to the Contractor under Clause 52.10.2 (*Health and safety hazard control*); and
- (iii) the precautions which, in its opinion, ought to be taken by the Contractor Related Parties in order to control those risks;

52.10.4 the Contractor shall provide the Officer in Charge or the site project liaison officer or overseeing officer nominated in this Contract or other person nominated by the Other Contractor (as the case may be) with:

- (i) copies of those sections of its own and, where appropriate, Contractor Related Party's safety policies which are relevant to the risks notified under Clause 52.10.1 (*Health and safety hazard control*);
- (ii) copies of any related risk assessments; and
- (iii) copies of any notifications and instructions issued by it to any Contractor Related Party under Clause 52.10.3 (*Health and safety hazard control*);

52.10.5 the Authority shall provide the Contractor with:

- (i) copies of those sections of its own or (to the extent that the same are provided to the Authority) any Third Party's (as the case may be) safety policies which are relevant to the risks notified under Clause 52.10.2 (*Health and safety hazard control*);
- (ii) copies of any related risk assessments (in the case of Other Contractor Premises, to the extent only that the same are provided to the Authority); and
- (iii) copies of any notifications and instructions issued by it to its employees similar to those called for from the Contractor under Clause 52.10.3 (*Health and safety hazard control*) (in the case of Other Contractor's Premises, to the extent only that the same are provided to the Authority); and

- 52.10.6 where the Contractor identifies a health and safety hazard associated with services provided by the Authority under Schedule 8 (Government Furnished Assets), the Contractor shall notify the Authority of the hazard and the risk to the Contractor's or the Authority's personnel;
- (i) the Authority shall implement any urgent temporary actions agreed by the Parties to rectify the hazard within five (5) Working Days; and
  - (ii) the Authority shall implement permanent changes to rectify the hazard as soon as practicable but no later than three (3) months from the notification in Clause 52.10.6 (*Health and safety hazard control*).

## **PART 10 - PEOPLE ISSUES**

### **53 Transfer of Undertakings (Protection of Employment) (TUPE) [Not Used]**

53.1 Not Used

### **54 Child Labour and Employment Law**

- 54.1 The Contractor shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where this Contract is being performed.
- 54.2 The Contractor agrees to take reasonable efforts to reflect this Clause 54 (*Child Labour and Employment Law*) in any Sub-Contract that it enters into to satisfy the requirements of this Contract and to require its Sub-Contractors to reflect this Clause 54 (*Child Labour and Employment Law*) in their Sub-Contracts that they enter into to satisfy the requirements of this Contract.

### **55 Equality**

- 55.1 The Contractor shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including re-assignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.
- 55.2 Without prejudice to the generality of the obligation in Clause 55.1 (*Equality*), the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent legislation in the country where this Contract is being performed.
- 55.3 The Contractor agrees to take reasonable efforts to secure the observance of the provisions of this Clause 55 (*Equality*) by any of its employees, agents or other persons acting under its direction or control who are engaged in the performance of this Contract.
- 55.4 The Contractor agrees to take reasonable efforts to reflect this Clause 55 (*Equality*) in any Sub-Contract that it enters into to satisfy the requirements of this Contract and to

require its Sub-Contractors to reflect this Clause 55 (*Equality*) in their Sub-Contracts that they enter into to satisfy the requirements of this Contract.

## **PART 11 - ASSET RELATED PROVISIONS**

### **56     Packaging (for Articles other than Munitions)**

#### **Definitions**

56.1    For the purposes of this Clause 56 (*Packaging (for Articles other than Munitions)*):

56.1.1    "**Packaging**" when used as a verb shall mean the preparation of Articles for transportation, storage and delivery in accordance with this Contract. The term includes, as appropriate, cleaning and preservation processes, packing techniques and marking procedures.

56.1.2    "**Packaging**" when used as a noun shall mean the materials, and components, used for the preparation of the Articles for transportation, storage and delivery in accordance with this Contract.

56.1.3    "**Packaging Design Authority**" or "**PDA**" shall mean the organisation that is responsible for the design of the packaging, identified in Box 3 of DEFFORM 111 in the Agreed Form.

56.1.4    "**Military Packager Approval Scheme**" or "**MPAS**" shall mean an Authority sponsored scheme to certify military Packaging designers and register organisations, as capable of producing acceptable Services Packaging Instruction Sheet ("**SPIS**") designs in accordance with Defence Standard (Def Stan) 81-041 (Part 4).

56.1.5    "**Commercial Packaging**" shall mean commercial Packaging for military use as described in Def Stan 81-041 (Part 1).

56.1.6    "**Military Level Packaging**" or "**MLP**" shall mean Packaging that provides enhanced protection in accordance with Def Stan 81-041 (Part 1), beyond that which Commercial Packaging normally provides for the military supply chain.

56.1.7    "**Military Packaging Level**" or "**MPL**" shall have the meaning described in Def Stan 81-041 (Part 1).

56.1.8    "**Primary Packaging Quantity**" or "**PPQ**", and Standard Family Specification ("**SFS**") shall have the meaning as described in Def Stan 81-041 (Part 1).

56.1.9    "**Robust Articles**" shall mean Robust items as described in Def Stan 81-041 (Part 2).

56.1.10    "**Dangerous Goods**" shall mean those substances, preparations and articles that are capable of posing a risk to health, safety, property or the environment which are prohibited by regulation, or classified and authorised only under the conditions prescribed by the:

- (i)        Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 ("**CDG**") (as amended 2011);

- (ii) European Agreement Concerning the International Carriage of Dangerous Goods by Road (“**ADR**”);
- (iii) Regulations Concerning the International Carriage of Dangerous Goods by Rail (“**RID**”);
- (iv) International Maritime Dangerous Goods (“**IMDG**”) Code;
- (v) International Civil Aviation Organisation (“**ICAO**”) Technical Instructions for the Safe Transport of Dangerous Goods by Air; and
- (vi) International Air Transport Association (“**IATA**”) Dangerous Goods Regulations.

56.1.11 “**Safety Data Sheet**” shall have the meaning as defined in REACH.

### **Specifications for Packaging**

56.2 General requirements for service Packaging, including details of UK and NATO MLP and Commercial Packaging descriptions, are contained in Def Stan 81-041 (Part 1) "Packaging of Defence Materiel". Def Stans, NATO Standardisation Agreements (“**STANAGs**”) and further information are available from the DStan internet site at: <http://www.dstan.mod.uk/>.

56.3 Not Used.

56.4 In the event of conflict between this Contract and Def Stan 81-041, this Contract shall take precedence.

### **Responsibilities**

56.5 Packaging responsibilities are as follows:

- 56.5.1 The Contractor shall be responsible for providing Packaging which fully complies with the requirements of this Contract.
- 56.5.2 The Authority shall indicate in this Contract or order raised against a framework agreement (where applicable) the standard or level of Packaging required for each Article, including the PPQ. If a standard or level of Packaging (including the PPQ) is not indicated in this Contract or order, the Contractor shall request such instructions from the Authority before proceeding further.
- 56.5.3 The Contractor shall ensure all relevant information necessary for the effective performance of this Contract is made available to all Sub-Contractors.
- 56.5.4 Where the Contractor or any of their Sub-Contractors have concerns relating to the appropriateness of the Packaging design and or MPL prior to manufacture or supply of the Articles they shall use DEFFORM 129B to feedback these concerns to the Contractor or Authority, as appropriate.
- 56.5.5 Where the volumetric data of individual package designs is required to be compiled as part of the codification data set, the Contractor shall do so in accordance with clause 56A.

## **Commercial Packaging**

56.6 The Contractor shall supply Commercial Packaging meeting the standards and Requirement of Def Stan 81-041 (Part 1). In addition the following requirements apply:

56.6.1 The Contractor shall provide Packaging which:

- (i) will ensure that each Article may be transported and delivered to the consignee named in this Contract in an undamaged and serviceable condition; and
- (ii) is labelled to enable the contents to be identified without need to breach the package; and
- (iii) is compliant with statutory requirements and this Clause 56 (*Packaging (for Articles other than Munitions)*).

56.6.2 The Packaging used by the Contractor to supply identical or similar Articles to commercial customers or to the general public (i.e. point of sale packaging) will be acceptable, provided that it complies with the following criteria:

- (i) reference in this Contract to a PPQ means the quantity of an Article to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;
- (ii) Robust Articles, which by their nature require minimal or no packaging for commercial deliveries, shall be regarded as "PPQ packages" and shall be marked in accordance with Clauses 56.13 (*Package labelling and marking*) to 56.16 (*Consignment of aggregated packages*). References to "PPQ packages" in subsequent text shall be taken to include Robust Articles; and
- (iii) for ease of handling, transportation and delivery, packages which contain identical Articles may be bulked and overpacked, in accordance with Clauses 56.13 (*Package labelling and marking*) to 56.15 (*Bar code marking*).

## **Packaging Regulations for Dangerous Goods**

56.7 The Contractor shall ascertain whether the Articles being supplied are, or contain, Dangerous Goods, and shall supply the Dangerous Goods in accordance with:

56.7.1 The Health and Safety At Work Act 1974 (as amended);

56.7.2 The Classification Hazard Information and Packaging for Supply Regulations (CHIP) 2009 (as amended);

56.7.3 The REACH Regulations 2007 (as amended); and

56.7.4 The Classification, Labelling and Packaging Regulations (CLP) 2009 (as amended).



- 56.8 The Contractor shall package the Dangerous Goods as limited quantities, excepted quantities or similar derogations, for UK or worldwide shipment by all modes of transport in accordance with the regulations relating to the Dangerous Goods and:
- 56.8.1 The Safety Of Lives At Sea Regulations (SOLAS) 1974 (as amended); and
- 56.8.2 The Air Navigation (Amendment) Order 2019.
- 56.9 As soon as possible, and in any event no later than one (1) month before delivery is due, the Contractor shall provide a Safety Data Sheet in respect of each Dangerous Good in accordance with the REACH Regulations 2007 (as amended) and the Health and Safety At Work Act 1974 (as amended).

#### **UK military or NATO Packaging**

- 56.10 The Contractor shall comply with the requirements for the design of MLP which include Clauses 56.10 (*UK military or NATO Packaging*) and 56.11 (*Military Packaging design procedure*) as follows:

- 56.10.1 Where there is a requirement to design UK or NATO MLP, the work shall be undertaken by an MPAS registered organisation, or one that although non-registered is able to demonstrate to the Authority that its quality systems and military package design expertise are of an equivalent standard.

Note 1: The MPAS certification (for individual designers) and registration (for organisations) scheme details are available from:

DES SEOC SCG-SCEng-Pkg  
MOD Abbey Wood  
Bristol, BS34 8JH

Tel. +44(0)30679-35353

[DESSEOCSCG-SCEng-Pkg@mod.gov.uk](mailto:DESSEOCSCG-SCEng-Pkg@mod.gov.uk)

Note 2: The MPAS Documentation is also available on the DStan website

- 56.10.2 MLP shall be designed to comply with the relevant requirements of Def Stan 81-041, and be capable of meeting the appropriate test Requirements of Def Stan 81-041 (Part 3). Packaging designs shall be prepared on a Service Packaging Instruction Sheet (SPIS), in accordance with Def Stan 81-041 (Part 4).
- 56.10.3 The Contractor shall ensure a search of the SPIS index (the “**SPIN**”) is carried out to establish the SPIS status of each requirement (using DEFFORM 129a ‘Application for Packaging Designs or their Status’).
- 56.10.4 New designs shall not be made where there is an existing usable SPIS, or one that may be easily modified.
- 56.10.5 Where there is a usable Standard Family Specification (SFS), it shall be used in place of a SPIS design unless otherwise stated by this Contract. When an SFS is used or replaces a SPIS design, the Contractor shall upload this information on to SPIN in Adobe PDF.

- 56.10.6 All SPIS, new or modified (and associated documentation), shall, on completion, be uploaded by the Contractor on to SPIN. The format shall be Adobe PDF.

#### **Manufacture of Packaging to a Military Packaging Level**

- 56.10.7 Where it is necessary to use an existing SPIS design, the Contractor shall ensure the Packaging manufacturer is a registered organisation in accordance with Clause 56.10.1 (*UK military or NATO Packaging*), or if un-registered, is compliant with MPAS ANNEX A Supplement (Code) M. The Contractor shall ensure, as far as possible, that the SPIS is up to date.

#### **Intellectual Property Rights (IPR)**

- 56.10.8 The documents supplied under Clause 56.10.6 (*UK military or NATO Packaging*) shall be subject to Paragraph 6 in Schedule 14 (*Intellectual Property Rights*) .

#### **Military Packaging design procedure**

- 56.11 Unless otherwise stated in this Contract, one of the following procedures for the production of new or modified SPIS designs shall be applied:

- 56.11.1 If the Contractor or their Sub-Contractor is the PDA they shall:

- (i) On receipt of instructions received from the Authority's representative nominated in Box 2 of DEFFORM 111 in the Agreed Form, prepare the required package design in accordance with Clause 56.10 (*UK military or NATO Packaging*).
- (ii) Where the Contractor or their Sub-Contractor is registered they shall, on completion of any design work, provide the Authority with the following documents electronically:
  - (A) a list of all SPIS which have been prepared or revised against this Contract; and
  - (B) a copy of all new/revised SPIS, complete with all continuation sheets and associated drawings, where applicable, to be uploaded onto SPIN.
- (iii) Where the PDA is not a registered organisation, then they shall obtain approval for their design from a registered organisation before proceeding, then follow Clause 56.11.1(ii) (*Military Packaging design procedure*).

- 56.11.2 Where the Contractor or their Sub-Contractor is not the PDA and is un-registered, they shall not produce, modify or update SPIS designs. They shall obtain current SPIS design(s) from the Authority or a registered organisation before proceeding with manufacture of Packaging. To allow designs to be provided in ample time, they should apply for SPIS designs as soon as practicable.

- 56.11.3 Where the Contractor or their Sub-Contractor is un-registered and has been given authority to produce, modify, and update SPIS designs by this

Contract, it shall obtain approval for their design from a registered organisation using DEFFORM 129a before proceeding, then follow Clause 56.11.1(ii) (*Military Packaging design procedure*).

- 56.11.4 Where the Contractor or their Sub-Contractor is not a PDA but is registered, it shall follow Clauses 56.11.1(i) and 56.11.1(ii) (*Military Packaging design procedure*).

### **Tools**

- 56.12 If Special Jigs, Tools Etc. are required for the production of MLP, the Contractor shall obtain written approval from the Authority's Representative before providing them.

### **Package labelling and marking**

- 56.13 In addition to any marking required by international or national legislation or regulations, the following package labelling and marking requirements apply:

#### **Labelling – General**

- 56.13.1 If this Contract specifies UK or NATO MLP, labelling and marking of the packages shall be in accordance with Def Stan 81-041 (Part 6) and this Clause 56 (*Packaging (for Articles other than Munitions)*) as follows:

- (i) Labels giving the mass of the package, in kilograms, shall be placed such that they may be clearly seen when the items are stacked during storage.

#### **Marking – General**

- (ii) Each consignment package shall be marked with details as follows:
  - (A) name and address of consignor;
  - (B) name and address of consignee (as stated in this Contract or order);
  - (C) destination where it differs from the consignee's address, normally either:
    - 1) delivery destination/address; or
    - 2) transit destination, where delivery address is a point for aggregation/disaggregation and/or onward shipment elsewhere, e.g., railway station, where that mode of transport is used; and
  - (D) the unique order identifiers and the CP&F Delivery Label / Form which shall be prepared in accordance with DEFFORM 129J.
- (iii) If aggregated packages are used, their consignment marking and identification requirements are stated at Clause 56.16 (*Consignment of aggregated packages*).

## Marking of Commercial Packaging

56.13.2 If this Contract specifies Commercial Packaging, an external surface of each PPQ package and each consignment package, if it contains identical PPQ packages, shall be marked, using details of the Articles as shown in this Contract schedule, to state the following:

- (i) description of the Article;
- (ii) the full thirteen digit NATO Stock Number ("**NSN**");
- (iii) the PPQ;
- (iv) maker's part/catalogue, serial and/or batch number, as appropriate;
- (v) the Contract and order number when applicable;
- (vi) the words "Trade Package" in bold lettering, marked in blue in respect of trade packages, and black in respect of export trade packages;
- (vii) shelf life of item where applicable;
- (viii) for rubber items or items containing rubber, the quarter and year of vulcanisation or manufacture of the rubber product or component (marked in accordance with Def Stan 81-041);
- (ix) any statutory hazard markings and any handling markings, including the mass of any package which exceeds three (3) kg gross; and
- (x) any additional markings specified in this Contract.

## Bar code marking

56.14 Bar code marking shall be applied to the external surface of each consignment package and to each PPQ package contained therein. The default symbology shall be as specified in Def Stan 81-041 (Part 6). As a minimum the following information shall be marked on packages:

56.14.1 the full 13-digit NSN;

56.14.2 denomination of quantity ("**D of Q**");

56.14.3 actual quantity (quantity in package);

56.14.4 manufacturer's serial number and/or batch number, if one has been allocated; and

56.14.5 the unique order identifier.

56.15 Requirements for positioning bar codes in relation to related text, as well as positioning on package etc., are defined in Def Stan 81-041 (Part 6). If size of the bar code does not allow a label to be directly attached, then a tag may be used. Any difficulties over size or positioning of barcode markings shall initially be referred to the organisation nominated in Box 3 of DEFFORM 111 in the Agreed Form.

## **Consignment of aggregated packages**

56.16 The Requirements for the consignment of aggregated packages are as follows:

- 56.16.1 With the exception of packages containing Dangerous Goods, over-packing for delivery to the consignee shown in this Contract may be used by the consignor to aggregate a number of packages to different Packaging levels, provided that the package contains Articles of only one NSN or class group. Over-packing shall be in the cheapest commercial form consistent with ease of handling and protection of over-packed items.
- 56.16.2 Two adjacent sides of the outer container shall be clearly marked to show the following:
- (i) class group number;
  - (ii) name and address of consignor;
  - (iii) name and address of consignee (as stated on this Contract or order);
  - (iv) destination if it differs from the consignee's address, normally either:
    - (A) delivery destination/address; or
    - (B) transit destination, if the delivery address is a point of aggregation/disaggregation and/or onward shipment e.g. railway station, where that mode of transport is used;
  - (v) where applicable, the reference number if the delivery note produced by CP&F relating to the contents. The consignee's copy of each delivery note shall be placed in the case/container. If the Articles listed in the delivery note are packed in several cases, the consignee's copy shall be placed in the first case and a separate list detailing the contents shall be prepared for each case after the first and placed in the case to which it relates. Each case is to be numbered to indicate both the number of the case and the total number of cases concerned e.g. 1/3, 2/3, 3/3;
  - (vi) shipping label in accordance with Clause 23; and
  - (vii) any statutory hazard markings and any handling markings.

## **Concessions**

56.17 Authorisation of the Contractor to undertake Packaging design, or to use a packaging design, that was not part of the original requirement under this Contract, shall be considered as an alteration to the specification under Schedule 6 (*Contract Change Procedure*).

## **Environmental - Requirement for wood used in Packaging**

56.18 The Contractor shall ensure that timber and wood-containing products supplied under this Contract comply with Annex I and Annex II of the International Standards for

Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 (ISPM 15).

### **Environmental – Packaging and Packaging waste**

- 56.19 All Packaging shall meet the requirements of the Packaging (Essential Requirements) Regulations 2003 (as amended) where applicable.
- 56.20 In any design work the Contractor shall comply with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) or equivalent legislation. Evidence of compliance shall be a contractor record in accordance with Clause 38 (*The Contractor's Records*).

### **Packaging design liability statement**

- 56.21 This Clause 56 (*Packaging (for Articles other than Munitions)*) is concerned with the supply of Packaging suitable to protect and ease handling, transport and storage of specified items. Where there is a failure of suitable Packaging (a design failure), or Packaging fails and this is attributed to the Packaging supplier, then the supplier shall be liable for the cost of replacing the Packaging.
- 56.22 Liability for other Losses resulting from Packaging failure or resulting from damage to Packaging, (such as damage to the packaged item etc.), shall be specified elsewhere in this Contract.

### **56A Supply of Information for NATO Codification and Defence Inventory Introduction**

- 56A.1 The purpose of Codification is to catalogue Items of Supply, using the minimum information required to distinguish them from similar items available. The cataloguing information is not normally a full technical specification and definition that could be used for manufacture of alternative items.
- 56A.2 For the purposes of this Clause 56A (*Supply of Information for NATO Codification and Defence Inventory Introduction*) and Clause 56B (*Codification Requirement of Item Identification*):
- 56A2.1 "**Codification**" shall mean the application of unique identification and classification information to Items of Supply, using a common supply language (as set out in Clause 56B (*Codification Requirement for Item Identification*)) which is recorded in sufficient detail to distinguish uniquely Items of Supply from other items, using NATO Stock Numbers or "**NSN**".
- 56A2.2 "**Codification Purposes**" shall mean use to enable maximum effectiveness in national and international logistic support, data management in the area of materiel, supply and inventory introduction and management, throughout the life of an equipment, by the United Kingdom Ministry of Defence and its NATO partners.
- 56A2.3 "**Codification Authority**" shall mean the United Kingdom National Codification Bureau or "**UKNCB**", except as provided in Clause 56A.11.
- 56A2.4 "**Authority's Agent**" shall mean the Government Departments or contractors authorised by the Codification Authority to undertake NATO codification.

- 56A2.5 **"Form, Fit and Function"** shall mean, in respect of each of its elements:
- (i) Form: The shape, size, dimensions, and other physically measurable parameters that uniquely characterise an article. For software, form denotes the language and media;
  - (ii) Fit: The characteristics of an article to enable it to interface or interconnect with a part of another article, including the dimensional relationship between mating parts and the limits of tolerances;
  - (iii) Function: The actions that a product is designed to perform in normal use or operation.
- 56A2.6 **"Item"** shall mean the part or the whole of any Article or any other Article to the same design or any modification of it.
- 56A2.7 **"Item of Supply"** shall mean an Item, or where two or more Items are attached or assembled together, the minimum assembly of Items listed in the Design Control Authority's Master Parts List or required to be delivered to the Authority under this Contract.
- 56A2.8 **"Item Identification"** shall mean the minimum information required to uniquely identify the Item of Supply derived from information supplied in response to the requirements specified in Clause 56B.
- 56A2.9 **"Technical Data"** shall mean the cataloguing information identified in Clause 56B to be supplied to enable the creation of Item Identification.
- 56A2.10 **"Design Control Authority"** or **"DCA"** shall mean the individual, company, firm, corporation, designing authority or government department, which controls the design, characteristics and production of an Item by means of its engineering drawings, specifications and inspection requirements.
- 56A2.11 **"NATO Commercial & Government Entity code"** or **"NCAGE"** shall mean the unique code allocated to a supplier by the UKNCB.
- 56A.3 In the case of an Item of Supply for which the Contractor is the DCA, the Contractor shall:
- 56A.3.1 provide Technical Data to the Codification Authority, or the Authority's Agent specified by the Codification Authority, where:
    - (i) the Item of Supply is not already codified in the NATO Codification System or **"NCS"**; or
    - (ii) the Contractor has not previously supplied that information either in the recommended spare parts list supplied by the Contractor in the initial provisioning phase or under another contract;
  - 56A.3.2 where the Item of Supply has already been NATO codified, supply the NSN(s) to the Codification Authority, or the Authority's Agent; and

- 56A.3.3 inform the Codification Authority, or it's Agent, when and to whom the data was supplied if the information has previously been supplied by the Contractor.
- 56A.4 In the case of an Item of Supply for which the Contractor is not the DCA, the Contractor shall ensure that the Technical Data is supplied, either by the subcontract DCA or by the Contractor. The Contractor shall, where appropriate, consider including the terms of this Condition, or equivalent text, in any Sub-Contracts, to ensure delivery of the cataloguing information.
- 56A.5 Unless otherwise provided by the Contract, the cost of supplying the information under Clauses 56A.3 and 56A.4 above, and any other information specifically called for under the Contract, shall be deemed to have been included in the Contract Price.
- 56A.6 The Contractor may from time to time be requested to supply additional information necessary for Codification. To the extent that it has the right to do so, the Contractor shall supply that additional data. The extent of information shall be governed by the Requirement of the Codification system at that time. Full details of the Codification system can be obtained from the Codification Authority.
- 56A.6.1 At any time during the life of the contract the Contractor shall notify the Codification Authority of all modifications or design changes made to an Item of Supply, which affect the Item Identification, including reference number changes, Form, Fit or Function.
- 56A.6.2 Fair and reasonable payment, based upon the actual work involved, will be made to the Contractor for the supply of additional information under Clause 56A.6 above and, in respect of modifications and design changes approved by the Authority; the supply of updated information under Clause 56A.6.1.
- 56A.7 Subject to the restrictions resulting from Clause 56A.9, the Authority shall have the right, free of charge, to use and copy or have used and copied for Codification Purposes information supplied under the provisions of this Clause 56A, use and copying being limited to that necessary for Codification Purposes. The Authority may convert or have converted any Technical Data provided in whatever format to an alternative format, including digital formats.
- 56A.8 Subject to the restrictions resulting from Clause 56A.9, the information constituting the Item Identification may be included in the databases of codification data which are produced by the Authority or any international organisation of which the Authority is a member and may be made available to other Governments, contractors, organisations or individuals who are authorised to have access to those databases by the Authority or the organisation(s) of which the Authority is a member.
- 56A.9 The Contractor shall endeavour to ensure that all information supplied under this Clause 56A can be used for Codification Purposes; however, where any of the information supplied is marked to indicate it is proprietary in nature the Contractor shall indicate the restrictions which apply to its use.
- 56A.10 The Codification Authority shall not retain or use the Technical Data supplied under this Clause 56A for any purpose other than for Codification.



- 56A.11 If the DCA is located in a NATO country other than the UK, the equivalent organisation in that NATO country shall be substituted for the UKNCB. All contact between the Contractor and those equivalent organisations will be via the UKNCB.
- 56A.12 If the DCA is located in a country which is not a member of the NATO Alliance or a NATO sponsored (NCS participating) country, the Codification Authority will be deemed to be the UKNCB, which may nominate an agent to act on its behalf.
- 56A.13 The Contractor, Sub-Contractor or supplier may contact the Codification Authority for any information concerning the NCS.
- 56A.14 The requirements set out in Clause 56B shall apply in relation to Item Identification.

## **56B Codification Requirement for Item Identification**

- 56B.1 Information to be supplied and used for the purposes of Codification is governed by the requirements of the NCS Item Identification Guide (“IIG”) and the approved item name shall be used for Codification. The exact requirements are item specific and will vary on an item by item basis.
- 56B.2 Information may be provided in the form of engineering drawings, international/national or commercial standards and specifications, commercial literature such as catalogues, brochures or similar documentation, in hard or soft copy. Alternatively arrangement may be made to allow the data to be retrieved via a Uniform Resource Locator (“URL”) or similar.
- 56B.3 Clause 56B covers all Items of Supply, and the following information must be supplied:
- 56B.3.1 The NCAGE or name, address and contact details of the Design Control Authority (DCA).
- 56B.3.2 The name of the Item of Supply, as recognised by the DCA.
- 56B.3.3 Identifying References:
- (i) the DCA's drawing or part number(s), and National or International Standard or Specification Reference, or both (indicating definitive or non-definitive). The references will be assumed to be fully definitive unless stated otherwise;
  - (ii) where the Contractor's own identifying reference differs from the DCA's reference, this shall also be provided;
  - (iii) any associated bar code or product identification numbers, assigned by companies compliant with EAN International or the Uniform Code Council (“UCC”);
  - (iv) for medical items, the ATC Code (World Health Organisation (WHO) Anatomical Therapeutic Codes), BNF code (British National Formulary) or the ECRI Universal Medical Device Nomenclature code shall be supplied where relevant.
- 56B.3.4 The following Volumetric Data. Definitions equate to those in ASD S2000M and the data is to be supplied in the format specified therein:

- (i) length, width and height/depth of packaged unit (“**SPU**”), used with an associated unit of issue code;
- (ii) length, width and height/depth of unpackaged unit (“**SUU**”), used with an associated unit of issue code;
- (iii) gross weight of packaged unit (“**WPU**”), used with an associated unit of issue code;
- (iv) gross weight of unpackaged unit (“**WUU**”), used with an associated unit of issue code.

56B.4 The following additional information shall be supplied where it is necessary for the information to be used to fully distinguish Items of Supply, as determined by the applicable approved item name and NCS IIG. The DCA is not required to disclose particulars of proprietary processes, manufacturing techniques or proprietary material specifications:

- 56B.4.1 Basic material (the base material from which the item is fabricated) surface treatment (the finish by which the item is plated, dipped and/or coated, including any special cleanliness conditions).
- 56B.4.2 All key dimensions shall be supplied for common mechanical parts, such as nuts, bolts, screws, washers etc.
- 56B.4.3 Where items are threaded, include the size, type, length, class and direction of the thread.
- 56B.4.4 Electrical characteristics, such as nominal voltage, current or rated power, or both, of the item, rated resistance, capacitance or inductance, and operating frequencies.
- 56B.4.5 For any pressure system components and equipment details of the pressure ratings.
- 56B.4.6 Temperature ratings.
- 56B.4.7 Information on distinguishing features, e.g. colour, shape, style, holes, cut-outs, keyways or slots, etc.
- 56B.4.8 Radioactive components - radioactive materials.
- 56B.4.9 Software - the software identification number.
- 56B.4.10 Markings - markings that indicate the primary purpose, function or application of the Item of Supply.

56B.5 For assemblies only, the Contractor shall supply the final assembly drawing or parts list, or both, including known NSNs and part numbers of constituent parts.

56B.6 Where the Item of Supply is designed for a specific application, the source data shall identify the end item application.

56B.7 Where the Item of Supply contains items of a hazardous nature, the information shall identify the existence of any hazard and the Contractor shall provide a safety data sheet in accordance with Clause 57.

### **Requests For NATO Codification**

56B.8 Where the Contractor is required to apply for NATO Codification on behalf of the Authority:

56B.8.1 All requests for codification action must be submitted using the Authority's mandated system.

56B.8.2 Access to the Authority's mandated system is via a user account allocated by UK NCB (subject to conditions).

56B.8.3 The Contractor shall supply the following additional information to the Codification Authority to enable automated item introduction on the Authority's relevant base inventory system. Where this information is not known, the Authority's Representative shall be contacted for guidance:

<b>Data Field</b>	<b>CRISP</b>	<b>SS3</b>	<b>SCCS</b>	<b>ASTRID</b>
Domestic Management Code – DMC		Y		
Inventory Management Code – IMC	Y			
Supply Management Branch – SMBi			Y	
Requirement for Provenance and Traceability (items fitted to aircraft requiring Certificate of Conformity)	Y	Y	Y	Y
Used on next higher assembly – End item information	Y	Y	Y	Y
Unit of Issue Code	Y	Y	Y	Y
Hazardous Indicator	Y	Y	Y	Y
Materiel Accounting Classification Code	Y	Y	Y	Y
Shelf Life Code	Y	Y	Y	
Estimated Price	Y			
Procurement Reference Code	Y	Y		
Special To Contents Container Indicator	Y		Y	
Periodic Maintenance Interval Code	Y			
Pre-Issue Inspection Code	Y			
Quality Assurance Documentation Code	Y			
Inventory Classification Code		Y		
Capital Indicator Code		Y		

## **57 Supply of Hazard Data**

57.1 The Contractor shall provide to the Authority:

57.1.1 for each hazardous material or substance supplied a “**Safety Data Sheet**” (“**SDS**”) in accordance with the Classification, Labelling and Packaging (CLP) Regulation 1272/2008 (“**CLP**”); or

57.1.2 for each hazardous Article, safety information as required by the Health and Safety at Work etc. Act 1974 at the time of supply.

Nothing in this Clause 57 (*Supply of Hazard Data*) shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor and/or the Contractor's obligations under **Error! Reference source not found.** (*Statement of Requirements*).

57.2 If the item of supply contains or is a substance falling within the scope of the Registration, Evaluation, Authorisation and Restriction of Chemicals Regulations (EC) No 1907/2006 ("**REACH**"):

57.2.1 the Contractor shall provide to the Authority an SDS for the substance in accordance with REACH. If the Contractor becomes aware of new information which may affect the risk management measures or new information on the hazard, the Contractor shall update the SDS and forward it to the Authority and to the address listed in Clause 57.8 (*Supply of Hazard Data*); and

57.2.2 the Authority, if it becomes aware of new information regarding the hazardous properties of the substance, or any other information that might call into question the appropriateness of the risk management measures identified in the SDS supplied, shall report this information in writing to the Contractor.

57.3 If the Contractor is required, under, or in connection with this Contract, to supply Articles or components of Articles that, in the course of their use, maintenance, disposal, or in the event of an accident, may release hazardous materials or substances, the Contractor shall provide to the Authority a list of those hazardous materials or substances, and, for each hazardous material or substance listed, provide an SDS.

57.4 The Contractor shall provide to the Authority a completed DEFFORM 68.

57.5 If the Articles, materials or substances are ordnance, munitions or explosives, in addition to the requirements of CLP and REACH the Contractor shall comply with the hazard reporting requirements of Def Stan 07-085 (Design Requirement for Weapons and Associated Systems).

57.6 If the Articles, materials or substances are or contain or embody a radioactive substance as defined in the Ionising Radiation Regulations SI 1999/3232, the Contractor shall additionally provide details of:

57.6.1 activity; and

57.6.2 the substance and form (including any isotope).

57.7 If the Articles, materials or substances have magnetic properties, the Contractor shall additionally provide details of the magnetic flux density at a defined distance, for the condition in which it is packed.

57.8 Any SDS to be provided in accordance with this Clause 57 (*Supply of Hazard Data*), including any related information to be supplied in compliance with the Contractor's statutory duties under Clauses 57.1.1 and 57.2.1 (*Supply of Hazard Data*), any information arising from the provisions of Clauses 57.5, 57.6 and 57.7 (*Supply of Hazard Data*) and the completed DEFFORM 68, shall be sent directly to the Authority's Representative as soon as practicable, and no later than one (1) month prior to the delivery of the relevant Articles, materials or substances. In addition, so that the safety information can reach users without delay, the Contractor shall send a copy preferably

as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hard copy is available, to the addresses below:

57.8.1 Hard copies to be sent to:

Hazardous Stores Information System (HSIS)  
Department of Safety & Environment, Quality and Technology (D S & EQT)  
Spruce 2C, #1260  
MOD Abbey Wood (South)  
Bristol BS34 8JH

57.8.2 Emails to be sent to:

DESTECH-QSEPEnv-HSISmulti@mod.gov.uk

57.9 Failure by the Contractor to comply with the requirements of this Clause 57 (*Supply of Hazard Data*) shall be grounds for rejecting the affected Articles. Any withholding of information concerning hazardous Articles, materials or substances shall be regarded as a breach of this Contract for which the Authority reserves the right to require the Contractor to rectify the breach immediately at no additional cost to the Authority or to terminate this Contract pursuant to Clause 70 (*Termination for Contractor Default*) without compensation to the Contractor.

57.10 Where delivery is made to the Defence Fulfilment Centre (“**DFC**”) and / or other Team Leidos location / building, the Contractor must comply with the Logistic Commodities and Services Transformation (“**LCST**”) Supplier Manual.

## **57A Use of Asbestos**

### **Definitions**

57A.1 For the purposes of this Clause 57A, “**Asbestos**” shall have the same meaning as “asbestos” defined in Regulation 2 of the Control of Asbestos Regulations 2012 or “**COAR Regulations**”.

### **Prohibition of Asbestos**

57A.2 Subject to Clauses 57A.4 and 57A.5 below, no Asbestos of any type shall be incorporated into any Articles or other material to be supplied under this Contract.

### **Notification**

57A.3 The Contractor shall notify the Authority in writing as soon as it becomes aware that Asbestos may be incorporated in Articles or other materials to be supplied or processed during performance of this Contract.

### **Exemption**

57A.4 The Authority may issue a Defence Exemption Certificate under the REACH Enforcement Regulations 2008 (the “**Enforcement Regulations**”) exempting the Contractor from parts of the Enforcement Regulations. The Contractor may incorporate Asbestos into Articles and/or material supplied, or use or process it in the performance of the Services under this Contract in accordance with the conditions set out in the Defence Exemption Certificate.

- 57A.5 If at any stage during the Contract Period, an alternative substance becomes available, the Contractor shall bring this to the attention of the Authority immediately, by notice in writing. The Authority shall then determine, in consultation with the Contractor and the Health and Safety Executive where appropriate, whether the substance would be suitable for incorporation into any Articles or material which have yet to be supplied under this Contract. The Authority may require the Contractor to suspend any further production of such Articles or material or delivery of the relevant Services incorporating Asbestos, pending such determination, thereby relieving the Contractor (for the time being) of any obligations to provide such Articles, material or such Services. In the event that the Authority determines that the alternative substance would be suitable for incorporation into such Articles or material or in the performance of such Services in lieu of Asbestos, the Authority may vary its requirements in the light of any such determination.
- 57A.6 If, at any stage during the Contract Period, the Authority issues a further certificate which varies or revokes any Defence Exemption Certificate granted in accordance with the Enforcement Regulations, the effect of which is that any further supply of the Articles or delivery of such Services under the Contract would be prohibited by the Enforcement Regulations, the Contractor shall, on becoming aware of the further certificate, immediately refrain from incorporating Asbestos into any such Articles or performing such Service and shall provide the Authority with written confirmation of this within forty-eight (48) hours. The Authority reserves the right to vary its requirements in the light of any such decision.
- 57A.7 The Contractor shall obtain from the Health and Safety Executive or the Authority, as appropriate, an exemption from the requirements of COAR Regulations 29 or 30 where an exemption is necessary for performance of this Contract.

## **58 Delivery, Acceptance, Rejection and transfer of Title and Risk** <sup>20</sup>

### **Delivery**

- 58.1 Unless otherwise agreed by the Parties, delivery of Articles shall occur upon the Articles being handed over by the Contractor to the Authority or to the Authority's Representative at the then relevant address in the United Kingdom that the Authority has notified the Contractor (such address as may change from time to time following notification (by any means) by the Authority to the Contractor).
- 58.2 Unless otherwise agreed by the Parties and subject to Clauses 58.4 to 58.17 (inclusive), the title and risk in the Articles shall pass from the Contractor to the Authority upon delivery at the address in Clause 58.1 (*Delivery*) provided the Contractor has complied with its obligations in this Clause 58 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*).
- 58.3 The Contractor shall ensure that the Articles are packaged in accordance with the terms of this Contract (including Clause 56 (*Packaging (for Articles other than Munitions)*)).
- 58.4 Where:
- 58.4.1 in respect of an Article that is delivered in accordance with Schedule 4 (*Acceptance Procedure*) (an "**Article**"), after delivery:

---

<sup>20</sup> This Clause 58 will be aligned with the successful bidder's solution.

- (i) the relevant Contractor Deliverable does not achieve Acceptance and the reason for such Acceptance not being achieved arises (whether in whole or in part) out of or in connection with the delivery of such Article (including where the Authority considers such to be defective),

then, (and whether or not such Article is in the possession of the Contractor to assess and/or repair where the Authority considers such Article is defective and requires repair and/or other remedial work):

- (A) the Article shall, for the purposes of this Contract, be considered as not having been delivered under this Contract and Clause 58.18 (*Risk*), the title, property and risk in that Article shall return to the Contractor.

## Rejection

- 58.5 Without prejudice to the Authority's rights under Schedule 4 (*Acceptance Procedure*) in respect of an Article, prior to acceptance by the Authority in accordance with Clauses 58.12 to 58.16 (inclusive) (*Acceptance*), the Authority may reject any Article (whether or not after inspection) which does not conform with the requirements of this Contract.
- 58.6 Without prejudice to the Authority's rights under Schedule 4 (*Acceptance Procedure*) in respect of an Article, the Authority may (whether or not after inspection) reject the whole of any consignment of the Articles if:
  - 58.6.1 a reasonable proportion or percentage of such Articles in that consignment does not conform with the requirements of this Contract; or
  - 58.6.2 samples, whether of Articles or of the material in the Articles, taken randomly from that consignment do not conform with the requirements of this Contract; and
  - 58.6.3 in either such case, where not more than ten (10) Working Days has elapsed since the date of delivery in the manner required in Clauses 58.1 to 58.3 (inclusive) (*Delivery*), subject always to Clause 58.14 (*Acceptance*).
- 58.7 Without prejudice to the Authority's rights under Schedule 4 (*Acceptance Procedure*) in respect of an Article, for the purposes of this Clause 58 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*), an item of Issued Property in connection with which the Contractor is required to perform obligations in accordance with this Contract shall, following completion of the relevant part of the Contractor Deliverables, be subject to rejection under Clause 58.6 (*Rejection*) as if it was an Article, but without prejudice to the Authority's proprietary and other rights in that item of Issued Property. The provisions of Clauses 58.8 to 58.11 (inclusive) (*Rejection*) shall similarly apply to such items.
- 58.8 Subject to Clause 58.11 (*Rejection*), the Contractor shall at its own expense:
  - 58.8.1 in the case of an Article (and without prejudice to the Authority's other rights under Schedule 4 (*Acceptance Procedure*), at the request of the Authority (and in the manner and at the time reasonably requested by the Authority), remove any Article in relation to which the reason for Acceptance (as applicable) referred to in Clause 58.4.1 (*Delivery*) not being achieved arises (whether in whole or in part) out of or in connection with the delivery of such

Article (including where the Authority considers the Article to be defective); and/or

- 58.8.2 in the case of an Article and within fourteen (14) Working Days of being notified of the rejection, or within any other applicable period specified in this Contract, remove any such Article and/or consignment which the Authority has rejected.
- 58.9 If the Contractor fails to remove the relevant Article and/or consignment in accordance with Clause 58.8 (*Rejection*) or the Authority considers such Article and/or consignment is defective and is in need of repair, the Authority may return it to the Contractor at the Contractor's risk and expense.
- 58.10 The Contractor shall at its own expense and within the contractual period for delivery, or within such further reasonable period as the Authority may allow, supply and deliver Articles that conform with the requirements of this Contract.
- 58.11 Without prejudice to the provisions of Schedule 4 (*Acceptance Procedure*) in respect of an Article, the Contractor may object in writing to a notification of rejection of an Article] by the Authority within the period specified at Clause 58.8.2(*Rejection*). If the objection is not resolved within a reasonable time, it shall be treated as a Dispute and the provisions of the Dispute Resolution Procedure shall apply. Unless otherwise agreed the Contractor shall not remove the Articles which are the subject of the rejection notice unless and until the objection or Dispute has been resolved in favour of the Authority.

#### **Acceptance**

- 58.12 Subject to Clause 58.13 (*Acceptance*) and without prejudice to the provisions of Schedule 4 (*Acceptance Procedure*) in respect of the Acceptance of an Assured Article, acceptance of an Article and/or consignment occurs at the time and in accordance with the procedure specified in this Contract on the date that is ten (10) Working Days from delivery in accordance with Clause 58.1 (*Delivery*) unless the Authority has rejected such Article in accordance with Clause 58.6 (*Rejection*).
- 58.13 The Authority shall not (and subject always to the provisions of Schedule 4 (*Acceptance Procedure*)) in respect of the Acceptance of an Article have accepted an Article:
- 58.13.1 merely because the Authority asks for, or agrees to, its repair by or under an arrangement with the Contractor; or
- 58.13.2 unless otherwise specified in this Contract, merely because the Article has been delivered to a Third Party.
- 58.14 The Authority shall not (and subject always to the provisions of Schedule 4 (*Acceptance Procedure*)) in respect of the acceptance of an Article be deemed to have accepted an Article unless it has had a reasonable opportunity to examine it after delivery for the purpose of ascertaining whether it is in conformity with this Contract.
- 58.15 Acceptance of any Article and/or consignment does not limit or in any way affect the Contractor's obligations to remedy any defects which are discovered in any Articles after the date such Article was accepted.



- 58.16 Where software is to be supplied as a requirement of this Contract it will be subject to the provisions of this Clause 58 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*) as if it were an Article.

### **Risk**

- 58.17 For the avoidance of doubt, title and risk in an Article will, subject to Clause 58.18, remain with the Contractor until such time as the Article has been delivered to the Authority in accordance with Clause 58.2 (*Delivery*).

- 58.18 Where following such delivery referred to in Clause 58.17:

- 58.18.1 the relevant Article is identified as the reason (whether in whole or in part) for Acceptance (as applicable) referred to in Clause 58.4.1 (*Delivery*) not being achieved; and/or
- 58.18.2 the relevant Article is rejected by the Authority in accordance with this Clause 58 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*); and/or
- 58.18.3 the relevant article is in the possession of the Contractor to assess and/or repair such Article where the Authority considers such item is defective and requires repair (as referred to in Clauses 58.4.1 and Clause 58 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*)),

then title and risk will, on the relevant date the circumstances described in Clauses 58.18.1, 58.18.2 or 58.18.3 occurs, be allocated so that title in the Article will remain with the Authority and risk in the Article will be with the Contractor (until such time as the relevant Article is again delivered to the Authority in accordance with Clause 58.2 (*Delivery*)).

## **59 Issued Property**

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

### **Receipt**

- 59.3 Subject to Clauses 59.3 and 59.7 (*Receipt*), within fourteen (14) Working Days of receipt of Issued Property, or such other longer period as may be specified in this Contract, the Contractor shall:
- 59.3.1 check the Issued Property to verify that it corresponds with the Issued Property specified in this Contract;
  - 59.3.2 conduct a reasonable visual inspection; and

- 59.3.3 conduct any additional inspection and testing as may be necessary and practicable to check that the Issued Property is not defective or deficient for the purpose for which it has been provided,
- and notify the Authority of any defects, deficiencies or discrepancies discovered.
- 59.4 Where Issued Property is packaged it shall not be unpacked earlier than is necessary. The period identified at Clause 59.3 (*Receipt*) shall count from the date on which packages are opened.
- 59.5 The Authority shall within a reasonable time after receipt of any notice under Clause 59.3 (*Receipt*) replace, re-issue or authorise repair of Issued Property agreed to be defective or deficient and the Contractor shall (having first taken all reasonable measures to mitigate the consequences of any such delay) consider whether such matter gives rise to a GFA Failure and, if so, shall consider initiating the procedures in Clause 30 (*Authority Performance Failures*) and shall also issue written instructions for the return or disposal of the defective or deficient Issued Property.
- 59.6 In the event that the Authority fails to provide, replace or authorise repair of defective or deficient Issued Property within a reasonable time of receipt of a notice in accordance with Clause 59.3 (*Receipt*), the Contractor shall (having first taken all reasonable measures to mitigate the consequences of any such delay) consider whether such matter gives rise to a GFA Failure and, if so, shall consider initiating the procedures in Clause 30 (*Authority Performance Failures*) and if the Parties agree, fair and reasonable revisions of the Contract Price, delivery schedule and/or any other matter shall be considered and, if agreed, an Authority Change, to incorporate the agreed changes to this Contract, shall be initiated (such changes having due regard to any relief that may have been granted to the Contractor in accordance with Clause 30 (*Authority Performance Failures*)).
- 59.7 Clauses 59.3 to 59.7 (inclusive) (*Receipt*) do not apply in the following circumstances:
- 59.7.1 where Issued Property is issued for the purpose of repair, overhaul, conversion or other work to be performed on the Issued Property, inspection of such property shall be as specified in this Contract;
  - 59.7.2 where the Contractor can show that the Issued Property cannot be fully tested until it has been integrated with other items, inspection of such property shall be as specified in this Contract;
  - 59.7.3 where Special Jigs, Tools Etc. become Issued Property under Clause 63 (*Special Jigs, Tooling and Test Equipment*);
  - 59.7.4 where Issued Property is in the care, custody or control of the Contractor as at the Effective Date; and/or
  - 59.7.5 subject to Clause 30.10.1 (*Discretionary GFA*) (in so far as such Clause 30.10.1 (*Discretionary GFA*) refers to Clause 59.4 (*Receipt*)), where such Issued Property is Discretionary GFA.

### **Custody**

- 59.8 Subject to Clause 59.11 (*Custody*), the Contractor shall be responsible for the safe custody and due return of Issued Property, whether or not incorporated into any Articles, and shall be responsible for all Loss or damage thereto, until re-delivered in

accordance with the Authority's instructions (as may be amended from time to time) or until the expiry of the period specified in Clause 60 (*Accounting and Return of Issued Property*).

59.9 The Contractor shall be responsible for such calibration and maintenance of the Issued Property as may be required for the purpose of the Contractor delivering the Contractor Deliverables and performing its other obligations in accordance with this Contract.

59.10 If requested, the Authority, within a reasonable time, and where practicable before delivery of the Issued Property, shall notify the Contractor of the value of the Issued Property, provided that the provisions of this Clause 59.10 (*Custody*) shall not apply to any Issued Property in the care, custody or control of the Contractor as at the Effective Date.

59.11 The Contractor shall not be liable in respect of:

59.11.1 defects or deficiencies notified to the Authority in accordance with Clause 59.3 (*Issued Property*) or latent defects which the Contractor can show could not reasonably have been discovered by means of the activities described at Clause 59.3 (*Issued Property*);

59.11.2 fair wear and tear in Issued Property resulting from its normal and proper use in the execution of this Contract (except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance by the Contractor);

59.11.3 Issued Property rendered unserviceable as a direct result of ordinary performance of this Contract; and

59.11.4 any Loss or damage to Issued Property arising from:

- (i) aircraft or other aerial devices or objects dropped from them, including pressure waves caused by aircraft or such devices whether travelling at sonic or supersonic speeds;
- (ii) ionising radiation or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel;
- (iii) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof; or
- (iv) riot, civil commotion, civil war, rebellion, revolution, insurrection, military or usurped power or acts of the Queen's enemies.

#### **Return of Issued Property**

59.12 Not Used

59.13 Not Used

59.14 The Contractor shall provide notification of Issued Property which is in its possession, but which is no longer required by the Contractor for the provision of the Contractor Deliverables, to the Authority's Representative via the Monthly Performance Report and in accordance with Schedule 13 (*Governance and Contract Management*). The Authority's Representative shall, within two (2) Contract Months from receipt of the

Monthly Performance Report notify the Contractor of a place or places within the United Kingdom where the Contractor should deliver such Issued Property. Where the Authority has notified such delivery instructions, the Contractor shall comply with such instructions as soon as is reasonably practicable, ensuring that appropriate packaging (having due regard to the nature of the relevant Issued Property) is utilised. Where there is no such notification, the Contractor shall request (in writing) the Authority for delivery instructions and shall repeat such request at least once weekly thereafter until such delivery instructions are notified to the Contractor by the Authority. Following receipt of such delivery instructions the Contractor shall deliver the relevant Issued Property to the Authority (in each case ensuring appropriate packaging (having due regard to the nature of the relevant Issued Property) is utilised).

- 59.15 Without prejudice to Clause 59.14 (*Accounting and Return of Issued Property*), on completion or termination of this Contract, the Contractor shall forward a list of Issued Property still held to the Authority's Representative. Return or disposal of such Issued Property will be as specified in this Contract, or as instructed by the Authority on completion or termination of this Contract. If no disposal instructions are specified in this Contract the Authority shall provide such instructions within two (2) months of the Contractor's written request to do so.

## **60 Accounting for property of the Authority**

- 60.1 The Contractor shall:

- 60.1.1 open and maintain a Public Store Account (PSA), as defined in Def Stan 05-099, which shall include a complete list of all property of the Authority, as defined in Clause 60.2 (*Accounting for property of the Authority*), and record for that property all transactions or other accounting information specified in Annex C to Schedule 8 (*Government Furnished Assets*);
- 60.1.2 supply to the Authority quarterly reports on the current PSA holdings. At least one (1) report in any twelve (12) month accounting period or part thereof shall be a reconciled report. This shall be submitted with the Annual Certificate Form AAC 32 as required in Def Stan 05-099. The other three (3) reports submitted in the period may be un-reconciled advisory reports. The submission by the Contractor and receipt by the Authority of these reports shall not prejudice any rights or obligations of the Authority or the Contractor under this Contract;
- 60.1.3 ensure that the PSA is available for inspection by the Authority at any reasonable time;
- 60.1.4 on being given two (2) months' notice permit, and co-operate with, the Authority to conduct audits of the PSA in a manner to be determined by the Authority provided that where the Authority is not satisfied of the proper use of property of the Authority, an audit may be conducted without notice;
- 60.1.5 retain the PSA for a period of three (3) years after disposal of the last item of the property of the Authority or for any other period as may be specified in this Contract;
- 60.1.6 if the Authority agrees that a Sub-Contractor at whatever level of sub-contracting shall have responsibility in the Sub-Contractor's PSA for property of the Authority issued in aid of this Contract, the Contractor shall include in any Sub-Contract with those Sub-Contractors the provisions

corresponding to those set out in this Clause 60 (*Accounting for property of the Authority*) that apply to property of the Authority issued in aid of the Sub-Contract, in particular Clauses 60.1, 60.2, 60.5 and 60.8 (*Accounting for property of the Authority*); and

- 60.1.7 manage the GFA component of the PSA in accordance with the provisions of Def Stan 05-099 and implement any new edition of or amendment to Def Stan 05-099 subject to Clause 76 (*Change*) within three (3) months of the publication date of the new edition. These amendments shall not have retrospective effect.
- 60.2 For the purposes of this Clause 60 (*Accounting for property of the Authority*), “property of the Authority” means GFA and fixed assets, including property issued under Clause 30.10 (*Discretionary GFA*), Clause 59 (*Issued Property*) and property of the Authority issued to the Contractor under any other authorising document.
- 60.3 Once title in Special Jigs, Tools Etc. has passed to the Authority in accordance with Clause 63.4 (Special Jigs, Tooling and Test Equipment: Passing of Property), the Contractor shall record that equipment in the PSA in accordance with Def Stan 05-099
- 60.4 For the avoidance of doubt, it is a condition of this Contract that this Clause 60 (*Accounting for property of the Authority*) shall apply to all property issued to the Contractor from the Effective Date, whether in aid of this Contract, any other contract or other agreement with the Authority. Property of the Authority issued prior to the Effective Date may be subject to separate contractual arrangements.
- 60.5 The obligations of the Contractor arising under this Clause 60 (*Accounting for property of the Authority*) in respect of property of the Authority issued in aid of this Contract shall survive completion of this Contract and shall not be completed until all such obligations are fulfilled including the provisions of Clause 60.1.5 (*Accounting for property of the Authority*).
- 60.6 The obligations of the Contractor arising under this Clause 60 (*Accounting for property of the Authority*) in respect of property of the Authority unconnected with this Contract shall survive completion of this Contract and shall not be completed until all those obligations are fulfilled including the provisions of Clause 60.1.5 (*Accounting for property of the Authority*) unless and until a subsequent contract containing a clauses which is materially the same as Clause 60 is placed with the Contractor at which time obligations in respect of any remaining property of the Authority unconnected with this Contract shall be subsumed in the subsequent contract.
- 60.7 If, after completion of this Contract, no subsequent contract is placed containing this Clause 60 within the period detailed at Clause 60.1.5 (*Accounting for property of the Authority*) then the obligations of the Contractor arising under this Clause 60 (*Accounting for property of the Authority*) in respect of property of the Authority unconnected with this Contract shall cease on expiry of the period detailed in Clause 60.1.5 (*Accounting for property of the Authority*).
- 60.8 The Authority reserves the right to amend Annex C to Schedule 8 (Government Furnished Assets) without further consultation where the amendments arise from the Authority’s proper and reasonable accounting requirements. For the purposes of this Clause 60 (*Accounting for property of the Authority*), Annex C to Schedule 8 (*Government Furnished Assets*) shall be regarded as a specification which is subject to the provisions of Clause 76 (*Change*). If the Authority exercises this right:

- 60.8.1 the Contractor shall implement the amendment to Annex C to Schedule 8 (*Government Furnished Assets*) at the commencement of the Authority's next accounting year provided that a notice of six (6) months or such other period as may expressly be agreed between the Authority and the Contractor is given to the Contractor. These amendments shall not have retrospective effect; and
- 60.8.2 the Contractor shall inform the Authority as soon as practicable, but in any event within three (3) months of notice having been given, if the Contractor cannot comply with the amendment to Annex C to Schedule 8 (*Government Furnished Assets*)

## **61 Marking of Articles**

- 61.1 Each Article shall be marked in accordance with the procedure laid out in this Contract. Where no procedure is stated, the Contractor shall mark each Article clearly and indelibly in accordance with the requirements of the relevant Def Stan 05-132 as specified in this Contract or specification. In the absence of such requirements, the Articles shall be marked with the Authority stock reference, NATO Stock Number ("**NSN**") or alternative reference number shown in this Contract. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Articles.
- 61.2 The marking shall include any serial numbers allocated to the Article.
- 61.3 Where because of its size or nature it is not possible to mark an Article with the required particulars, the required information should be included on the package or carton in which the Article is packed in accordance with Clause 56 (*Packaging (for Articles other than Munitions)*).

## **62 Transport**

- 62.1 Where this Contract states that the Authority is responsible for transport of items of Issued Property, the Authority shall only be responsible to transport such Issued Property to the Contractor's premises at [•]<sup>21</sup>, unless an alternative destination is identified as the delivery point for any specific item of Issued Property in the tables at Annex A to Schedule 8 (*Government Furnished Assets*).
- 62.2 The Contractor shall be responsible for transporting the Articles supported under this Contract and returning the items of Issued Property (as the case may be) from the point of origin to the relevant locations within the United Kingdom as notified by the Authority to the Contractor from time to time. The Contractor shall also be responsible for all loading and unloading of the Articles and the items of Issued Property, including, where necessary, the provision of special handling equipment.

## **63 Special Jigs, Tooling and Test Equipment**

- 63.1 The Contractor shall provide all jigs, tools, patterns, moulds, dies, manufacturing gauges and test equipment, together with associated fixtures, fittings and software necessary for the manufacture of the Articles or for the provision of the Contractor Deliverables, unless supplied by the Authority in accordance with Schedule 8 (*Government Furnished Assets*).

---

<sup>21</sup> Bidders to confirm address of premises for the purpose of this Clause.

## **Pricing**

- 63.2 The Contract Price includes an appropriate amount to enable the Contractor to recover his expenditure on Special Jigs, Tools Etc., including the cost of maintenance and calibration under Clause 63.8 (*Accounting and Control*).
- 63.3 The Contractor shall not claim assistance from other Government funds (e.g. Regional Development Grants or selective financial assistance) or other third parties towards the costs of any Special Jigs, Tools Etc.

## **Passing of property**

- 63.4 Except where otherwise specified in this Contract, the Special Jigs, Tools Etc. shall become the property of the Authority:
- 63.4.1 where the Special Jigs, Tools Etc. are delivered to the Authority before being utilised by the Contractor for any purpose, in accordance with Clause 58 (*Delivery, Acceptance, Rejection and Transfer of Title and Risk*) as if they were Articles; or
  - 63.4.2 where the Authority authorises the Contractor to utilise the Special Jigs, Tools Etc. for the production of articles for a Third Party in advance of their being used for the production of Articles under this Contract, upon delivery of the first article so produced for the Third Party; or
  - 63.4.3 where the Contractor is to utilise the Special Jigs, Tools Etc. in respect of the Contractor Deliverables before delivery of such Special Jigs, Tools Etc. to the Authority, the earlier to occur of when the Special Jigs, Tools Etc. are delivered to the Contractor or title to such Special Jigs, Tools Etc. is secured by the Contractor or any Contractor Related Party through any contractual arrangement to which the Contractor or any Contractor Related Party is a party; and
  - 63.4.4 in all other cases upon acceptance of the first Article delivered under this Contract or upon expiry or termination of this Contract whichever is the earlier.
- 63.5 Where property in the Special Jigs, Tools Etc. passes to the Authority while they are still required to provide the Contractor Deliverables, they shall be treated thereafter as Issued Property for the purposes of Clauses 59 (*Issued Property*) and 60 (*Accounting for property of the Authority*).

## **Modifications**

- 63.6 Notwithstanding the passing of property to the Authority pursuant to Clause 63.4 (*Passing of Property*), the Contractor shall be free to modify the Special Jigs, Tools Etc. as it may deem necessary in order to produce the Articles or to provide the Contractor Deliverables, and the Authority's approval of such modifications shall not be required.

## **Accounting and control**

- 63.7 The Contractor shall account for and control the Special Jigs, Tools Etc. in accordance with the provisions of Clause 63.5 (*Passing of Property*). Pending the transfer to the Public Store Account, the Contractor shall:

- 63.7.1 maintain a list of Special Jigs, Tools Etc. procured or manufactured by the Contractor;
  - 63.7.2 make the list available to the Authority for inspection by the Authority;
  - 63.7.3 maintain the list for three (3) years after disposal of the Special Jigs, Tools Etc., where not transferred to the Public Store Account in accordance with Clause 59 (*Issued Property*);
  - 63.7.4 forward the list to the Authority's Representative following first Article acceptance and prior to transfer of Special Jigs, Tools Etc. to the Public Store Account; and
  - 63.7.5 remove from the list any Special Jigs, Tools Etc. transferred to the Public Store Account.
- 63.8 The Contractor shall be responsible for the safe custody, maintenance and calibration necessary to retain the relevant Special Jigs, Tools Etc. on any Contractor premises until delivered to the Authority in accordance with Clause 63.9.

#### **Availability**

- 63.9 Once property in the Special Jigs, Tools Etc. has passed to the Authority in accordance with Clause 63.4 (*Passing of property*), the Contractor shall, if required, deliver the Special Jigs, Tools Etc. to such individual, company, factory or Government Establishment as may be named by the Authority. The Contractor shall not be entitled to any further payment for delivering the Special Jigs, Tools Etc. other than for the recovery of packing and carriage costs reasonably incurred. This Clause 63.9 (*Availability*) shall not, however, entitle the Authority to require the Contractor to dispose of the Special Jigs, Tools Etc. to the prejudice of this Contract or other contracts held by the Contractor with the Authority or with another customer, provided the Authority's approval for such use has been given in accordance with Clause 63.11 (*Use for other than the purposes of the Authority*). Where the Contractor holds no contracts for such articles, but having received the Authority's approval in accordance with Clause 63.11 (*Use for other than the purposes of the Authority*), has made a firm written offer to a Third Party to supply such articles, the Authority shall not be entitled to dispose of the Special Jigs, Tools Etc. until such time as the Contractor's offer has expired and no commitment to supply those articles or perform those services remains.

#### **Delivery**

- 63.10 The Special Jigs, Tools Etc. shall be delivered to the Authority by the Contractor in accordance with Clause 59.12 (*Accounting and return of Issued Property*) or as notified to the Contractor from time to time (in each case at no additional cost to the Authority).

#### **Use for other than the purposes of the Authority**

- 63.11 The Contractor shall not use the Special Jigs, Tools Etc. for any other purposes other than those of the Authority without first obtaining the written approval of the Authority and in accordance with the terms, including payment, for such other use as stated in a commercial exploitation, or other agreement between the Contractor and the Authority. In Sub-Contracts, which include the provisions of this Clause 63 (*Special Jigs, Tooling and Test Equipment*), the Contractor shall require that such written approval be obtained direct from the Authority.



## **64 Montreal Protocol Substances**

64.1 The Contractor shall provide annually to the Authority a list (or a nil return where appropriate) setting out which of the substances listed in Regulation (EC) No. 1005/2009 (as amended by Regulation (EC) No. 744/2010 and as subsequently amended from time to time) have been used in the Contractor Deliverables and/or any Packaging specifying:

64.1.1 the quantity of such substances; and

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

## **65 Diversion Orders**

65.1 For the purposes of this condition, Diversion Orders are defined as requests for the urgent delivery of specified quantities of Contractor Deliverables to consignees other than that stated in the Contract.

65.2 The Authority shall notify the Contractor at the earliest practicable opportunity it becomes aware that a Contractor Deliverable is likely to be subject to a Diversion Order.

65.3 The Authority may issue a Diversion Order for the urgent delivery of the Contractor Deliverables identified in it. These Contractor Deliverables are to be delivered by the Contractor using the quickest means available as agreed by the Authority.

65.4 The Authority reserves the right to cancel the Diversion Order

65.5 If the terms of the Diversion Order are unclear, the Contractor shall immediately contact the Authorities Representative who issued it for clarification and/or further instruction.

65.6 If the Diversion Order increases the quantity of Contractor Deliverables beyond the scope of the Contract, it is to be returned immediately to the Authority's Commercial Officer with an appropriate explanation.

65.7 The Contractor shall be entitled to reasonable additional delivery and packaging costs incurred in complying with the Diversion Order or cancellation. Claims are to be submitted by the Contractor to the Authority's Commercial Officer together with applicable receipts and agreed as an amendment to the Contract in accordance with Clause 75 (*Contract Change*). The Contractor shall comply with the requirements of the Diversion Order upon receipt of the Diversion Order.

## **66 Counterfeit Material**

66.1 For the purposes of this Condition, "Counterfeit Materiel" shall mean any Article or any part thereof whose origin, age, composition, configuration, certification status or other characteristic (including whether or not such Article or part has been used previously) has been falsely represented by:

66.1.1 misleading marking of the materiel, labelling or packaging

66.1.2 misleading documentation; or

- 66.1.3 any other means, including failing to disclose information;
- 66.2 except where it has been demonstrated that the false representation was not the result of dishonesty by the Contractor or any party within the Contractor's supply chain
- 66.3 Where the Authority suspects that any Article or consignment of Articles contains Counterfeit Materiel, it shall
  - 66.3.1 notify the Contractor of its suspicion and reasons therefor
  - 66.3.2 where reasonably possible, and if requested by the Contractor within ten ( 10 Working Days of such notification, (at the Contractor's own risk and expense and subject to any reasonable controls specified by the Authority) afford the Contractor the facility to (i) inspect the Article or consignment and/or (ii) obtain a sample thereof for validation or testing purposes;
  - 66.3.3 give the Contractor a further twenty (20) Working Days or such other reasonable period agreed by the Authority, from the date of the inspection at 2.b(i) or the provision of a sample at 2.b(ii), to comment on whether the Article or consignment meets the definition of Counterfeit Materiel; and
  - 66.3.4 determine, on the balance of probabilities and strictly on the evidence available to it at the time, whether the Article or consignment meets the definition of Counterfeit Materiel.
  - 66.3.5 Where the Authority has determined that the Article, part or consignment of Articles contain Counterfeit Materiel then it may reject the Article, part or consignment under Clause 58.5.

## **67 Quality Assurance – Requirement for a Certificate of Conformity**

- 67.1 The Contractor shall provide a Certificate of Conformity (CofC) in accordance with the Statement of Requirement and any applicable Quality Plan. One copy of the CofC shall be sent to the Authority Representative upon delivery and one copy shall be provided with the Articles or to the recipient of the Service.
  - 67.1.1 The CofC shall be considered by the Contractor as a Record and Clause 39 shall apply.
- 67.2 The information provided on the CofC shall include:
  - 67.2.1 Contractor name and address
  - 67.2.2 Contractor unique CofC reference number
  - 67.2.3 Contract number and where applicable Contract Amendment number;
  - 67.2.4 Details of any approved concessions;
  - 67.2.5 Acquirer name and organisation;
  - 67.2.6 Delivery address;
  - 67.2.7 Contract Item Number from the Schedule of Requirements;

- 67.2.8 Description of Article or Service including part number, Specification and configuration status;
  - 67.2.9 Identification marks, batch and serial number(s) in accordance with the Specification;
  - 67.2.10 Quantities;
  - 67.2.11 A signed and dated statement by the Contractor that Articles or Services provided comply with the requirements of the Contract, and approved concessions.
  - 67.2.12 Exceptions or additions to the above are to be documented
- 67.3 Where the Statement of Requirement and any applicable Quality Plan requires demonstration of traceability and design provenance through the supply chain, the Contractor shall include in any relevant sub-contract the requirement for the information called for at Clause 3.1.1(v). The Contractor shall ensure that this information is available to the Authority through the supply chain, upon request in accordance with Clause 38.

## **PART 12 - CONTRACT SPECIFIC PROVISIONS**

### **68 Procedure for Initial Spares for New Equipment**

- 68.1 This procedure requires the Contractor to draw up, at the earliest possible moment, and in accordance with such technical information and assistance as may be provided by the Authority, a list of spare parts which he considers will be sufficient in type and quantity to maintain the operational efficiency in accordance with Annex A to Schedule 2 (*Systems Requirement Document*) of the new equipment during an initial period of use of two (2) years. Lists of spares required under Part A (New Equipments) should be submitted on DEFFORM82A as detailed in Schedule 2 (Statement of Requirement). The Contractor shall assess which parts are likely to need replacement during the initial period of use in accordance with Clause 68.3.

#### **Provision of Initial Spares Concurrently with the Main Equipment**

- 68.2 The Contractor shall provide an Initial Spares Package as outlined in Schedule 2 (Statement of Requirement) that has a sufficient quantity of spare parts to ensure adequate spares cover for an initial period of use of two (2) years.

#### **Criteria for Determining Spares Required**

- 68.3 Spares recommended by the Contractor shall, unless the Contract stipulates otherwise, comply with the following criteria:
- 68.3.1 They shall consist of components, piece-parts, modules, sub-assemblies and assemblies which are to the same design standard as those fitted in the production equipment.
  - 68.3.2 Common items such as standard nuts and bolts, washers etc., shall be excluded unless they are likely to need frequent replacement, when they shall be listed separately (see sub-sub-Clause 68.3.7 (iii) below)

- 68.3.3 Items supplied to the Contractor on Embodiment Loan are to be excluded.
- 68.3.4 The total estimated value of all the parts recommended shall not exceed the amount agreed in the Contract<sup>22</sup>.
- 68.3.5 The total quantity of any part shall take account of reliability predictions and such deployment information, servicing and other data as may be supplied by the Authority.

### **Preparation and Submission of Lists**

- 68.3.6 The Contractor shall provide the Project Manager concerned with an original copy of each preliminary list detailing the range and quantity of spares which he recommends in accordance with Clause 68.1. If formal design modification approval of any part of the main equipment occurs after these lists have been prepared, then Clause 76 (*Change*) shall apply and the Contractor may be asked to submit further lists, within a specified period, in respect of the modified portion of the equipment (see Clause 10 below). For the avoidance of doubt, no action to purchase or manufacture listed items is to be taken until Authority has accepted the DEFFORM 82A in accordance with Part 1 of Schedule 4 (Contract Document Deliverable Acceptance Procedure)
- 68.3.7 Preliminary lists are to be submitted in 3 parts, using DEFFORM 82A:
- (i) LIST A - shall detail the main assemblies in serially numbered order (e.g. 1/10 to 10/10), forming the complete equipment and may be submitted as a list, or as an equipment family tree. Where assemblies of a complete equipment are receiving the Authority's approval to manufacture in sequence, it is most important that inability to complete LIST A should not delay completion of LISTS B and C for assemblies which have been approved for manufacture. Such lists are to be endorsed with the main assembly serial number mentioned above.
  - (ii) LIST B - shall detail the spares which are peculiar to the equipment, separate lists being submitted for each main assembly.
  - (iii) LIST C - shall detail those spares recommended, but not appropriate to LISTS A or B, together with any common items referred to in sub-Clause 4.b) above, these items being listed last. Separate lists are to be submitted for each main assembly.
  - (iv) On LISTS B and C, the Contractor shall complete columns (i) to (viii), adding any special reference advised by the Authority. The original copy of each of these lists shall be submitted to the Project Manager as soon as they are completed and without waiting for the completion of other lists. The last list of any series is to show that the series is complete.

### **Procedure for the Purchase of Spares by the Authority**

---

<sup>22</sup> The Contractor will submit Firm Price for Initial Spares Package as part of the ITN return.

- 68.4 After acceptance of the DEFFORM87A, the Contractor will deliver the Initial Spares Package in accordance with the Schedule 2 (Statement of Requirement).

### **Design Changes**

- 68.5 The Contractor shall be responsible for notifying the Project Manager of any proposed amendments to the lists which he considers necessary as a result of design changes, in accordance Clause 76 (Change) and Clause 77 (Contract Amendments).

## **69 Radio Transmissions**

- 69.1 Where in the UK it is necessary for the Contractor to make radio transmissions for the purpose of test and development of electronic equipment under the Contract, the Contractor shall obtain an appropriate licence from the UK Regulatory Authority, OFCOM in accordance with the Wireless Telegraphy Act 2006.
- 69.2 The Contractor shall ensure that prior to making any transmission a licence exists that covers the particular transmissions of the Contract in all respects.
- 69.3 The Contractor shall agree with the Authority the frequencies to be used for the Contract

## **PART 13 - TERMINATION**

### **70 Termination for Contractor Default**

#### **Right to Terminate**

- 70.1 If a Contractor Default has occurred, the Authority shall be entitled to terminate the whole or any part of this Contract in accordance with the provisions of Clause 70.2 (*Right to Terminate*) and subject to the provisions of Clauses 70.3 to 70.6 (inclusive) (*Rectification*).
- 70.2 If a Contractor Default has occurred (including a default as contemplated in Clause 70.13 (*Termination Following a Change of Ownership*)) and the Authority wishes to terminate the whole or any part of this Contract pursuant to this Clause 70 (*Termination for Contractor Default*), it must serve a notice (the “**Termination Notice**”) on the Contractor stating:
- 70.2.1 that the Authority is terminating this Contract or part thereof for Contractor Default;
  - 70.2.2 where relevant, the part of this Contract that the Authority is terminating;
  - 70.2.3 the type and nature of the Contractor Default that has occurred, giving reasonable details; and
  - 70.2.4 that this Contract or part thereof shall (subject to the provisions of Clauses 70.3 to 70.6 (inclusive) (*Rectification*)) terminate on the day (the “**Contractor Default Termination Date**”) falling twenty (20) Working Days after the date the Contractor receives the Termination Notice.

#### **Rectification**

- 70.3 Where a Termination Notice cites a Contractor Default of the type and nature falling under limbs (a), (f) or (i) of the definition of "Contractor Default", the Contractor shall, in consultation with the Authority, have the opportunity to set out within ten (10) Working Days or such other period as agreed between the Parties before the end of such ten (10) Working Day period how it intends to remedy such Contractor Default.
- 70.4 Where the Authority agrees with such proposed remedy, and the remedy is implemented as agreed, the Termination Notice in question shall be deemed to be revoked.
- 70.5 Where the Authority agrees with such proposed remedy, and the remedy is not implemented as agreed, the Contractor Default Termination Date shall be the day falling twenty (20) Working Days after the date by which the remedy was agreed to be implemented.
- 70.6 If by the day falling twenty (20) Working Days after the date the Contractor receives the Termination Notice (or such later date as the Authority, acting reasonably, may agree) the Authority considers that such proposed remedy will not restore the provision of the Contractor Deliverables or any portion thereof in accordance with the terms of this Contract, and/or that such proposed remedy will not rectify the Contractor Default, the Authority may terminate the whole or the relevant part of this Contract forthwith (and the Contractor Default Termination Date shall be the day falling twenty (20) Working Days after the date the Contractor receives the Termination Notice (or such later date to be determined at the Authority's discretion)).

#### **Termination Date for Contractor Default**

- 70.7 Following the issue of a Termination Notice pursuant to Clause 70.2 (*Right to Terminate*) and where the Authority is terminating the whole of this Contract, this Contract shall (subject to the provisions of Clauses 70.3 to 70.6 (inclusive) (*Rectification*)) terminate on the Contractor Default Termination Date.

#### **Partial Termination**

- 70.8 Where the Authority is terminating part of this Contract, the Parties shall, subject to Clause 74 (*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.
- 70.9 For the avoidance of doubt, where Clause 70.8 (*Partial Termination*) applies, the Parties shall continue to fulfil their respective obligations in respect of those parts of this Contract that are not identified in the Termination Notice as being terminated.

#### **Termination following a Prohibited Act**

- 70.10 If the Contractor commits a Prohibited Act and/or breaches and/or is in default under Clauses 5.1.13, 5.1.14 and/or 5.1.15 (*Contractor Warranties*), the Authority may (without prejudice to its rights in Clauses 13.3 and 13.4 (*Sub-Contracting*) and subject to the provisions of Clause 70.11 (*Termination following a Prohibited Act*)) by notice:
- 70.10.1 require the Contractor to remove from performance of this Contract any Contractor Related Party, and any of the Contractor's employees, consultants, or agents whose acts or omissions have caused the default; or

- 70.10.2 immediately terminate this Contract; and
  - 70.10.3 any notice served by the Authority under this Clause 70.10 (*Termination Following a Prohibited Act*) shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Contract shall terminate).
- 70.11 In exercising its rights and remedies in respect of a Prohibited Act, the Authority shall:
- 70.11.1 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
  - 70.11.2 give all due consideration, where appropriate, to action other than termination of this Contract, including without being limited to:
    - (i) requiring the Contractor to procure the termination of a Sub-Contract where the Prohibited Act was undertaken by or on behalf of a Sub-Contractor or anyone acting on its or their behalf; or
    - (ii) requiring the Contractor to procure the re-assignment of an employee, consultant or agent (whether its own or that of a Sub-Contractor or anyone acting on its behalf) from performing this Contract where the Prohibited Act is that of such employee, consultant or agent,

and the Contractor shall (and shall use all reasonable endeavours to procure that its Sub-Contractors shall) give all due consideration to the Authority's proposal under this Clause 70.11.2 (*Termination Following a Prohibited Act*).

#### **Termination following withholding of Hazard Data**

- 70.12 As an alternative to terminating this Contract (or any part thereof) following a Contractor Default of the type described at limb (i) of the definition of that term, the Authority shall have the option to require the Contractor to rectify the relevant breach immediately at no additional cost to the Authority.

#### **Termination following a Change of Ownership**

- 70.13 If a Change of Ownership occurs in the circumstances described in Clause 81.3 (*Change of Ownership*), a Contractor Default shall be deemed to have occurred and the Authority shall be entitled to terminate the whole or any part of this Contract within twelve (12) months of the date the Authority became aware that the relevant Change of Ownership has occurred and such termination shall be subject to the provisions of Clause 70.2 (*Right to Terminate*) and shall not be subject to the provisions of Clauses 70.3 to 70.6 (inclusive) (*Rectification*).

### **71 Termination for Convenience**

- 71.1 The Authority shall, in addition to its power under any other of the provisions of this Contract, have the power to determine this Contract at any time by giving to the Contractor at least twenty (20) Working Days written notice, and upon the expiration of such notice period this Contract shall terminate, without prejudice to the rights of the

Parties already accrued as at the Termination Date, but subject to the operation of the following provisions of this Clause 71 (*Termination for Convenience*).

- 71.2 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:
- 71.2.1 to direct the Contractor, where provision of any element of the Contractor Deliverables has not been commenced, to refrain from commencing such provision;
  - 71.2.2 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;
  - 71.2.3 to direct the Contractor to, as soon as may be reasonably practicable after the receipt of such notice, take such steps as will ensure that the rate of provision of the Contractor Deliverables (or the rate of performance of any activities that are integral to such provision) is reduced as rapidly as possible; and/or
  - 71.2.4 to direct the Contractor to determine on the best possible terms such Sub-Contracts and orders for materials, parts, components and/or services as have not been completed, observing in connection with this any direction given under Clauses 71.2.1 to 71.2.3 (*Termination for Convenience*) as far as may be possible.
- 71.3 If in any particular case of hardship to the Contractor should arise from the operation of this Clause 71 (*Termination for Convenience*) it shall be open to the Contractor to refer the circumstances to the Authority who, on being satisfied that such hardship exists, shall make such allowance (having particular regard to the provisions of Clause 72 (*Financial consequences of Termination*)), if any, as in its opinion is reasonable, and the decision of the Authority on any matter or thing arising out of this Clause 71.3 (*Termination for Convenience*) shall be final and conclusive.

## **72 Financial consequences of Termination**

### **Termination for Contractor Default**

- 72.1 Where this Contract or any part thereof is terminated pursuant to Clause 70 (*Termination for Contractor Default*), the provisions of Clauses 72.2 to 72.4B (inclusive) (*Termination for Contractor Default*) shall apply (provided always that where such termination is as a result of an Insolvency Event the Contractor shall not be entitled to any compensation or any further payment from the Authority).
- 72.2 Where Clause 72.1 (*Termination for Contractor Default*) applies, and the Authority makes alternative arrangements for the provision of the Contractor Deliverables (which may, for the avoidance of doubt, include the Authority carrying out the Contractor Deliverables itself and/or through Third Parties), the Authority shall be entitled to recover from the Contractor the cost of tendering for and/or making such alternative arrangements together with any additional expenditure incurred by the Authority as a result of such alternative arrangements (i) throughout the remainder of what would



have been (as at the date of the Termination Notice) the term of this Contract had it not been terminated pursuant to Clause 70 (*Termination for Contractor Default*).

72.3 Where Clause 72.1 (*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 72.2 (*Termination for Contractor Default*). If following such assessment, the amount of such Losses is less than the amount outstanding to the Contractor for any aspect of the Contractor Deliverables that it has, as at the Termination Date, delivered to the Authority in accordance with this Contract, then the Authority shall pay the difference to the Contractor. The Authority shall complete such assessment, and the Parties shall complete the reconciliation process, within three (3) months of the Termination Date and payment shall be made within twenty (20) Working Days of such completion.

72.4 Where the Authority is entitled to terminate this Contract pursuant to Clause 70 (*Termination for Contractor Default*) as a result of the occurrence of a Prohibited Act (and/or the Contractor breaches and/or is in default under Clauses 5.1.13, 5.1.14 and/or 5.1.15 (*Contractor Warranties*)), the Authority shall, in addition to its rights set out in Clauses 72.2 and 72.3 (*Termination for Contractor Default*) (but without any double-counting) be entitled to:

72.4.1 recover from the Contractor the amount of any Losses resulting from such termination;

72.4.2 recover from the Contractor the amount or value of any gift, consideration or commission entailed by such Prohibited Act; and

72.4.3 where this Clause 72.4 (*Termination for Contractor Default*) applies but this Contract has not been terminated, to recover from the Contractor any other Losses sustained as a result of such Prohibited Act,

and any recovery action taken against any employee of the Authority shall be without prejudice to any recovery action taken against the Contractor pursuant to this Clause 72.4 (*Termination for Contractor Default*).

72.5 Where the Authority is entitled to terminate this Contract pursuant to Clause 87.5 (*Tax Compliance*), the Authority shall, subject to the provisions of Clause 87.7 (*Tax Compliance*) and in addition to the Authority's rights in Clauses 72.2 and 72.3 (*Termination for Contractor Default*) (but without double-counting), be entitled to recover from the Contractor:

72.5.1 the amount of any Losses resulting from such termination; and

72.5.2 where this Clause 72.4A (*Termination for Contractor Default*) applies but where this Contract has not been terminated, any other Losses sustained as a result of the breach by the Contractor giving rise to the Authority's rights in this Clause 72.4A (*Termination for Contractor Default*).

72.6 Where the Authority is entitled to terminate this Contract pursuant to Clause 45B.6.2, 45B.6.3 or 45B.6.4 (*Cyber*), the Authority shall, subject to the provisions of Clause 45B.6.1 (*Cyber*) and in addition to the Authority's rights in Clauses 72.2 and 72.3 (*Termination for Contractor Default*) (but without double-counting), be entitled to recover from the Contractor:

72.6.1 the amount of any Losses resulting from such termination;

72.6.2 any other Losses sustained in consequence of any breach of Clause 45B.6 (*Cyber*); and

72.6.3 where this Clause 72.6 (*Termination for Contractor Default*) applies but where this Contract has not been terminated, any other Losses sustained as a result of the breach by the Contractor giving rise to the Authority's rights in this Clause 72.6 (*Termination for Contractor Default*).

### **Termination for Convenience**

72.5 Where this Contract is terminated pursuant to Clause 71 (*Termination for Convenience*), the provisions of Clause 72.9 (*Termination for Convenience*) shall apply.

72.6 Not Used

72.7 Not Used

72.8 Where Clause 71 (*Termination for Convenience*) applies, the Authority shall (subject to Clause 72.9 (*Termination for Convenience*) and to the Contractor's compliance with any direction given by the Authority pursuant to Clause 71.2 (*Termination for Convenience*)) indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable Loss by the Contractor by reason of the termination of this Contract, subject to:

72.8.1 the Contractor taking all reasonable steps to mitigate such Loss; and

72.8.2 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 71 (*Termination for Convenience*).

72.9 The Authority's total liability under the provisions of this Condition shall be limited to the total price of the Contractor Deliverables payable under the contract (or relevant part), including any sums paid, due or becoming due to the Contractor at the date of termination. Not Used.

72.10 Claims for payment under this condition shall be submitted in accordance with the Authority's direction.

71.9A Not Used.

71.9B Not Used.

### **Miscellaneous provisions**

72.11 Where on the Termination Date or the Expiry Date (as the case may be) the Parties:

72.11.1 agree all amounts which are due to each other arising under this Contract, each Party shall (subject to the provisions of Clause 26 (*Recovery of Sums Due*)) pay to the other any amounts payable pursuant to this Clause 72 (*Financial Consequences of Termination*) within twenty (20) Working Days of the Termination Date or the Expiry Date (as the case may be) or such other period as agreed between the Parties before the end of the relevant twenty (20) Working Day period; or

- 72.11.2 do not agree what amounts are due to each other arising under this Contract, the Parties shall carry out a reconciliation as contemplated at Clause 24 (*Disputed Amounts*) within ten (10) Working Days of the Termination Date or the Expiry Date (as the case may be) or such other period as agreed between the Parties before the end of the relevant twenty (20) Working Day period.

### **73 Exit Plan**

- 73.1 The Parties have agreed that the matters which are likely to be required to be implemented on expiry or early termination of this Contract are set out in Schedule 15 (*Exit Management*). The Parties have agreed that on the earlier to occur of:

73.1.1 no later than thirty (30) calendar months from the Effective Date; and

73.1.2 ten (10) Working Days following receipt of a written notice from the Authority,

the Contractor shall review the Exit Plan in accordance with Good Industry Practice, having due regard to the status of the Contractor Deliverables and any other relevant factors at that time and issue to the Authority a proposed update and revision of the Exit Plan, giving full details of the rationale for any proposed changes. Following receipt by the Authority of the revised Exit Plan and rationale, the Contractor and the Authority shall meet (as soon as reasonably practicable and on such number of occasions as the Authority may reasonably require) to discuss and make any agreed amendments to the revised Exit Plan.

- 73.2 The Parties acknowledge that:

73.2.1 the preparation and development of the Exit Plan as contemplated in this Clause 73 (*Exit Plan*) forms part of this Contract and forms part of the Contract Price

73.2.2 the Contractor shall be obliged to carry out those activities described in Clause 75 (*Continuing Assistance*) whether or not such activities are also incorporated or contemplated or referred to in the Exit Plan and the Contractor acknowledges that it has incorporated pricing for the performance of such activities in Clause 75 (*Continuing Assistance*); and

73.2.3 in the event that the Authority wishes to require the Contractor to perform any additional or alternative obligations to those set out in Exit Plan as at the date set out in Clause 73.1.1 or the Termination Date (as the case may be), identified in the Exit Plan (as may have been updated or revised) in addition to those activities referred to in Clause 73.2.2 (*Exit Plan*) the Authority shall issue an Authority Change Notice and the Contractor shall not be permitted to object to such proposed Authority Change, notwithstanding any other provisions of this Contract and the price for such obligations as detailed in the Authority Change shall be fair and reasonable and shall be added to the Exit Payment.

### **74 Continuing Obligations**

- 74.1 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:

- 74.1.1 termination of this Contract shall be without prejudice to any accrued rights or obligations under this Contract prior to termination; and
- 74.1.2 termination of this Contract shall not affect the continuing rights and obligations of the Contractor and the Authority under:
- (i) Not Used;
  - (ii) Clause 3.2 (*Contractor's Obligations*);
  - (iii) Clause 5 (*Contractor Warranties and Undertakings*);
  - (iv) Clause 31 (*Indemnity and Liabilities*);
  - (v) Clause 38 (*The Contractor's Records*);
  - (vi) Clause 45B (*Cyber*), to the extent contemplated in Clause 45B.7.1 (*Cyber*);
  - (vii) Clause 46 (*Intellectual Property Rights*);
  - (viii) Clause 47 (*Security – Secret Matters*);
  - (ix) Clause 59 (*Issued Property*);
  - (x) Clause 60 (*Accounting for property of the Authority*);
  - (xi) Clause 72 (*Financial consequences of Termination*);
  - (xii) Clause 75 (*Continuing Assistance*);
  - (xiii) Clause 87 (*Tax Compliance*);
  - (xiv) Clause 90 (*Dispute Resolution (English Law)*); and
  - (xv) any other provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

## **PART 14 - GENERAL CONTRACT PROVISIONS**

### **75 Continuing Assistance**

#### **Co-operation**

75.1 Not Used

75.1.1 Not Used

75.1.2 Not Used

75.1.3 Not Used

75.2 Not Used.

- 75.3 For a period of six (6) months after the Expiry Date or, if earlier, the Termination Date, the Contractor shall, if requested to do so in writing by the Authority, provide all reasonable assistance, guidance and information to the Authority or any Follow-On Contractor (as the case may be) required by the Authority or any Follow-On Contractor, and this assistance shall be included within the Contract Price.
- 75.4 Not Used.
- 75.5 On expiry or earlier termination of this Contract, the Contractor shall:
- 75.5.1 upon request by the Authority make arrangements, to be agreed between the Authority and the Contractor (acting reasonably and in good faith), for the Authority to take over at fair and reasonable prices, where payment has not already been made, the rights, title and interest in such Articles and/or material as are held by the Contractor and/or any Sub-Contractor and which the Authority requires to maintain continuity of the delivery of goods and services equivalent to the Contractor Deliverables following the Expiry Date or, if earlier, the Termination Date; and
  - 75.5.2 provide, procure the provision of, or provide access to, as the Authority may require, all such information, documents and data in the possession or control of the Contractor, together with a sufficient explanation of such information, documents and data, the full rights to use such information, documents and data, and a formal certificate confirming those rights, as is required to put the Authority in the position it would have been had there been full and proper performance by the Contractor of the Contractor Deliverables.
- 75.6 The Contractor agrees that following the early termination of this Contract, the Authority shall be entitled to continue to purchase (and the Contractor shall continue to supply) on reasonable terms and conditions at fair and reasonable prices goods and services (which would, but for the expiry or early termination of this Contract, amount to Articles) which are required by the Authority to maintain continuity of the delivery of goods and services equivalent to the Contractor Deliverables following the Termination Date.
- 75.7 The Contractor shall not be obliged to co-operate with a Follow-On Contractor where this Contract is terminated under Clause 71 (*Termination for Convenience*).

## **76 Change**

### **Changes**

- 76.1 Changes (other than Minor Changes) shall be in accordance with the provisions of Schedule 6 (*Contract Change Procedure*).

### **Minor Changes**

- 76.2 The Contractor shall ensure that the Contractor Deliverables conform in all respects with the Statement of Requirements.
- 76.3 The Contractor shall use a configuration control system to control Minor Changes. The configuration control system shall be compatible with ISO 9001 (latest published version).

76.4 The Authority's Representative may alter the Statement of Requirements, provided always that any such alterations shall not alter the fit, form, function or characteristics of the Contractor Deliverables or otherwise give rise to any change of the nature referred to in Clause 76.6 ("**Minor Changes**").

76.5 The Minor Changes referred to in Clause 76.4 shall:

76.5.1 be notified by the Authority's Representative in writing;

76.5.2 apply from the date specified by the Authority in the notice referred to in Clause 76.5.1; and

76.5.3 be recorded as a formal amendment to this Contract pursuant to Clause 77.1 (*Amendments to Contract*),

and, following such notification, the Authority shall provide an updated Statement of Requirement to reflect such Minor Changes and the Contractor shall ensure that the Contractor Deliverables shall be delivered in accordance with such updated Statement of Requirement from the date referred to in Clause 76.5.2.

76.6 Any proposed alterations to the Statement of Requirement that cause a change to:

76.6.1 the fit, form, function or characteristics of the Contractor Deliverables;

76.6.2 the cost of the whole or part of the Contractor Deliverables;

76.6.3 the delivery dates for the whole or part of the Contractor Deliverables; or

76.6.4 the period required for the production or completion of the whole or part of the Contractor Deliverables,

shall be subject to the provisions of Schedule 6 (*Contract Change Procedure*).

76.7 Any documentation provided by or on behalf of the Authority outside of this Clause 76 shall not alter the Statement of Requirements.

## **77 Amendments to Contract**

77.1 Amendments to this Contract may not be made except by the written agreement of the duly authorised Representatives of the Parties in accordance with Clause 76 (*Change*) and, where applicable, Schedule 6 (*Contract Change Procedure*), provided always that any such amendments shall come into force only when the Contractor has issued:

77.1.1 in the case of a Change proposed in an Authority Change Notice, the Form set out in Annex B to Schedule 6 (*Contract Change Procedure*); and

77.1.2 in the case of a Change proposed in a Contractor Change Notice, the Form set out in Annex C to Schedule 6 (*Contract Change Procedure*),

as an unqualified Contractor Change Proposal and the Authority agrees to all the terms of such Contract Change Proposal and, following such agreement, a deed of variation to give effect to such Change has been duly executed by the Parties.

77.2 Subject to the provisions of Clause 77.1 (*Amendments to Contract*), any purported amendment to this Contract which does not satisfy the provisions of this Clause 77 (*Amendments to Contract*) shall be of no effect.

## 78 **Law and Jurisdiction**

78.1 Not Used

78.2 The Contractor irrevocably appoints the solicitors or other persons in England and Wales, specified in the Contract as its agents to accept on its behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction arising out of or relating to the Contract or any issue connected therewith<sup>23</sup>.

## 79 **Transfer**

79.1 Subject to Clause 80 (*Novation*), neither Party to this Contract shall give, bargain, sell, assign, or otherwise dispose of this Contract or any part thereof, or the benefit or advantage of this Contract or any part thereof, without the prior consent in writing of the other Party.

79.2 Subject to the Contractor obtaining the prior written consent of the Authority in accordance with Clause 79.1 (*Transfer*) above, the Contractor may assign to a Third Party (the “**Assignee**”) the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest incurred by the Authority in accordance with Clause 24 (*Disputed Amounts*)).

79.3 Any assignment of the right to receive payment of the Contract Price (or any part thereof) under Clause 79.2 (*Transfer*) above shall be subject to:

79.3.1 reduction of any sums in respect of which the Authority exercises its right of recovery under Clause 26 (*Recovery of Sums Due*) or under any other clause concerning recovery of sums due;

79.3.2 all related rights of the Authority under this Contract in relation to the recovery of sums due but unpaid; and

79.3.3 the Authority receiving notification under both Clause 79.4 and Clause 79.5.2 (*Transfer*) below.

79.4 In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under Clause 79.2 (*Transfer*) above, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

79.5 The Contractor shall ensure that the Assignee:

79.5.1 is made aware of the Authority’s continuing rights under Clauses 79.3.1 and 79.3.2 (*Transfer*); and

79.5.2 notifies the Authority of the Assignee’s contact information and bank account details, to which the Authority shall make payment, subject to any

---

<sup>23</sup> If the preferred Bidder is not registered in England and Wales, then this Clause will apply.

reduction made by the Authority in accordance Clauses 79.3.1 and 79.3.2 (*Transfer*) above.

- 79.6 The provisions of this Contract, including any clauses concerning payment, shall continue to apply in all other respects after any assignment in accordance with this Clause 79 (*Transfer*) and shall not be amended without the prior approval of the Authority.

## **80 Novation**

- 80.1 Subject to Clause 80.2, the rights and obligations of the Authority under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any law or any scheme pursuant to any law or otherwise) other than:

80.1.1 in respect of the whole of this Contract to any person who performs any of the functions that previously had been performed by the Authority; or

80.1.2 to any public body (being a single entity) acquiring the whole of this Contract and having the legal capacity, power and authority to become a Party to and to perform the obligations of the Authority under this Contract, being:

(i) a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975; or

(ii) any other public body whose obligations under this Contract are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Contract.

- 80.2 The Contractor agrees that the Authority may at any time on written notice elect to appoint a Third Party to act as its agent to manage the whole or any part of this Contract on the Authority's behalf and/or to perform any or all of the obligations of the Authority under this Contract to the extent set out in such notice.

## **81 Change of Ownership**

- 81.1 The Contractor acknowledges that the Authority has a legitimate interest in the ownership of the Contractor and that the Contractor is required to notify the Authority of any Change of Ownership in accordance with this Clause 81 (*Change of Ownership*).

- 81.2 The Contractor shall notify the Authority's Representative in writing (providing a copy to the Mergers & Acquisitions Section, Strategic Supplier Management Team, Spruce 3b #1301, MOD Abbey Wood, Bristol, BS34 8JH), so far as permitted by relevant law (relevant law for the purposes of this Clause 81 (*Change of Ownership*) being law in the United Kingdom and in all relevant jurisdictions where the Contractor would be subject to a legal sanction arising from issuing such notice), if any proposed Change of Ownership is contemplated, including details of the proposed new ownership structure (legal and beneficial) and/or details of the material asset (including shares held in any company by the Contractor or any of its Subsidiaries), business or undertaking proposed to be disposed or acquired (as the case may be).

- 81.3 Where:



- 81.3.1 the Authority is not informed of a proposed Change of Ownership for the reasons set out in Clause 81.2 (*Change of Ownership*) or for any other reason and a Change of Ownership occurs; and/or
- 81.3.2 the Authority objects to the proposed (or actual) transferee to whom the sale, transfer, disposal or other arrangement is made and/or the Authority is concerned that the disposal or acquisition by the Contractor of the material asset, business or undertaking in question may have a material effect on the ability of the Contractor to perform its obligations under this Contract, in either case, whether or not the Authority is informed of the proposed Change of Ownership pursuant to Clause 81.2 (*Change of Ownership*) and whether the Authority becomes aware of such Change of Ownership prior to or after such Change of Ownership occurring,

then the Authority may terminate this Contract at any time within six (6) months of the date the Authority becomes aware that the relevant Change of Ownership has occurred and the provisions of Clause 70.2 (*Termination for Contractor Default*) and Clause 70.13 (*Termination following a Change of Ownership*) shall apply.

## **82 Disruption**

- 82.1 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.
- 82.2 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:
  - 82.2.1 inspect; and/or
  - 82.2.2 (subject to the Authority giving the Contractor reasonable advance notice, and subject to the Authority exercising this right a maximum of three (3) times in any one (1) Year in respect of the same plan) practically test at any reasonable time,

and shall be updated and revised as necessary by the Contractor throughout the Contract Period.

## **83 Waiver**

- 83.1 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.
- 83.2 No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

#### **84     Discrepancies, Errors and Omissions**

- 84.1     If either Party identifies any discrepancy, error or omission between the provisions of this Contract, it shall notify the other Party in writing of such discrepancy, error or omission as soon as reasonably practical.
- 84.2     The Parties shall seek to agree such amendments to resolve such discrepancy, error or omission as soon as reasonably practical.
- 84.3     Where the Parties fail to reach agreement within ten (10) Working Days of the notice under Clause 84.1 (*Discrepancies, Errors and Omissions*) and either Party considers that the discrepancy, error or omission to be material to its rights and obligations under this Contract, then the matter will be referred to the Dispute Resolution Procedure.

#### **85     Severability**

- 85.1     If any provision of this Contract is held to be invalid, illegal or unenforceable to any extent then:
- 85.1.1     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
- 85.1.2     the parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

#### **86     Whole Agreement**

- 86.1     This Contract constitutes the entire agreement between the Parties relating to the subject matter of this Contract.
- 86.2     This Contract supersedes all prior negotiations, representations and undertakings (whether written or oral), except that this Clause 86 (*Whole Agreement*) shall not exclude liability in respect of any fraudulent misrepresentation.

#### **87     Tax Compliance**

- 87.1     The Contractor represents and warrants that at the date this Contract came into effect, it has notified the Authority in writing of any Occasion Of Tax Non-Compliance or any litigation that it is involved in that is in connection with any OOTNC.
- 87.2     If, at any point during the performance of this Contract, an OOTNC occurs, the Contractor shall:
- 87.2.1     notify the Authority in writing of such fact within twenty (20) Working Days of its occurrence; and
- 87.2.2     promptly provide to the Authority:
- (i)     details of the steps which the Contractor is taking to address the OOTNC and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

- (ii) such other information in relation to the OOTNC as the Authority may reasonably require.

87.3 For the avoidance of doubt, the obligation at Clause 87.2 (*Tax Compliance*) also applies to OOTNC in non-UK jurisdictions. If the OOTNC occurred in non-UK jurisdictions, the notification must be accompanied by a full explanation of the OOTNC and any relevant tax laws and administrative provisions so the Authority can understand the nature and seriousness of the OOTNC.

87.4 The duty to notify does not substitute the Contractor's other reporting obligations under this Contract.

87.5 The Authority shall be entitled to terminate this Contract in the event that:

87.5.1 the warranty given by the Contractor pursuant to Clause 87.1 (*Tax Compliance*) is materially untrue; or

87.5.2 the Contractor commits a material breach of its obligation to notify the Authority of any OOTNC as required by Clause 87.2 (*Tax Compliance*); or

87.5.3 the Contractor fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority, are acceptable.

87.6 In the event that the Authority is entitled to terminate this Contract under Clause 87.5 (*Tax Compliance*) the provisions of Clause 71.4A (*Termination for Contractor Default*) and Clause 87.7 (*Tax Compliance*) shall apply.

87.7 In exercising its rights or remedies under this Clause 87 (*Tax Compliance*), the Authority shall:

87.7.1 act in a reasonable and proportionate manner taking into account, among other things:

(i) the gravity and duration of the OOTNC and any sanctions imposed by a court or tribunal; and

(ii) any remedial action taken by the Contractor to prevent reoccurrence of the OOTNC; and

87.7.2 without prejudice to Clause 87 (*Tax Compliance*), seriously consider, where appropriate, action other than termination of this Contract to deal with the failure by the Contractor to comply with this Clause 87 (*Tax Compliance*).

87.8 Not Used.

## **88 Representatives**

### **References to Authority and the Contractor**

88.1 Except as provided otherwise under this Contract, any reference to the Authority and the Contractor in respect of:

88.1.1 the giving of consent;

88.1.2 the delivering of any notices; or

88.1.3 the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the relevant Party,

shall be deemed to be references to the Authority's Representatives and the Contractor's Representatives (respectively) in accordance with this Clause 88 (*Representatives*).

### **The Contractor's Representatives**

88.2 The Contractor shall employ representatives (the "**Contractor's Representatives**") to act as the Contractor's representatives in connection with the provision of the Contractor Deliverables and generally in connection with this Contract. Such representatives are described in the table forming Part 2 to Schedule 13 (*Contract Management and Governance*).<sup>24</sup>

### **Authority of the Contractor's Representatives**

88.3 The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes of this Contract.

### **Appointment of successor**

88.4 The Contractor may terminate the appointment of any Contractor's Representative and shall appoint a successor, the identity of whom shall be made known to the Authority.

### **Authority's Representatives**

88.5 The Authority shall employ representatives (the "**Authority's Representatives**") to act as the Authority's representatives in connection with the provision of the Contractor Deliverables and generally in connection with this Contract. Such representatives are described in the table forming Part 2 to Schedule 13 (*Contract Management and Governance*).<sup>25</sup>

### **Authority of Authority's Representatives**

88.6 The Authority's Representative shall have the full authority to act on behalf of the Authority for all purposes of this Contract.

### **Appointment of Successor**

88.7 The Authority may terminate the appointment of any Authority's Representative and shall appoint a successor, the identity of whom shall be made known to the Contractor.

## **89 Notices**

89.1 All notices, orders, or other forms of communication required to be given in writing ("**Notices**") under or in connection with this Contract shall:

89.1.1 be in a form which can be read, copied and recorded;

89.1.2 be authenticated by signature or by such other method as agreed between the Parties;

---

<sup>24</sup> Subject to the agreed **Error! Reference source not found.** (*Governance and Contract Management*).

<sup>25</sup> Subject to the agreed **Error! Reference source not found.** (*Governance and Contract Management*).

- 89.1.3 be marked for the attention of the appropriate Authority's Representative or the Contractor's Representative; and
- 89.1.4 be marked in a prominent position with the relevant Contract number.
- 89.2 Notices should be delivered by:
  - 89.2.1 hand;
  - 89.2.2 prepaid post (or airmail, in the case of Notices to or from overseas);
  - 89.2.3 facsimile; or
  - 89.2.4 electronic mail.
- 89.3 Notices shall be deemed to have been received:
  - 89.3.1 if delivered by hand, on the day of delivery if it is a Working Day and otherwise on the first Working Day immediately following the day of delivery;
  - 89.3.2 if sent by prepaid post (or airmail, if appropriate), on the fifth Working Day (or on the tenth Working Day, in the case of airmail) after the day of posting; and
  - 89.3.3 if sent by facsimile, or other electronic means:
    - (i) if transmitted between 09.00 and 17.00 hours on a Working Day (recipient's time), on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
    - (ii) if transmitted at any other time, at 09.00 hours on the first Working Day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument.
- 89.4 The addresses (including electronic addresses) of each Party and their Representatives to which all Notices shall be sent are set out in DEFFORM 111 in the Agreed Form, or such other address as either Party may by written Notice specify to the other for the purpose of this Clause 89 (*Notices*).
- 89.5 Where either Party requests written confirmation of any communication which does not constitute a Notice, such request shall not unreasonably be refused.

## **90 Dispute Resolution (English Law)**

- 90.1 The Parties will attempt in good faith to resolve any Dispute through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any Alternative Dispute Resolution ("**ADR**") procedure on which the Parties may agree.
- 90.2 In the event that the Dispute is not resolved by negotiation, or where the Parties have agreed to use an ADR procedure, by the use of such procedure, the Dispute shall be referred to arbitration.

- 90.3 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:
- 90.3.1 that the Dispute is referred to arbitration; and
- 90.3.2 the particulars of the Contract out of or in relation to which the Dispute arises.
- 90.4 Unless otherwise agreed in writing by the Parties, the arbitration and this Clause 90 (*Dispute Resolution (English Law)*) shall be governed by the provisions of the Arbitration Act 1996.
- 90.5 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.
- 90.6 For the avoidance of doubt it is agreed between the Parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the Parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the Parties to the arbitration.

## **91 Contractor’s Status**

- 91.1 Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Authority and Contractor.
- 91.2 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.
- 91.3 Neither Party shall place or cause to be placed any order with suppliers or otherwise incur liabilities in the name of the other Party or any representative of the other Party.

## **92 Conflicts of Interest and Impartiality**

- 92.1 The Contractor has notified the Authority of its intention to operate a conflicts of interest regime (“**Conflicts Regime**”), the Contractor acknowledging that its obligations under this Contract and its aspiration to participate to be a provider of goods and/or services in future procurements connected with the MORPHEUS Programme will require the careful management of information both internally and externally by the Contractor and Contractor Related Parties.
- 92.2 Notwithstanding the full adherence by the Contractor to the provisions of the Conflicts Regime, the Authority reserves the right to exclude the Contractor from participation in any future procurements contemplated in Clause 92.1(*Conflicts of Interest and Impartiality*) (whether to comply with law, as may be permitted in accordance with the regulations applying to any such future procurements or for any reason to ensure fair competition for such procurements).

**93     Rights of Third Parties**

- 93.1     Except as provided in Clause 93.2 (*Rights of Third Parties*) and notwithstanding anything to the contrary elsewhere in this Contract, no right is granted to any person who is not a Party to enforce any term of this Contract in his own right and the Parties declare that they have no intention to grant any such right.
- 93.2     Where, and only where, this Contract expressly states that a Third Party shall be entitled to enforce a term of this Contract:
- 93.2.1     the said Third Party shall be entitled to enforce that term in his own right;
- 93.2.2     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 93.2 (*Rights of Third Parties*)) relevant to the exercise of that right; and
- 93.2.3     the Third Party's rights shall be subject to:
- (i)     the resolution of any Dispute pursuant to the Dispute Resolution Procedure; and
- (ii)     Clause 94 (*Law (English)*).

**94     Law (English)**

- 94.1     The Contract shall be considered as a contract made in England and subject to English Law.
- 94.2     Subject to and without prejudice to the Dispute Resolution Procedure, each Party hereby irrevocably submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to this Contract or breach thereof.
- 94.3     Other jurisdictions may apply solely for the purpose of giving effect to this Clause 94 (*Law (English)*) and for the enforcement of any judgement, order or award given under English jurisdiction.

**95     Counterparts [Not Used]**

- 95.1     This Contract may be entered into in any number of counterparts and each of the executed counterparts, when duly executed and delivered, shall be deemed to be an original but, taken together, they shall constitute one and the same instrument.

**96     Modern Slavery, Child Labour and Inhumane Treatment**

- 96.1     The "Modern Slavery Helpline" refers to the point of contact for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700.
- 96.2     The Contractor:

- 96.2.1 shall not use, or allow its Subcontractors to use, forced, bonded or involuntary prison labour;
- 96.2.2 shall not require any Supplier staff or Subcontractor staff to lodge deposits or identify papers with the Employer or deny Supplier staff freedom to leave their employer after reasonable notice;
- 96.2.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world.
- 96.2.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world.
- 96.2.5 shall make reasonable enquiries to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world.
- 96.2.6 shall have and maintain throughout the term of each Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and shall include in its contracts with its sub-contractors anti-slavery and human trafficking provisions;
- 96.2.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under a Contract;
- 96.2.8 if requested by the Authority, shall prepare and deliver at the commencement of the Contract, a slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;
- 96.2.9 shall not use, or allow its employees or Sub-contractors to use, physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Sub-contractors
- 96.2.10 shall not use, or allow its Sub-contractors to use, child or slave labour
- 96.2.11 shall report the discovery or suspicion of any slavery or trafficking by it or its Sub-contractors to the Authority and Modern Slavery Helpline

**IN WITNESS** this document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.



The common seal of **THE SECRETARY OF** )<sup>26</sup>  
**STATE FOR DEFENCE** was affixed to this ) )  
deed in the presence of: )  
)

.....  
Name

<sup>27</sup>Executed as a deed by [**CONTRACTOR** )  
**[LIMITED]**] acting by a director and its )  
secretary or two directors: )  
)

Director .....

Director/Secretary .....

---

<sup>26</sup> To be confirmed whether this Contract is to be executed as a Deed or under hand.

<sup>27</sup> To be reviewed subject to legal personality of the Contractor.

