



Ministry
of Defence



Defence Equipment & Support

Contract No. OSP/0080 - PROJECT MITER

REDACTED (COMERCIALLY SENSITIVE INFORMATION OMITTED)

**The Service Provision of Earth Moving,
Engineering Construction and Materials
Handling Capabilities.**

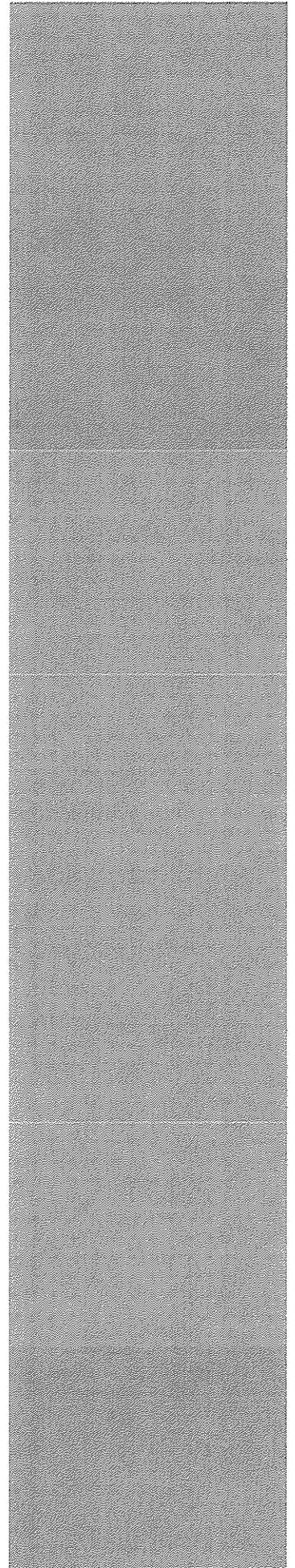


Table of Contents

PART 1 - CONDITIONS OF CONTRACT-	14
PART 2 – General Provisions.....	19
1. Appointment.....	19
2. Contract Duration.....	19
3. Contract Period Extension.....	19
4. Contract Documents and Precedence.....	19
5. Contractor's Warranties, Representations and Undertakings.	20
6. Contractor's Obligation and Responsibilities	21
7. Supply chain	22
8. Health and Safety	23
9. Entire Agreement	23
10. Risk.....	23
11. Authority's Disclosed Data	24
12. Disruption.....	24
13. Quality of Services	25
14. Mitigation	25
15. Parent Company Guarantees.....	25
16. Benchmarking	25
PART 3 – Incentivisation.....	26
17. Provisions for Pricing, Payment and Performance Measurement and Management.....	26
PART 4 – Intellectual Property Rights (IPR).....	26
18. The Provisions of Schedule 5 (IPR) shall apply.....	26
PART 5 – Termination.....	26
19. Termination for Contractor Default	26
20. Persistent Breach.....	28
21. Force Majeure Events	29
22. Termination or Partial Termination for Force Majeure Event	29
24. Step In / Step Out	31
PART 6 - Exit	32
25. Exit.....	32
26. Remedies.....	33
27. Inadequacy of Damages	34
28. Government Furnished Assets (GFA)	34
PART 8 - Insurance, Indemnity and Conduct of Claims.....	35
29. Insurance.....	35
PART 9 – KPI Relief Events.....	37
30. KPI Relief.....	37

OFFICIAL SENSITIVE – COMMERCIAL

PART 10 - No Exclusivity	38
31. No Exclusivity.....	38
PART 11 - Security	38
32. Security.....	38
PART 12 - People	38
33. TUPE	38
34. Pensions	38
35. Sponsored Reserves.....	38
PART 13 - Notices	38
36. Notices.....	38
PART 14 - Fleet Asset Transfer/Management.....	39
37. Fleet Asset Transfer/Management	39
PART 15 - Service Continuity.....	39
38. Transition to War.....	39
39. Measures in a Crisis (MIAC)	39
PART 16 - Earned Value Management EVM.....	41
40. Earned Value Management.....	41
Schedule 1 – Definitions.....	42
Schedule 2 – Statement of Requirements	49
Schedule 3 – Pricing and Payment	50
Schedule 4 – Performance Measurement & Management	68
Schedule 5 – Intellectual Property Rights (IPR).....	106
Schedule 6 – Government Furnished Assets and Issued Property.....	150
Schedule 7 – Required Insurance	153
Schedule 8 – Security Aspect Letter.....	159
Schedule 9 – Governance.....	166
Schedule 10 – Personnel	175
Schedule 11 – Leases and Licenses	215
Schedule 12 – Opportunities & Innovation	223
Schedule 13 – MDAL and List of Authority Dependencies.....	227
Schedule 14 – Fleet Asset Transfer & Management	237
Schedule 15 – International Traffic Arms Regulations (ITAR).....	241
Schedule 16 – Benchmarking	242
Schedule 17 – Contractor's Compliance Matrix.....	251
Schedule 18 – Contractor's Commercially Sensitive Information.....	252
Schedule 19 – Referenced Documents	254
Schedule 20 – Parent Company Guarantees	257

OFFICIAL SENSITIVE - COMMERCIAL

Tables

Table 1: MITER Schedule of Requirements	9
Table 2: Schedule of Requirements: Option Prices	12
Table 3: Transition Payment Plan	63
Table 4: Management Fee Payment plan.....	64
Table 5: Service Provision Fee (SPF) Payment Table.....	65
Table 6: Whole Force Approach (Personnel, Logistics & Infrastructure) Payment Table	66
Table 7: Management of Legacy Spares and Consumables Payment Table.....	67
Table 8: TPI Retentions and Deductions.....	72
Table 9: TPI 1: Delivery of Transition Management Plan.....	75
Table 10: TPI 2: Development and Delivery of MFIS.....	77
Table 11: TPI 3: Delivery of Training for MFIS.....	78
Table 12: TPI 4: Achievement of ISC	79
Table 13: TPI 5: Achievement of FSC	80
Table 14: Transition Milestone Value	81
Table 15: TPI 6: Transition Out	82
Table 16: KPI 1: Fulfilling Demands	83
Table 17: KPI 2: Provide Operators and Maintainers.....	84
Table 18: KPI 3: Provide Training.....	85
Table 19: KPI 4: Provide Scheduled Maintenance.....	86
Table 20: KPI 5: Equipment Availability Deployed Tactical Environment	88
Table 21: KPI 6: Provide Unscheduled Maintenance.....	90
Table 22: KPI 7: Provide Accurate Data	92
Table 23: KPI 8: Safety Management.....	95
Table 24: PI 6.1: Spares Provisioning	98
Table 25: PI 7.1: Provide Accurate data	99
Table 26: PI 8.1: Review and Update of Publications (Routine).....	100
Table 27: PI 8.2: Review and Update Publications (Priority and Immediate)	100
Table 28: TPI to SOR Reference.....	101
Table 29: KPI to SOR Reference	101
Table 30: KPI Fee at Risk	102
Table 31: List of Third Party IPR	126
Table 32: List of Licenced Authority IPR.....	127
Table 33: Commercially Sensitive Information (IPR)	131
Table 34: Government Furnished Assets	151
Table 35: Additional Governance Bodies	174
Table 36: Whole Force Personnel by Role / Year.....	206

Table 37: Force Support Plant Operator Maintainer Role (Constant Delivery).....	207
Table 38: Force Support Plant Operator Maintainer (Operational delivery).....	208
Table 39: Close Support Plant Operator Maintainer (Operational delivery).....	209
Table 40: Army Crane + C-Veh Truck Operator	210
Table 41: Army Basic MHE operator	211
Table 42: Army Advanced MHE operator	212
Table 43: Army Construction Vehicle Maintainer	213
Table 44: Army MHE Maintainer	214
Table 45: List of Authority Licenced Facilities and Areas by Requirement.....	217
Table 46: List of Authority Licenced Facilities and Areas by Period.....	219
Table 47: List of Authority Licenced Areas by Facility Type and Period.....	222
Table 48: Innovative Proposals that can be undertaken by the Contractor	224
Table 49: Joint Innovative Proposals.....	226
Table 50: Innovative Proposals that can be undertaken by the Authority.....	226
Table 51: AmeyBriggs Authority Dependencies	231
Table 52: AmeyBriggs Bid Assumptions.....	235
Table 53: Contractors Commercially Sensitive Information	253
Table 54: List of Referenced Documents	256
Table 55: List of Additional Documents	256

SCHEDULE OF REQUIREMENTS

Name and Address of Contractor AmeyBriggs Services Limited, 10 Furnival Street, London, United Kingdom. EC4A 1AB		MINISTRY OF DEFENCE Schedule of Requirements for Project MITER – The Service Provision of Earth Moving, Engineering Construction and Materials Handling Capabilities	Contract No OSP/0080
Serial	Description		
1	Transition In	Firm Price ██████████	
2	MITER Management Fee Year 1	Firm Price ██████████	
3	MITER Service Provision Fee Year 1	Firm Price ██████████	
4	MITER Management Fee Year 2	Firm Price ██████████	
5	MITER Service Provision Fee Year 2	Firm Price ██████████	
6	MITER Management Fee Year 3	Firm Price ██████████	
7	MITER Service Provision Fee Year 3	Firm Price ██████████	
8	MITER Management Fee Year 4	Fixed Price	

Serial	Description	Price £ (ex-VAT)
		██████████
9	MITER Service Provision Fee Year 4	Fixed Price ██████████
10	MITER Management Fee Year 5	Fixed Price ██████████
11	MITER Service Provision Fee Year 5	Fixed Price ██████████
12	MITER Management Fee Year 6	Fixed Price ██████████
13	MITER Service Provision Fee Year 6	Fixed Price ██████████
14	MITER Management Fee Year 7	Fixed Price ██████████
15	MITER Service Provision Fee Year 7	Fixed Price ██████████
16	Employment-Related Costs (TUPE)	Firm Price ██████████
17	The provision of Non-Fair Wear and Tear (NFWT) Years 2 to 7	Priced in accordance with Schedule 3 (Pricing and Payment) Paragraph 7
18	The provision of Un-Qualifying Spares Years 2 to 7	Priced in accordance with Schedule 3 (Pricing and Payment) Paragraph 9

OFFICIAL SENSITIVE – COMMERCIAL

Serial	Description	Price £ (ex-VAT)
19	The provision of Tyres and Batteries Year 2 to 7	Priced in accordance with Schedule 3 (Pricing and Payment) Paragraph 10
20	MITER Whole Force Approach Personnel, Logistics & Infrastructure Year 1	Firm Price ██████████
21	MITER Whole Force Approach Personnel, Logistics & Infrastructure Year 2	Firm Price ██████████
22	MITER Whole Force Approach Personnel, Logistics & Infrastructure Year 3	Firm Price ██████████
23	MITER Whole Force Approach Personnel , Logistics & Infrastructure Year 4	Fixed Price ██████████
24	MITER Whole Force Approach Personnel, Logistics & Infrastructure Year 5	Fixed Price ██████████
25	MITER Whole Force Approach Personnel Logistics & Infrastructure Year 6	Fixed Price ██████████
26	MITER Whole Force Approach Personnel Logistics & Infrastructure Year 7	Fixed Price ██████████
27	Transition Out (Exit management Plan)	Fixed Price ██████████
28	Management of legacy spares and consumables Year 1	Firm Price ██████████
29	Management of legacy spares and consumables Year 2	Firm Price ██████████

OFFICIAL SENSITIVE - COMMERCIAL

Serial	Description	Price £ (ex-VAT)
30	Management of legacy spares and consumables Year 3	Firm Price ██████████
31	Management of legacy spares and consumables Year 4	Fixed Price ██████████
32	Management of legacy spares and consumables Year 5	Fixed Price ██████████
33	Management of legacy spares and consumables Year 6	Fixed Price ██████████
34	Management of legacy spares and consumables Year 7	Fixed Price ██████████

Table 1: MITER Schedule of Requirements

OFFICIAL SENSITIVE – COMMERCIAL

The following table lists the options available to the Authority during the Contract Period

Serial	Option Description	Price £ (ex-VAT)
1	MITER Management Fee Year 8	Fixed Price ██████████
2	MITER Service Provision Fee Year 8	Fixed Price ██████████
3	MITER Management Fee Year 9	Fixed Price ██████████
4	MITER Service Provision Fee Year 9	Fixed Price ██████████
5	MITER Management Fee Year 10	Fixed Price ██████████
6	MITER Service Provision Fee Year 10	Fixed Price ██████████
7	The provision of Non-Fair Wear and Tear (NFWT) Year 8	Priced in accordance with Schedule 3 (Pricing and Payment) para 7
8	The provision of Non-Fair Wear and Tear (NFWT) Year 9	Priced in accordance with Schedule 3 (Pricing and Payment) para 7
9	The provision of Non-Fair Wear and Tear (NFWT) Year 10	Priced in accordance with Schedule 3 (Pricing and Payment) para 7

OFFICIAL SENSITIVE - COMMERCIAL

Serial	Option Description	Price £ (ex-VAT)
10	The provision of Un-Qualifying Spares Year 8	Priced in accordance with Schedule 3 (Pricing and Payment), Paragraph 9
11	The provision of Un-Qualifying Spares Year 9	Priced in accordance with Schedule 3 (Pricing and Payment), Paragraph 9
12	The provision of Un-Qualifying Spares Year 10	Priced in accordance with Schedule 3 (Pricing and Payment), Paragraph 9
13	The provision of Tyres and Batteries Year 8	Priced in accordance with Schedule 3 (Pricing and Payment), Paragraph 10
14	The provision of Tyres and Batteries Year 9	Priced in accordance with Schedule 3 (Pricing and Payment), Paragraph 10
15	The provision of Tyres and Batteries Year 10	Priced in accordance with Schedule 3 (Pricing and Payment), Paragraph 10
16	MITER Whole Force Approach Personnel Logistics & Infrastructure Year 8	Fixed Price ██████████
17	MITER Whole Force Approach Personnel Logistics & Infrastructure Year 9	Fixed Price ██████████
18	MITER Whole Force Approach Personnel Logistics & Infrastructure Years 10	Fixed Price ██████████
19	Management of legacy spares and consumables Year 8	Fixed Price ██████████

OFFICIAL SENSITIVE – COMMERCIAL

Serial	Option Description	Price £ (ex-VAT)
20	Management of legacy spares and consumables Year 9	Fixed Price ██████████
21	Management of legacy spares and consumables Year 10	Fixed Price ██████████

Table 2: Schedule of Requirements: Option Prices

OFFICIAL SENSITIVE - COMMERCIAL

THIS CONTRACT is made on the 14 day of August, Two Thousand and Twenty (2020)
BETWEEN

- (1) **THE SECRETARY OF STATE FOR DEFENCE**, (who is and whose statutory successors and permitted assignees are hereinafter referred to as the "**Authority**"); and
- (2) AmeyBriggs Services Limited (Company No. 12801304) whose registered office is at 10 Furnival Street, London, United Kingdom. EC4A 1AB (who is and whose permitted assignees are hereinafter referred to as the "**Contractor**" or "**AmeyBriggs**").

WHEREAS:

- (A) The Authority requires the provision of a service to manage and sustain the combined construction and mechanical handling equipment fleet in the United Kingdom (UK), on deployed operations and overseas environments and to provide spares, support and test equipment, complete equipment schedules training, data collection, a management information system and technical documentation in respect of such construction and mechanical handling. MITER will utilise the Whole Force Approach (WFA) Initiative. The intent of Whole Force Approach is to create an effective, agile and resilient capability delivered by an integrated, pre-planned and affordable mix of regular and reserve military, civilian and industry resources to meet Defence Outputs (**the "MITER Capability"**);
- (B) By a notice published in the Defence Contract Bulletin on 31st July 2018 the Authority invited expressions of interest from appropriately qualified parties for the provision of the MITER Capability;
- (C) The Contractor has submitted proposals to the Authority to provide the MITER Capability;
- (D) The Authority has awarded this Contract pursuant to DSCPR.

NOW IT IS HEREBY AGREED as follows:

TERMS AND CONDITIONS OF CONTRACT**PART 1 - CONDITIONS OF CONTRACT-**

1. The following Defence Conditions (DEFCONS) shall apply:

DEFCON Number and Edition	Description
DEFCON 5J (Edition 18/11/16)	Unique Order Identifier
DEFCON 23 (Edition 08/09)	Special Jigs, Tooling and Test Equipment
DEFCON 68 (Edition 02/19)	Supply of Data for Hazardous Articles, Materials and Substances
DEFCON 76 (Edition 12/06)	Contractor's Personnel at Government Establishments. For the purpose of Clause 4 of DEFCON 76 the Contractor's Liability shall be limited to [REDACTED] per incident and not aggregated.
DEFCON 113 (Edition 02/17)	Diversion of Orders
DEFCON 117 (Edition 10/13)	Supply of Information for NATO Codification and Defence Introduction
DEFCON 127 (Edition 12/14)	Price Fixing Condition for Contract of Lesser Value (Amendments only)
DEFCON 129 (Edition 17/19)	Packaging (Articles for other Munitions)
DEFCON 129J (Edition 18/11/16)	The use of the Electronic Business Delivery Form
DEFCON 130 (Edition 04/18)	Packaging for Explosives
DEFCON 501 (Edition 11/17)	Definitions and Interpretations
DEFCON 502 (Edition 05/17)	Specification Changes
DEFCON 503 (Edition 12/14)	Formal Amendments to Contract
DEFCON 507 (Edition 10/18)	Delivery
DEFCON 513 (Edition 11/16)	Value Added Tax
DEFCON 514 (Edition 08/15)	Material Breach
DEFCON 515 (Edition 02/17)	Bankruptcy and Insolvency
DEFCON 516 (Edition 04/12)	Equality
DEFCON 518 (Edition 02/17)	Transfer
DEFCON 520 (Edition 05/18)	Corrupt Gifts and Payment of Commission
DEFCON 522 (Edition 11/17)	Payment and Recovery of Sums Due

OFFICIAL SENSITIVE – COMMERCIAL

DEFCON Number and Edition	Description
DEFCON 524 (Edition 10/98)	Rejection: Unless stated in the Contract, DEFCON 524 shall apply to New Articles. For the purpose of DEFCON 524 rejection shall have deemed to have taken place after 60 Business Days.
DEFCON 525 (Edition 10/98)	Acceptance: Unless stated in the Contract, DEFCON 525 shall apply to New Articles. For the purpose of DEFCON 525 acceptance shall have deemed to have taken place after 60 Business Days.
DEFCON 526 (Edition 08/02)	Notices
DEFCON 527 (Edition 09/97)	Waiver
DEFCON 528 (Edition 07/17)	Import and Export Licences
DEFCON 529 (Edition 09/97)	Law (English)
DEFCON 530 (Edition 12/14)	Dispute Resolution (English Law)
DEFCON 531 (Edition 11/14)	Disclosure of Information
DEFCON 532B (Edition 05/18)	Protection of Personal Data
DEFCON 534 (Edition 06/17)	Subcontracting and Prompt Payment
DEFCON 537 (Edition 06/02)	Rights of Third Parties
DEFCON 538 (Edition 06/02)	Severability
DEFCON 539 (Edition 08/13)	Transparency
DEFCON 550 (Edition 02/14)	Child Labour and Employment Law
DEFCON 566 (Edition 12/18)	Change of Control of Contractor
DEFCON 601 (Edition 04/14)	Redundant Material
DEFCON 602A (Edition 12/17)	Quality Assurance (With Deliverable Quality Plan)
DEFCON 605 (Edition 06/14)	Financial Reports
DEFCON 606 (Edition 06/14)	Change and Configuration Control Procedure
DEFCON 608 (Edition 10/14)	Access and Facilities to be Provided by the Contractor
DEFCON 609 (Edition 08/18)	Contractor's Records
DEFCON 611 (Edition 02/16)	Issued Property
DEFCON 612 (Edition 10/98)	Loss of or Damage to the Article
DEFCON 619A (Edition 09/97)	Customs Duty Drawback
DEFCON 620 (Edition 05/17)	Contract Change Control Procedure

OFFICIAL SENSITIVE - COMMERCIAL

OFFICIAL SENSITIVE – COMMERCIAL

DEFCON Number and Edition	Description
DEFCON 621A (Edition 06/97)	Transport (If the Authority is Responsible for Transport)
DEFCON 621B (Edition 10/04)	Transport (If the Contractor is Responsible for Transport)
DEFCON 624 (Edition 11/13)	Use of Asbestos
DEFCON 627 (Edition 12/10)	Quality Assurance - Requirement for a Certificate Conformity
DEFCON 637 (Edition 05/17)	Defect Investigation and Liability
DEFCON 642 (Edition 06/14)	Progress Meetings
DEFCON 643 (Edition 12/14)	Fixing (Non-qualifying contracts)
DEFCON 644 (Edition 07/18)	Marking of Articles
DEFCON 645 (Edition 07/99)	Export Potential
DEFCON 647 (Edition 04/19)	Financial Management Information
DEFCON 649 (Edition 12/16)	Vesting
DEFCON 656B (Edition 08/16)	Termination for Convenience: Any termination notice issued under DEFCON 656B shall be 12 months
DEFCON 658 (Edition 10/17)	Cyber
DEFCON 659A (Edition 02/17)	Security Measures
DEFCON 660 (Edition 12/15)	Official-Sensitive Security Requirements
DEFCON 661 (Edition 10/06)	War Risk Indemnity
DEFCON 670 (Edition 02/17)	Tax Compliance
DEFCON 681 (Edition 06/02)	Decoupling Clause - Subcontracting with the Crown
DEFCON 684 (Edition 01/04)	Limitation upon claims in Respect of Aviation Products
DEFCON 691 (Edition 03/15)	Timber and Wood - Derived Products
DEFCON 694 (Edition 07/18)	Accounting for Property of the Authority
DEFCON 697 (Edition 07/13)	Contractors on Deployed Operations

OFFICIAL SENSITIVE - COMMERCIAL

2. The Contractor shall perform the contract at all times in accordance with the Quality standards below;

Normative Quality Assurance Requirements	
1	Contractual standard requirements for a Quality Management System.
	The Primary Quality Assurance Standard Requirements:
A	AQAP 2110 Edition 3 NATO Quality Assurance Requirements for Design, Development and Production. CoC shall be provided in accordance with DEFCON 627
B	AQAP 2120 Edition 3 NATO Quality Assurance Requirements for Production. CoC shall be provided in accordance with DEFCON 627
C	AQAP 2130 Edition 3 NATO Quality Assurance Requirements for Inspection and Test. CoC shall be provided in accordance with DEFCON 627
D	AQAP 2131 Edition 2 NATO Quality Assurance Requirements for Final Inspection. CoC shall be provided in accordance with DEFCON 627
E	AQAP 2310 Edition A Version1 NATO Quality Management System requirements for Aviation, Space and Defence Suppliers. CoC shall be provided in accordance with DEFCON 627
F	No specific Quality Management System requirements are defined. This does not relieve the Contractor of providing conforming products under this contract. CoC shall be provided in accordance with DEFCON 627
G	No specific Quality Management System requirements are defined. This does not relieve the Contractor of providing conforming products under this contract.
2	Developmental Software
A	AQAP 2210 Edition A Version 2- NATO Supplementary Software Quality Assurance Requirements to AQAP 2110 or AQAP 2310 shall apply.
3	Quality Plans
A	A Deliverable Quality Plan is required in accordance with DEFCON 602A 12/06 and AQAP 2105 NATO Requirements for Deliverable Quality Plans Edition 2. Unless otherwise notified, the quality plan shall be delivered to the Quality Focal Point within 3 months of the Commencement Date
4	Concessions
A	Concessions shall be managed in accordance with Def Stan. 05-061 Part 1, Issue 6 - Quality Assurance Procedural Requirements - Concessions.
5	Contractor Working Parties
A	Any Contractor Working Parties shall be provided in accordance with Def Stan. 05-061 Part 4, Issue 3 - Quality Assurance Procedural Requirements - Contractor Working Parties.
6	Safety Critical Items
A	Safety Critical Items shall be subject to independent inspection in accordance with Def Stan. 05-061 Part 9, Issue 5 - Quality Assurance Procedural Requirements - Independent Inspection Requirements for Safety Critical Items.
7	Configuration Management
A	For UK contracts: Configuration shall be managed in accordance with Def Stan 05-057 Issue 6 - (Configuration Management of Defence Materiel)
8	Counterfeit Avoidance Management
A	Counterfeit Avoidance Management shall be managed in accordance with Def Stan 05-135 Issue 1 (Avoidance of Counterfeit Materiel)
Informative Quality Assurance Standards	
9	Informative Quality Assurance Standards

A	For guidance on the application and interpretation of AQAPs use AQAP 2009 Edition 3.
B	Where GQA is performed against this contract it will be in accordance with AQAP 2070 Edition B Version 3.
C	ISO 25051: 2008 Software Engineering - Software Product Quality Requirements and Evaluation (SQuaRE) - Requirements for quality of COTS software product and instructions for testing.

3. The following Defence Forms shall apply in addition to those that are referenced in the above mentioned DEFCONS:

Parent Company Guarantees (Deed of Guarantee and Indemnity)	DEFFORM 24
Confidentiality Agreement	DEFFORM 94
Appendix - Addresses and Other Information	DEFFORM 111

PART 2 – General Provisions

1. Appointment

- 1.1. The Authority hereby appoints the Contractor to supply the Articles and provide the Services and/or procure the supply of the Articles and provision of the Services in accordance with Schedule 2 (Statement of Requirements) and the Contractor shall allocate sufficient resources to enable it to comply with these obligations, on the Authority's behalf and in the Contractor's own name in accordance with this Contract, and the Contractor hereby accepts such appointment.

2. Contract Duration

- 2.1. This Contract shall commence on the Commencement Date (14 August 2020), with a Transition In Phase effective until 31 May 2021 and continue until 30 June 2027 (the Contract Expiry Date) unless extended in accordance with Clause 3 (Contract Period Extension) or otherwise terminated in accordance with Part 5 (Termination).

3. Contract Period Extension

- 3.1. The Authority has the unilateral right to extend the term of the Contract under the existing terms and conditions for three (3) periods of twelve (12) months following the planned Contract Expiry Date. The Authority will give a minimum of six (6) months' notice in writing of their intention to exercise each of these extension periods.
- 3.2. In the event that the Authority exercises the option to extend in accordance with Clause 3.1 then pricing for the Services and Assets during the extension periods will be conducted in accordance with paragraph 12 of Part 1 of Schedule 3 (Pricing and Payment)
- 3.3. Without limiting Clause 3.1 in determining whether to grant any extension, the Authority may have regard to and take into account any relevant factor, including:
- 3.3.1. performance against KPIs in accordance with Schedule 4 (Performance Measurement & Management);
 - 3.3.2. the outcome of any Annual Contract Reviews undertaken in accordance with Schedule 9 (Governance);
 - 3.3.3. the extent to which, additional benefits have been delivered during the Contract Period;
 - 3.3.4. the outcome of any strategic defence review or other H.M. Government review into the UK defence industry; and
 - 3.3.5. The outcome of the Benchmarking review exercise in accordance with the provisions of Schedule 16 (Benchmarking).

4. Contract Documents and Precedence

- 4.1. Schedule 2 (Statement of Requirements) sets out the requirements and specifications of the Articles and Services, including a description of what work is to be done, timescales for completion of the work to be done, Contractor Deliverables, GFA and any other information relevant to the requirements under this Contract.
- 4.2. No amendment shall be made to Schedule 2 (Statement of Requirements) except in accordance with DEFCON 502 (Specification Changes).
- 4.3. In the event of any conflict between the provisions of this Contract, its Schedules, annexes and appendices and any other document referred to in this Contract, the order of precedence shall (save where expressly provided to the contrary) be as follows:
- 4.3.1. the main terms and conditions of this Contract and Schedule 1 (Definitions);
 - 4.3.2. Schedule 2 (Statement of Requirement) and the annexes, appendices and any other addendums to such Schedule; and

- 4.3.3. the other Schedules to this Contract and the annexes, appendices any other addendums to such Schedules;
- 4.3.4. any referenced documents or forms; and
- 4.3.5. the Contractor's solution as set out in the Contractors SOR compliance matrix at Schedule 17 (Contractor's Compliance Matrix).

5. Contractor's Warranties, Representations and Undertakings.

- 5.1. The Contractor warrants and represents to the Authority, and the Authority relies upon such warranties and representations, that on the Commencement Date:
 - 5.1.1. it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
 - 5.1.2. in the case of any document executed on or before the Commencement Date, all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under this Contract has been taken;
 - 5.1.3. in the case of any document executed on or before the Commencement Date, the obligations expressed to be assumed by the Contractor under the Contract are legal, valid, binding and enforceable to the extent permitted by law;
 - 5.1.4. the execution, delivery and performance by it of the Contract does not contravene any provision of:
 - 5.1.4.1. any existing laws including any law which has been enacted but is not yet in force;
 - 5.1.4.2. the articles of association of the Contractor;
 - 5.1.4.3. any order or decree of any court or arbitrator which is binding on the Contractor; or
 - 5.1.4.4. any obligation which is binding upon the Contractor or upon any of its assets or revenues;
 - 5.1.5. no claim is presently being assessed and no legal proceeding is presently in progress or, to the best of the knowledge of the Contractor (having made all due enquiry), pending or threatened against it or any of its assets which has a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
 - 5.1.6. no legal proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, having made all due enquiries, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
 - 5.1.7. in entering into this Contract, it has not committed any Prohibited Act;
 - 5.1.8. it has gathered all information necessary to perform its obligations under the Contract;
 - 5.1.9. it has confirmed the accuracy and sufficiency of the Contract and Schedule 2 (Statement of Requirements),
 - 5.1.10. neither the Contractor (or anyone employed or acting on behalf of it) nor any of the agents or shareholders is or has been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under any legislation relating to anti-bribery and anti-corruption, including the Bribery Act 2010; and
 - 5.1.11. neither the Contractor (or anyone employed or acting on behalf of it) nor any of the agents or shareholders is or has been the subject of UK or foreign export control sanctions or investigations.

- 5.2. The Contractor warrants and represents to the Authority, and the Authority relies upon such warranties and representations, that at the time of the execution of the relevant document:
- 5.2.1. in the case of any document that is required by this Contract to be executed after the Commencement Date, all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under that document will be or has been taken; and
 - 5.2.2. in the case of any document executed after the Commencement Date, the obligations expressed to be assumed by the Contractor under the relevant document shall be or are legal, valid, binding and enforceable to the extent permitted by law.
- 5.3. The Contractor warrants and represents to the Authority, and the Authority relies upon such warranties and representations, that throughout the Contract Period it will have in place (and will procure that any Subcontractor has in place) adequate procedures (as referred to in Section 7(2) of the Bribery Act 2010) designed to prevent persons associated with the Contractor and any Subcontractor from bribing any person with the intention of obtaining or retaining business for the Contractor or any Subcontractor or with the intention of obtaining or retaining an advantage in the conduct of business for the Contractor or any Subcontractor.
- 5.4. The Contractor warrants and represents to the Authority, and the Authority relies upon such warranties and representations, that throughout the Contract Period:
- 5.4.1. it will perform its obligations under this Contract in accordance with all relevant Law, guidance and Good Industry Practice;
 - 5.4.2. it will obtain and maintain all rights, agreements, approvals, consents, permits, licences, facilities, permission and certificates lawfully or necessarily required in connection with its obligations under this Contract;
 - 5.4.3. it shall perform its obligations under this Contract in a proper, skilful and workmanlike manner and shall employ sufficient persons sufficiently instructed, supervised and skilled to ensure that it can comply with its obligations under this Contract;
 - 5.4.4. it shall provide sufficient vehicles, plant, equipment and facilities to ensure that it can comply with its obligations under the Contract;
 - 5.4.5. it will inform the Authority fully and as soon as possible of any circumstances which might prejudice the Contractor's ability to provide the Services whether temporarily or permanently including, without limitation, any litigation, arbitration, adjudication or mediation proceedings before or of any court, arbitrator or relevant authority which may be threatened or pending and shall, for so long as such proceedings subsist, keep the Authority fully informed of the same;
 - 5.4.6. it will not without the prior written consent of the Authority (and whether by a single transaction or by a series of related transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security, which the Authority hereby consents to) the whole or any part of its business or assets so as to materially affect the ability of the Contractor to perform its obligations under this Contract;
 - 5.4.7. it shall transact all its business on normal arm's length terms in the ordinary and usual course of business.

6. Contractor's Obligation and Responsibilities

- 6.1. The liability for the performance of the obligations and services of this Contract shall rest with the Contractor. Without limitation to any other provisions of this Contract, the Contractor shall:
- 6.1.1. co-operate with the Authority in all matters relating to the provision of the Articles and Services;

- 6.1.2. (subject to the prior written approval of the Authority) appoint, or (at the request of the Authority) replace, without delay, the Contractor's Manager;
- 6.1.3. promptly inform the Authority of the absence (or anticipated absence) of the Contractor's Manager and, if the Authority requires, the Contractor shall provide a suitably qualified replacement;
- 6.1.4. (subject to the prior written approval of the Authority) appoint, or (at the request of the Authority) replace, without delay, the Contractor's security officer; and
- 6.1.5. (subject to the prior written approval of the Authority such approval not to be unreasonably held) appoint, or (at the reasonable request of the Authority) replace, without delay, the Contractor's other named key personnel.
- 6.1.6. ensure that the Contractor's personnel are suitably qualified and experienced persons and use all reasonable skill and care in the performance of the Services and the requirements of this Contract.
- 6.1.7. The liability for the performance of the obligations and services of this Contract shall rest with the Contractor:
- 6.1.8. In the event of a failure by the Contractor to perform any obligation under this Contract; then
 - 6.1.8.1. Amey Community Ltd shall be jointly and severally liable for the performance or non-performance of the obligations that Briggs Equipment UK Ltd is liable for under this Contract as agreed at Clause 15 (Parent Company Guarantee); and
 - 6.1.8.2. Briggs Equipment UK Ltd shall be jointly and severally liable for the performance or non-performance of the obligations that Amey Community Ltd is liable for under this Contract as agreed at Clause 15 (Parent Company Guarantee).
- 6.1.9. Briggs Equipment UK Ltd and Amey Community Ltd shall provide a Parent Company Guarantee in accordance with Clause 15 (Parent Company Guarantee).
- 6.1.10. Any loss, liability or damage as a result of a breach by the Contractor under this Contract will not be recoverable by the Authority pursuant to this Agreement to the extent that the same has otherwise already been recovered by the Authority pursuant to either of the Parent Company Guarantees under Clause 15 (Parent Company Guarantee) or otherwise.

7. Supply chain

- 7.1. When the Contractor is required to procure Equipment where title will vest with the Authority, the Contractor shall:
 - 7.1.1. subject to Clause 7.3, advertise on Contracts Finder all Subcontract opportunities arising from or in connection with the provision of the Articles and/or Services and/or Works above a minimum threshold of £25,000 that arise during the Contract Period;
 - 7.1.2. within 90 days of awarding a subcontract to a subcontractor, update the notice on Contracts Finder with details of the successful subcontractor;
 - 7.1.3. monitor the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;
 - 7.1.4. provide reports on the information at Clause 7.3 to the Authority in the format and frequency as reasonably specified by the Authority; and
 - 7.1.5. promote Contracts Finder to suppliers and encourage those organisations to register on Contracts Finder.

- 7.2. Each advert referred to at Clause 7.1 above shall provide a full and detailed description of the Subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Contractor.
- 7.3. The obligation at Clause 7.1 shall only apply in respect of subcontract opportunities arising after the Commencement Date.
- 7.4. Notwithstanding Clause 7.1, the Authority may by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.
- 7.5. Any request to procure Equipment where title will vest with the Authority, shall be agreed in accordance with DEFCON 620 (Contract Change Procedure).

8. Health and Safety

- 8.1. The Contractor shall observe, and ensure that the Contractor's personnel observe, all health and safety rules and regulations and any other security requirements that apply in respect of the Authority or at any of the Authority's premises. The Authority reserves the right to refuse the Contractor's personnel access to the Authority's premises, if any of the rules and regulations and any security requirements that apply are not adhered to.
- 8.2. The Contractor shall:
 - 8.2.1. notify the Authority as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the supply of the Articles and the provision of the Services; and
 - 8.2.2. before the date on which the supply of the Articles and the provision of the Services are to start, obtain, and at all times maintain, all necessary licences and consents and comply with all relevant laws and legislation in relation to:
 - 8.2.2.1. the supply of the Articles and the provision of the Services;
 - 8.2.2.2. the use of any GFA; and
 - 8.2.2.3. the use of all documents, information and materials provided by the Contractor or its agents, Subcontractors, consultants or employees relating to the Services, including computer programs, data, reports and specifications.

9. Entire Agreement

- 9.1. This Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 9.2. Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

10. Risk

- 10.1. The MITER Risk Register shall be jointly maintained by the Authority and the Contractor during the Contract Period. The Risk Register shall detail all risks that are associated with the work under the Contract. All such risks (including risks relating to Subcontracts of any tier and security) shall be attributed in the Risk Register to where they can be best managed. Each risk identified in the registers shall be categorised (whether the risk is high, medium or low), have an action plan by way of mitigation and under which the risk is to be managed and monitored.
- 10.2. The Risk Register shall be living documents, and risks identified in the Risk Register shall be continuously reviewed as an item of the Review Meetings as detailed in Schedule 9 (Governance). Where some risks no longer exist, they will be removed from the Risk Register by mutual consent. New risks will be added (by mutual consent) to the Risk Register as soon as they are identified, attributed and mitigation action agreed.

10.3. The Contractor acknowledges that any risk assessment which has been, or may be, undertaken in connection with the Contract does not affect the legal relationship between the Parties. The issuing of any risk assessment questionnaire or guidance document and the process of risk assessment generally, including without limitation, the identification of (or failure to identify) either:

10.3.1. particular risks and their impact; or

10.3.2. risk reduction measures, contingency plans and remedial actions,

shall not, unless otherwise agreed in accordance with DEFCON 620 in any way limit or exclude the Contractor's obligations under the Contract and shall be entirely without prejudice to the Authority's rights, privileges and powers under the Contract. The risks identified as a result of any risk assessment questionnaire or guidance document and risk assessment process generally remain the risk of the Contractor and are not assumed by the Authority except to the extent that the Authority expressly and unequivocally accepts those risks under the Contract. Any risk assessment questionnaire or guidance document released was or will be issued by the Authority solely on this basis.

11. Authority's Disclosed Data

11.1. Subject to Clause 11.4 (Fraudulent Statements), the Authority does not make any representation or give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Authority's Disclosed Data, and neither the Authority nor any of its directors, officers, employees, agents or advisers shall be liable to the Contractor in contract, tort (including the tort of negligence) or for breach of any statutory duty or otherwise as a result of:

11.1.1. any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Authority Disclosed Data; or

11.2. any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to the Contractor's compliance with this Contract.

11.3. No Relief

11.3.1. Subject to Clause 11.4 (Fraudulent Statements), the Contractor shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority), is incorrect or insufficient.

11.4. Fraudulent Statements

11.4.1. Nothing in Clause 11 (Authority's Disclosed Data) shall exclude any liability which the Authority would otherwise have to the Contractor for statements made fraudulently or fraudulent omissions to make statements prior to Contract Award.

12. Disruption

12.1. The Contractor shall take all reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Authority, its employees or any other Contractor employed by the Authority.

12.2. The Contractor shall inform the Authority of any actual or potential industrial action which affects or might affect its ability at any time to perform its obligations under the Contract as soon as it becomes aware of the actual or potential industrial action and, in any event, no later than the seven (7) Business Days before the action is due to take place, whether such action be by its own employees or others.

12.3. The Contractor shall have a robust Business Continuity Plan, at the Commencement Date and be updated no less than on an annual basis to ensure that, as an example, in the event of industrial action by the Contractor's employees, provision of the Services is maintained and such contingency plans shall be available for the Authority to inspect and/or comment on at any reasonable time and shall be updated and revised as necessary by the Contractor throughout the

Contract Period inform the Authority of any actual or potential industrial action which affects or might affect its ability at any time to perform its obligations under the Contract as soon as it becomes aware of the actual or potential industrial action and, in any event, no later than the seven (7) Business Days before the action is due to take place, whether such action be by its own employees or others.

13. Quality of Services

- 13.1. The Contractor warrants to the Authority that:
- 13.1.1. the Contractor shall perform the Services with care and skill and in accordance with Good Industry Practice, generally recognised commercial practices and standards in the industry for similar Services;
 - 13.1.2. the Contractor shall in all its operations to perform the Contract, and subject to the terms of Schedule 2 (Statement of Requirements), adopt a sound proactive environmental approach that identifies, considers, and where possible, mitigates the environmental impacts of its supply chain and the Contractor shall provide evidence of so doing to the Authority on demand;
 - 13.1.3. the Services will conform with all descriptions and specifications provided by the Authority to the Contractor contained within this Contract, including as set out in Schedule 2 (Statement of Requirements); and
 - 13.1.4. the Services will be provided in accordance with all applicable Law from change in law in force, and the Contractor will notify the Authority in writing as soon as it becomes aware of any changes in that Legislation.
- 13.2. The Authority's rights under this Contract are in addition to the statutory terms implied in favour of the Authority by the Supply of Goods and Services Act 1982 and any other Law.
- 13.3. The provisions of this Clause shall survive any performance, acceptance or payment pursuant to this Contract and shall extend to any substituted or remedial Services provided by the Contractor.

14. Mitigation

- 14.1. Each of the Parties shall at all times take reasonable steps to minimise and mitigate any loss for which it is entitled to bring a claim against the other party pursuant to this Contract.

15. Parent Company Guarantees

- 15.1. The Contractor shall at all times during the Contract Period maintain the Parent Company Guarantee's from each Parent Company (Amey Community Ltd and Briggs Equipment UK Ltd) as provided at Schedule 20 (Parent Company Guarantee) to guarantee the due performance by the Contractor of its obligations under this Contract.
- 15.2. If, during the Contract Period, if either of the Guarantors shall cease to meet the Guarantee Criteria, the Contractor shall, within twenty (20) Business Days following a written request from the Authority, and at the Contractor's own cost and expense, procure that a substitute Guarantor (which at the relevant time and thereafter shall meet the Guarantee Criteria) shall become the Guarantor and shall provide a Parent Company Guarantee in favour of the Authority substantially in the form set out in DEFFORM 24 (Specimen of Guarantee Given by a Parent Company in respect of a Subsidiary) to secure the due performance by the Contractor of its obligations to the Authority.
- 15.3. If the Contractor fails to comply with this Clause 15, then this shall constitute an event of default on the part of the Contractor pursuant to Clause 19 (Termination for Contractor Default).

16. Benchmarking

- 16.1. The provisions of Schedule 16 (Benchmarking) shall apply

PART 3 – Incentivisation

17. Provisions for Pricing, Payment and Performance Measurement and Management

- 17.1. The provisions of Schedule 3 (Pricing and Payment) shall apply.
- 17.2. The provisions of Schedule 4 (Performance Measurement and Management) shall apply.

PART 4 – Intellectual Property Rights (IPR)

18. The Provisions of Schedule 5 (IPR) shall apply.

PART 5 – Termination

19. Termination for Contractor Default

- 19.1. Without prejudice to any other rights or remedies of the Authority under this Contract, each and any of the following events shall constitute an event of default on the part of the Contractor, entitling the Authority to terminate in whole or in part the appointment of the Contractor by written notice to the Contractor:
 - 19.1.1. a failure by the Contractor to comply with Clause 15 (Parent Company Guarantee);
 - 19.1.2. the Contractor incurs any of the criteria outlined in Paragraph 8 (Termination for Failure of Performance KPIs) of Schedule 4 (Performance Measurement and Management)
 - 19.1.3. the Contractor repeatedly breaches any of the obligations of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
 - 19.1.4. the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of that other party;
 - 19.1.5. a petition is filed, a notice is given, a resolution is passed, or an order is made, in connection with the winding up of the Contractor (being a company) (and such process is not discharged or such petition or notice not withdrawn within fourteen (14) days) other than for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of the Contractor;
 - 19.1.6. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Contractor (being a company);
 - 19.1.7. the holder of a qualifying floating charge over the assets of the Contractor (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 19.1.8. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the Contractor;
 - 19.1.9. the Contractor (being an individual) is the subject of a bankruptcy petition or order;
 - 19.1.10. a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within fourteen (14) days;
 - 19.1.11. the Contractor unlawfully suspends or ceases, or threatens to unlawfully suspend or cease, carrying on all or a substantial part of its business;
 - 19.1.12. any warranty given by the Contractor under this Contract is found to be untrue or misleading;

- 19.1.13. the Contractor repudiates or abandons the Contract.
- 19.1.14. if the Contractor does not enter into an applicable Admission Agreement by ISC date;
- 19.1.15. if the Contractor breaches the provisions any Admission Agreement provided that where the breach is remediable the right to terminate shall only arise where the Contractor fails to remedy the breach within twenty eight (28) days of service of a notice from the Minister for the Cabinet Office setting out particulars of the breach and requiring the Contractor to remedy it;
- 19.1.16. if the Contractor breaches the provisions of Schedule 10 (Personnel), Part A TUPE, Transfer Regulations Part 3 Pension Matters provided that where the breach is remediable the right to terminate shall only arise where the Contractor fails to remedy the breach within 28 days of service of a notice from the Authority setting out particulars of the breach and requiring the Contractor to remedy it; or;
- 19.1.17. where notice to terminate the Admission Agreement has been served under Clause 13.1 of any Admission Agreement.
- 19.1.18. where the Contractor fails to deliver the Asset Management Programme; or
- 19.1.19. failure of the Contractor to comply with Clause 6 (Contractor's Obligation and Responsibilities)
- 19.2. Where the Authority has the right to terminate this Contract under Clause 19.1 but where, in the Authority's sole opinion such breach is remediable, then it shall issue to the Contractor a Rectification Notice citing such breach and requiring the Contractor to rectify such breach (a "Rectification Notice").
- 19.3. On receipt of a Rectification Notice, the Contractor shall, within fifteen (15) Business Days (or such longer period as may be agreed by both Parties), provide a plan to the Authority containing the Contractor's proposed remedial action for remedying the breach and associated timescale for completion of such remedial action (a "Rectification Plan").
- 19.4. The Authority shall consider the Rectification Plan for approval, and such approval shall not be unreasonably withheld. Provided that the Authority approves the Rectification Plan and the Contractor rectifies the breach in accordance with the Rectification Plan, the Authority may not terminate the Contract under this Clause for that breach.
- 19.5. In the event that the Authority approves the Rectification Plan but the Contractor fails to rectify the breach in accordance with the Rectification Plan within the agreed period, or any longer period as may be agreed between the Parties, then the Authority may proceed to terminate the Contract in accordance with the provisions of this Clause.
- 19.6. In the event that the Authority, acting reasonably, rejects the Rectification Plan, the Contractor shall within ten (10) Business Days amend the Rectification Plan and submit it to the Authority for approval (an "Amended Rectification Plan"). In the event that the Authority rejects the Amended Rectification Plan the Authority may choose to treat the failure as a material breach and proceed to terminate the Contract in accordance with DEFCON 514 (Material Breach) and the provisions of Clause 25 (Exit) shall apply.
- 19.7. If the Contractor:
 - 19.7.1. fails to submit a Rectification Plan that is acceptable to the Authority within the permitted time; or
 - 19.7.2. fails to submit an Amended Rectification Plan that is acceptable to the Authority within the permitted time; or
 - 19.7.3. fails to remedy the breach in accordance with the relevant Rectification Plan, or Amended Rectification Plan (as the case may be),

then the Authority may choose to treat any of the failures at Clause 19.7.1 to 19.7.3 as a material breach and proceed to terminate the Contract in accordance with DEFCON 514 (Material Breach) and the provisions of Clause 25 (Exit) shall apply.

20. Persistent Breach

- 20.1. If a breach of the Contract by the Contractor other than a breach or event which falls into any of the categories of events of default set out in Clauses 19.1.1 to 19.1.19 or 19.2 inclusive or in respect of which this Contract provides an express remedy (including a breach or event in respect of which a Key Performance Indicator applies) (such a breach being a "Persistent Breach") has occurred more than three (3) times in any six (6) month period then the Authority may serve a notice citing such breach and requiring the Contractor to rectify such breach (a "Rectification Notice" on the Contractor:
- 20.2. On receipt of the Rectification Notice the Contractor shall, within fifteen (15) Business Days (or such longer period as may be agreed by both Parties), provide a plan to the Authority containing the Contractor's remedial action for remedying the breach and associated timescales for completion of such remedial action (a Rectification Plan).
- 20.3. The Authority shall consider the Rectification Plan for approval, and such approval shall not be unreasonably withheld. Provided that the Authority approves the Rectification Plan and the Contractor rectifies the breach in accordance with the Rectification Plan, the Authority may not terminate the Contract under this Clause for that breach.
- 20.4. In the event that the Authority approves the Rectification Plan but the Contractor fails to rectify the breach in accordance with the Rectification Plan within the agreed period, or any longer period as may be agreed between the Parties, then the Authority may proceed to terminate the Contract in accordance with the provisions of this Clause.
- 20.5. In the event that the Authority acting reasonably rejects the Rectification Plan, the Contractor shall within ten (10) Business Days amend the Rectification Plan and submit it to the Authority for approval ("Amended Rectification Plan"). In the event that the Authority rejects the Amended Rectification Plan the Authority may choose to treat the failure as a material breach in accordance with DEFCON 514 (Material Breach) and the provisions of Clause 25 (Exit) shall apply.
- 20.6. If, following service of such a Rectification Notice under Clause 20.1, the breach specified has recurred three (3) or more times in the six (6) month period after the date of service of said notice, then the Authority may service notice on the Contractor:
 - 20.6.1. specifying that it is a final warning notice;
 - 20.6.2. stating that the breach specified has been the subject of a Rectification Notice served within the six (6) month period prior to the date of service of the final warning notice; and
 - 20.6.3. stating that if such breach recurs three (3) or more times in the six (6) month period after the date of service of the final warning notice, this Contract may be terminated pursuant to DEFCON 514 (Material Breach).
- 20.7. A final warning notice which is issued pursuant to Clause 20.4. may only relate to the same recurring breach which has previously been notified to the Contractor in accordance with Clause 20.1.
- 20.8. If the Contractor has five (5) or more Rectification Notices in any five (5) month period then the Authority will have the option to treat the accumulated Persistent Breaches as a material breach and the provisions of DEFCON 514 (Material Breach) and Clause 25 (Exit) shall apply.
- 20.9. Following a decision by the Authority to terminate this Contract under this Clause 20, the provisions of DEFCON 514 (Material Breach) and Clause 25 (Exit) shall apply.

21. Force Majeure Events

- 21.1. On the occurrence of a Force Majeure Event, the Contractor shall notify the Authority as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Contractor and any action proposed to mitigate its effect. The Authority shall use all reasonable endeavours to notify the Contractor if it becomes aware of any current or expected event that could give rise to a Force Majeure Event.
- 21.2. Following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.
- 21.3. The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Contractor shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 21.4. No Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party or to the extent that a Force Majeure Event occurs and the affected Party is prevented from carrying out obligations by that Force Majeure Event. Without prejudice to Clause 21.5 the Authority shall not be entitled to terminate this Contract for Contractor default to the extent that such Contractor default arises from a Force Majeure Event.
- 21.5. The Authority may terminate or partially terminate this Contract pursuant to the provisions in Clause 22 (Termination/Partial Termination for Force Majeure Event).
- 21.6. Where a Force Majeure Event occurs, the Contractor shall be entitled to request relief from obligations affected by the Force Majeure Event. Where a notice is provided under Clause 21.1 above, it shall be granted to the extent that the Contractor can demonstrate to the reasonable satisfaction of the Authority that:
- 21.6.1. the Force Majeure Event in question has occurred;
 - 21.6.2. the Force Majeure Event has caused the Contractor's failure to meet its relevant obligations;
 - 21.6.3. the Force Majeure Event has not been caused or contributed to by the Contractor; and
 - 21.6.4. the Contractor has taken all possible steps to mitigate the effects of such Force Majeure Event.
- 21.7. Upon the Authority being satisfied with the above clauses 21.6.1 to 21.6.4 and within ten (10) Business Days, it shall specify to the extent reasonable in the circumstances the obligations for which relief under this Clause 21 shall be given, which shall include but not be limited to the Force Majeure period, and any payments the Contractor is entitled to within the Force Majeure period.
- 21.8. The Contractor shall notify the Authority after the Force Majeure Event ceases or no longer causes the Contractor to be unable to comply with its obligations under this Contract. Following such notification this Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

22. Termination or Partial Termination for Force Majeure Event

- 22.1. The Authority may terminate or partially terminate this Contract, at any time on or before the Contract Expiry Date on the grounds of a Force Majeure Event, pursuant to the provisions of this Clause 22.
- 22.2. If no terms, pursuant to Clause 21 (Force Majeure Events), are agreed to address the consequences of the Force Majeure Event on or before the date falling sixty (60) Business Days

after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Contractor is unable to comply with its obligations under this Contract for a period of more than one hundred and twenty (120) Business Days from the commencement date of the Force Majeure Event, then, subject to Clause 22.3 the Authority may terminate or partially terminate this Contract by giving twenty (20) Business Days' written notice to the other Party.

- 22.3. Where the Authority gives notice to Terminate the whole Contract as a result of a Force Majeure Event the Contract shall be set aside and the Parties relieved of any further obligations.
- 22.4. Where the Authority gives notice to partially terminate the Contract as a result of a Force Majeure Event, the Parties shall meet and agree the impact of this Clause 22.

23. Consequences of Termination

- 23.1. Hand back and vesting
 - 23.1.1. Subject to Part 5 (Termination), on termination of this Contract for any reason, the Contractor shall:
 - 23.1.2. immediately deliver to the Authority all GFA and all copies of information and data provided by the Authority to the Contractor detailed at Schedule 6 (GFA and Issued Property);
 - 23.1.3. certify to the Authority that it has not retained any GFA, copies of any GFA or other information or data (except for one copy which the Contractor may use for audit purposes only; and
 - 23.1.4. immediately deliver to the Authority all specifications, programs (including source codes) and other documentation comprised in the Contractor Deliverables and existing at the date of such termination, whether or not then complete

and all Intellectual Property Rights in such materials shall automatically pass to the Authority (to the extent that they have not already done so) who shall be entitled to enter the premises of the Contractor to take possession of such materials.

- 23.2. If the Contractor fails to fulfil its obligations under Clause 23.1 then the Authority may enter the Contractor's premises and take possession of any items which should have been returned under it. Until they have been returned or repossessed, the Contractor shall be solely responsible for their safe keeping.
- 23.3. All Articles, together with component parts and equipment incorporated in the Articles, and all materiel which the Contractor acquires or allocates for incorporation in any of the Articles shall vest in the Authority in accordance with DEFCON 649 (Vesting) and shall be held, accounted for and disposed of in accordance with DEFCON 611 (Issued Property) and DEFSTAN 05-99 (Managing Government Furnished Equipment in Industry).
- 23.4. Subcontracts & Lease Agreements
 - 23.4.1. The Contractor shall ensure that any Subcontracts and leases placed by it in pursuance of this Contract shall include a clause which enables the Subcontracts and leases to be novated to the Authority on reasonable notice if so demanded by the Authority in the event that this Contract is terminated for any reason.
- 23.5. Supply Chain
 - 23.5.1. The Contractor also agrees that in the event of any such termination, it shall continue to supply, on demand, but subject to lead times, any Articles which are manufactured or supplied by or on behalf of the Contractor and are in the process of being procured under the AMP pursuant to a Subcontract for such period as those Articles remain in production, (or one (1) year where the Authority is the sole customer), at fair and reasonable prices and on fair and reasonable terms.
- 23.6. Payment and Milestone Payments

- 23.6.1. On termination of this Contract, any agreed outstanding payments shall be subject to the provisions of Schedule 3 (Pricing and Payment) and Schedule 4 (Performance Measurement and Management).
- 23.7. Provisions Surviving Termination
- 23.7.1. On termination or expiry of this Contract, the following provisions of this Contract shall continue in force:
- 23.7.1.1. Clause 5 (Contractor Warranties, Representations and Undertakings), "DEFCON 529 Law (English), Clause 9 (Entire Agreement), DEFCON 538 Severability, DEFCON 539 Transparency, DEFCON 531 Disclosure of Information, DEFCON 637 Defect Investigation and Liability, DEFCON 606 Contractors Records, this Clause 23 (Consequences of Termination), DEFCON 656B (Termination for Convenience), Clause 25 (Exit), Clause 27 (Inadequacy of Damages), DEFCON 611 (Issued Property), Clause 29 (Insurance), DEFCON 661 War Risk Indemnity, DEFCON 532B (Protection of Personal Data), DEFCON 530 (Dispute Resolution), Schedule 1 (Definitions), Schedule 3 (Pricing and Payment), Schedule 5 (IPR), Schedule 7 (Required Insurance), Schedule 8 (Security), Schedule 9 (Governance), Schedule 10 (Personnel), Schedule 11 (Lease and Licences);
- 23.7.1.2. any other provisions which limit liability; and
- 23.7.1.3. any other provisions of this Contract required in order to give force and effect to the provisions listed in Clause 23.7.1 above.
- 23.7.2. Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

24. Step In / Step Out

- 24.1. The Authority can exercise its right to Step In either under Clause 39 (Measures in a Crisis) or following an event that may trigger termination in accordance with Part 5 (Termination), DEFCON 514 (Material Breach), DEFCON 520 (Corrupt Gifts and Payments of Commission), DEFCON 656B (Termination for Convenience), or if any of the following events occur:
- 24.1.1. any circumstances constituting, in the reasonable opinion of the Authority, a situation of emergency;
- 24.1.2. any, in the reasonable opinion of the Authority, serious risk exists to the health or safety of persons or property or to the environment; and
- 24.1.3. a breach of statutory duty by the Contractor or any Subcontractor,
- by issuing a Step-In Notice.
- 24.2. Within five (5) Business Days of the date of the Step In Notice, the Authority shall inform the Contractor as to the action to be taken by the Authority, provided that the final decision as to the action to be taken shall be at the Authority's absolute discretion.
- 24.3. At any time after the Authority has issued a Step In Notice, and having informed the Contractor, the Authority may take such action as it considers appropriate, having discussed on fair and reasonable terms how this will affect the Contract, and in order to do so may do, or engage a third party to do, either or both of the following:
- 24.3.1. have access to and the right to use any of Articles delivered under the Contract and, for such period as is necessary, take over any or all of the Articles/Services as specified in the Step-In Notice; and/or

- 24.3.2. suspend the obligation of the Contractor to provide all or any of the Articles/Services as specified in the Step-In Notice.
- 24.4. The Contractor shall co-operate fully with the Authority and provide all reasonable assistance (including providing access to or copies of technical information).
- 24.5. The Authority shall take any action under this Clause 24, in respect of the Articles/Services affected by the Step-In, and the Authority shall reimburse the Contractor for all reasonable costs incurred by the Contractor in assisting the Authority provided that the Authority shall otherwise have no liability to the Contractor as a result of any action taken pursuant to this Clause 24.
- 24.6. In the event that the Authority exercises its right to step-in then for so long as, and to the extent that, the Authority exercises such rights, the Contractor will no longer have the right or obligation to provide such of the Articles/Services in respect of which the Authority has exercised its rights as the Contractor is prevented from so providing.
- 24.7. At such time as the Authority may decide, in its absolute discretion, that grounds for the exercise of its rights under this Clause 24 no longer exist in respect of all or any of the affected Articles/Services, it shall issue a Step-Out Notice, and the Contractor shall comply fully with the terms of any such Step-Out Notice to reinstate the provision of such Articles/Services as the Authority requires.
- 24.8. Following the exercise of any of its rights pursuant to this Clause 24 (and whether or not a Step-Out Notice has been served or the Contractor has recommenced any of its obligations), the Authority may, if it is not satisfied, terminate the Contract in accordance with Part 5 (Termination) of the Contract or DEFCON 514 (Material Breach), DEFCON 520 (Corrupt Gifts and Payments of Commission), DEFCON 656B (Termination for Convenience).
- 24.9. References (however worded) in this Clause 24 to any steps or action being taken by the Authority under this Clause 24 are references to such steps or action being taken either by the Authority itself or by persons engaged by the Authority for that purpose.

PART 6 - Exit

25. Exit

- 25.1. If the Authority terminates this Contract using any of its rights under this Contract the Authority shall have the right to require the Contractor to continue to deliver its obligations under this Contract for a period of up to twelve (12) months at no additional cost to the Authority above that cost which would have been borne by the Authority in such period in the event that the Contract had not been terminated, unless the twelve (12) month period would end after the Contract Expiry Date (in which case the Authority shall have the right to require the Contractor to continue to deliver its obligations under this Contract for a period of time from and including termination of the Contract to and including the Contract Expiry Date at no additional cost to the Authority above that cost which would have been borne by the Authority in such period in the event that the Contract had not been terminated).
- 25.2. The Contractor shall maintain throughout the Contract Period a termination and expiry data pack, containing:
- 25.2.1. a list of all Subcontractors and suppliers used by the Contractor in performance of this Contract, including details of products and existing Subcontracts;
 - 25.2.2. warranty, guarantee and certification documentation, including test certificates as appropriate;
 - 25.2.3. reports produced for, and minutes of meetings with, the Authority during the Contract Period (including supporting information referenced therein); Clause;
 - 25.2.4. up to date Obsolescence Management Plan;
 - 25.2.5. up to date Risk Registers, issues logs and opportunities registers;

- 25.2.6. records of all GFA in the Contractor's possession;
- 25.2.7. all archived information as defined in Contractor's Statement of Work
- 25.2.8. the latest version of the Equipment Safety Case, Technical Publications and Training Material and;
- 25.2.9. any leases and/or licenses used in the delivery of the services
(the "**Termination and Expiry Data Pack**").
- 25.3. The Termination and Expiry Data Pack shall be made available on request for inspection by the Authority and shall be maintained in a manner suitable to facilitate a hand-over of Services to another contractor or to the Authority on Exit . The Termination and Expiry Data Pack shall be maintained by the Contractor in the manner that he would expect them to have been maintained were he to have been in the position of a third party unfamiliar with the requirements.
- 25.4. The Contractor shall provide the Termination and Expiry Data Pack to the Authority, at no cost to the Authority, within twenty (20) Business Days of a request from the Authority, in the event that:
 - 25.4.1. any one of the events listed in Clauses 19.1.1 to 19.1.19 (inclusive) occurs; or
 - 25.4.2. the Authority terminates the Contract;
 - 25.4.3. if the Authority exercises its rights in accordance with Clause 24 (Step-In)
 - 25.4.4. on expiry of the Contract.
- 25.5. In the event that any information contained within the Termination and Expiry Data Pack is to be passed to a third party, the Contractor may request that the third party agree to and to sign a DEFFORM 94 – (Confidentiality Agreement) to facilitate the hand-over,
- 25.6. The Contractor shall make its relevant personnel available to the Authority and/or a third party, for a period up to three months from the date of termination of this Contract, and (if relevant) in the run-up to termination, to enable the Authority and/or the third parties' representative(s) to be directly briefed, including face to face at the premises of the Authority, in all matters they may raise relevant to the past and future performance of this Contract.
- 25.7. This briefing shall include reviews and presentations by the Contractor of the records and data to be handed over to ensure its proper interpretation and use. In the event that the Authority requires additional support from the Contractor to ensure a smooth transition to other arrangements, and such support is deemed by the Authority to be over and above the requirements described in Clause 25.5, this transfer of management information will form the subject of a contract change and shall be agreed between the Parties in accordance with DEFCON 620 (Contract Change Control Procedure).
- 25.8. The Authority shall have the right to purchase any Fleet Assets which remain in the Contractor's possession at the point of termination or expiry of the Contract. Should the Authority elect to purchase any of the Fleet Assets in the Contractor's possession, the Parties shall agree a fair and reasonable price for such Fleet Assets in accordance with paragraph 5.7 of Schedule 14 (Fleet Asset Transfer and Management). The Authority shall be under no obligation to purchase the Fleet Assets.
- 25.9. On expiry of the Contract, the provisions of Clause 25.2 to 25.8 shall apply.

26. Remedies

- 26.1. The rights of and remedies provided to the Authority under this Contract are in addition to and not exclusive of any rights or remedies by law.
- 26.2. The Contractor and the Authority shall each be under a duty to mitigate any damages and losses in respect of which it makes a claim pursuant to this Contract.

27. Inadequacy of Damages

- 27.1. Without prejudice to any other rights or remedies that the Authority may have, the Contractor acknowledges and agrees that damages alone would not be an adequate remedy for any breach of this Contract by the Contractor. Accordingly, the Authority shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Contract.

PART 7 - GFA

28. Government Furnished Assets (GFA)

- 28.1. The Authority shall be responsible for providing and/or making available free of charge to the Contractor those requirements in terms of Government Furnished Assets (GFA) which are specifically and clearly defined by description, quantity, date required, period and purpose in Schedule 6 (GFA and Issued Property) to the Contract.
- 28.2. The Authority shall have no liability to the Contractor if, when the GFA is made available or offered to be made available on the agreed dates, the Contractor fails to make use of them. Any additional costs from this failure shall be the responsibility of the Contractor. The Authority shall accept no liability for increases to the Contract Price.
- 28.3. In addition to Clause 28.2, if the Contractor receives a demand that it cannot satisfy using GFA, then it shall be still obliged to deliver the demand either by using alternative GFA (subject to the agreement of the Authority), or by providing the article from other sources. Any additional costs incurred to meet the Authority's demand shall be the responsibility of the Contractor. The Authority shall accept no liability for increases to the Contract Price subject to the mechanics of Schedule 3 (Pricing and Payment).
- 28.4. The Contractor acknowledges and accepts the provisions of DEFCON 611 (Issued Property) whereby any Article(s) found to be damaged upon receipt or which do not meet the Contractor's requirements shall be reported promptly to the Authority who will give instructions to the Contractor regarding the disposal of the defective Article(s).
- 28.5. In the event that the Contractor identifies any further potential GFA requirements during the Contract Period, in addition to those included under Schedule 6, (GFA and Issued Property), then the relevant process set out in Clauses 28.6, 28.7 or 28.8 below shall apply.
- 28.6. Contract change requests which may require additional GFA shall be dealt with in accordance with the process set out in DEFCON 620 (Contract Change Control Procedure)
- 28.7. In all other events (not provided for by Clause 28.6 above) where the Contractor finds that it has omitted a request for GFA which will be required to enable delivery of the Contractor Deliverables in accordance with the Contract, then it must promptly inform the Authority, and request such additional GFA, in writing. The Contractor's written request shall include (as a minimum) the following:
- 28.7.1. the GFA description;
 - 28.7.2. quantity of GFA;
 - 28.7.3. NSN (if known);
 - 28.7.4. start date of the GFA loan;
 - 28.7.5. end date of the GFA loan;
 - 28.7.6. which Contractor Deliverables will be affected if the GFA is not made available and how such Contractor Deliverables will be affected; and
 - 28.7.7. where the GFA is to be delivered to or collected from, and Clause 28.9 shall apply.
- 28.8. All additional GFA requests made in accordance with Clause 28.7 will be assessed by the Authority and a decision will be made within twenty (20) Business Days. The Authority shall not be

liable for any losses or additional costs incurred in the event that the requested additional GFA cannot be provided.

- 28.9. All agreed changes to Schedule 6 (GFA and Issued Property) shall be dealt with in accordance with the process set out in DEFCON 620 (Contract Change Control Procedure).

PART 8 - Insurance, Indemnity and Conduct of Claims

29. Insurance

- 29.1. Without prejudice to its liability to indemnify or otherwise be liable to the Authority under this Contract, the Contractor shall for the periods specified in Schedule 7 (Required Insurance) take out and maintain or procure the taking out and maintenance of the insurances as set out under this Clause 29 (Insurance) and Schedule 7 (Required Insurance) and any other insurances as may be required by law, together the Required Insurances. The Contractor shall ensure that each of these Required Insurances are effective in each case not later than the date on which the relevant risk commences.
- 29.2. The Required Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 29.3. Where specified in Schedule 7 (Required Insurance) the Contractor shall ensure that the relevant policy of insurance:
- 29.3.1. shall contain an indemnity to principals clause or additional insureds equivalent, under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury or third-party property damage, and for which the Contractor is legally liable in respect of this Contract;
- 29.3.2. names the Authority as co-insured for its separate interest with attendant non-vitiation, waiver of subrogation and notice of cancellation provisions.
- 29.4. The Contractor shall discharge in full all duties and obligations in respect of the Insurance Act 2015 when procuring, maintaining or amending any insurance(s) required by this contract, including in circumstances where the Contractor is required to name the Authority on any such insurance policies to protect the Authority's separate interests.
- 29.5. The Contractor shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.
- 29.6. The Authority may elect (but shall not be obliged) where notice has been provided to the Contractor to purchase any insurance which the Contractor is required to maintain pursuant to this Contract but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.
- 29.7. The Contractor shall from the date of this Contract and within fifteen (15) Business Days after the renewal of each of the Required Insurances, provide evidence, in a form satisfactory to the Client, that the Required Insurances are in full force and effect and meet in full the requirements of this Clause 29 (Insurance) and Schedule 7 (Required Insurance). Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Contractor of its liabilities and obligations under this Contract.
- 29.8. The Contractor shall notify the Authority in writing at least ten (10) Business Days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances. This Clause 29.8 shall not apply where the termination of any Required Insurances occurs purely as a result of a change of insurer in respect of any of the Required Insurances required to be taken out and maintained in accordance with this Clause 29 (Insurance).
- 29.9. The Contractor shall promptly notify to insurers any matter arising from, or in relation to, this Contract for which it may be entitled to claim under any of the Required Insurances. In the event

that the Authority receives a claim relating to this Contract, the Contractor shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

- 29.10. Except where the Authority is the claimant party, the Contractor shall give the Authority notice within twenty (20) Business Days after any insurance claim in excess [REDACTED] relating to this Contract on any of the Required Insurances or which, but for the application of the applicable policy excess, would be made on any of the Required Insurances and (if required by the Authority) full details of the incident giving rise to the claim.
- 29.11. Where any Required Insurance requires payment of a premium, the Contractor shall be liable for such premium.
- 29.12. Where any insurance referred to in this Clause 29 (Insurance) and Schedule 7 (Required Insurance) is subject to an excess or deductible below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible and shall indemnify the Authority against any loss or claims which would otherwise be insured but for the excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.
- 29.13. All insurance proceeds received in respect of the Property Damage "All Risks" Insurance as specified in Schedule 7 (Required Insurance) shall be used to reinstate, repair or replace the insured property in respect of which the insurance proceeds were received.

PART 9 – KPI Relief Events

30. KPI Relief

- 30.1. If and to the extent that as a direct result of a failure by the Authority to deliver a Dependency the Contractor is unable to comply with any or all of its obligations under this Contract (such occurrence being a "KPI Relief Event") then the Contractor shall be entitled to apply for KPI relief from performance retentions and deductions related to KPIs and TPIs. The Contractor shall not be entitled to make a claim under Clause 21 (Force Majeure) in respect of a KPI Relief Event and this clause is the Contractor's sole remedy as a result a failure by the Authority to deliver a Dependency. To obtain KPI relief the Contractor shall as soon as reasonably practicable, and in any event within ten (10) Business Days after the Contractor becomes aware of a failure by the Authority to deliver a Dependency, give the Authority a KPI relief event notice which shall contain:
 - 30.1.1. full details of the nature of the KPI Relief Event;
 - 30.1.2. the date of occurrence of the KPI Relief Event;
 - 30.1.3. the likely duration of the KPI Relief Event; identification of the cause or likely cause of the KPI Relief Event;
 - 30.1.4. full details of its claim for relief from performance retention and deductions in accordance with Schedule 13 Part B (AmeyBriggs Authority Dependencies); and
- 30.2. demonstrate to the reasonable satisfaction of the Authority that:
 - 30.2.1. the Contractor could not have avoided such occurrence or consequences by steps which they might have taken, without incurring unreasonable costs;
 - 30.2.2. the KPI relief claimed could not be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice, without incurring unreasonable costs;
 - 30.2.3. the Contractor is using reasonable endeavours to perform the Contractor's obligations under this Contract; and
- 30.3. Notify the Authority's Representative if at any time the Contractor receives or becomes aware of any further information relating to the KPI Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.
- 30.4. If the Contractor has complied with its obligations under Clause 30.2 then the Authority shall, for the period during which the Relief Event applies, not levy performance deductions and/or retentions in respect of any KPIs and TPIs which relate to the Relief Event;
- 30.5. If in the Authority's opinion the Contractor has not demonstrated to the reasonable satisfaction of the Authority that the Contractor is entitled to KPI relief or the Authority disagreed with the KPI relief event notice, then the Authority shall reject the Contractor's claim for KPI relief. If the Contractor disagrees with the Authority's decision then this disagreement is to be provided to the Authority in writing within five (5) Business Days of receiving the Authority's rejection.
- 30.6. Any disagreements that cannot be resolved between the Parties shall follow the process as set out in DEFCON 530 (Dispute Resolution). In such instances the Authority shall retain or deduct any KPI sums due, pending the outcome of the dispute resolution process.

PART 10 - No Exclusivity

31. No Exclusivity

- 31.1. The Parties agree that this Contract shall be the primary source for the supply of the Articles and the provision of the Services in accordance with Schedule 2 (Statement of Requirements).
- 31.2. The Parties acknowledge and agree that nothing in this Contract shall prohibit the Authority from purchasing Articles or Services from a third party which are the same as, or comparable to, the Articles or the Services in circumstances where the Authority has an urgent requirement to do so. The Authority's decision as to whether such purchases are for reasons of urgency shall be final.
- 31.3. The provisions of DEFCON 530 (Dispute Resolution) shall not prevent the Authority from undertaking the actions described at Clause 31.2.

PART 11 - Security

32. Security

- 32.1. The provisions of Schedule 8 (Security) shall apply.

PART 12 - People

33. TUPE

- 33.1. The Contractor Shall comply with the provisions of Schedule 10 (Personnel) Part A (TUPE)
- 33.2. The Parties acknowledge and agree that:
 - 33.2.1. the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended from time to time) and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate, shall apply to this Contract; and
 - 33.2.2. on the termination/expiry of all or part of this Contract, Schedule 10 (Personnel), Part A (TUPE) shall apply.

34. Pensions

- 34.1. The Parties agree that the provisions of Schedule 10 (Personnel), Part A (TUPE), Transfer Regulations Part 3 – Pension Matters will apply to this Contract.
- 34.2. All Subcontracts which may result in the employment of any former Authority Employee being transferred to a Subcontractor pursuant to the Transfer Regulations shall include those provisions required under paragraph 1.2 of Schedule 10 (Personnel) Part B (Sponsored Reserves) of this Contract in respect of such Subcontracts.

35. Sponsored Reserves

- 35.1. The Contractor Shall comply with the provisions of Schedule 10 (Personnel) Part B (Sponsored Reserves)

PART 13 - Notices

36. Notices

- 36.1. In accordance with DEFCON 526, any notice given under this Contract (each a "Notice") shall be given in writing and shall be delivered by hand to the relevant physical address and expressly marked for the attention of the relevant individual, set out in Paragraph 36.2.
- 36.2. Any Notice:
 - 36.2.1. if to be given to the Authority shall be sent to:

Defence Equipment & Support
Elm 1A
MOD Abbey Wood
Bristol
BS34 8JH
Attention: Commercial Officer, Project MITER

36.2.2. if to be given to the Contractor shall be sent to:

AmeyBriggs Services Ltd
10 Furnival Street,
London,
EC4A 1AB
Attention: The Managing Director (“Contractor’s Manager”)

PART 14 - Fleet Asset Transfer/Management

37. Fleet Asset Transfer/Management

37.1. The provisions of Schedule 14 (Fleet Asset Transfer and Management) shall apply.

PART 15 - Service Continuity

38. Transition to War

- 38.1. The Contractor shall continue to provide the Services in peacetime and during periods of crisis, tension, emergencies, and surge, in transition to war and during hostilities.
- 38.2. In the event of crisis, tensions, emergencies, surge or hostilities affecting the Services the Authority shall be entitled (but not obliged) to exercise its rights under Clause 39 (Measures in a Crisis).

39. Measures in a Crisis (MIAC)

- 39.1. If, at any time, the Authority believes, in its sole opinion, that there exist any of the circumstances identified in Clause 39.2, then the Authority may issue a notice to the Contractor stating that it believes that MIAC applies, and may take any or all of the measures outlined in this Clause 39.
- 39.2. The circumstances referred to in Clause 39.1 exist where, as a result of:
 - 39.2.1. the national interest, the requirements of national security, or the occurrence of a state of transition to war, war or other emergency (whether or not involving hostilities);
 - 39.2.2. a request being made to the Authority by a local authority, public body, or statutory corporation for assistance in relation to the occurrence or possible occurrence of a major accident, crisis or natural disaster; and/or
 - 39.2.3. a request by NATO, the United Nations, the European Union or any other country for support and assistance in relation to international obligations,

it is necessary, appropriate, or desirable for the Authority to take all or any of the measures set out in Clause 39.3 below.

- 39.3. If the Authority has issued the notice contemplated by Clause 39.1, then MIAC applies and the Authority may require the Contractor, within such period as the Authority in its sole discretion specifies (but provided that such period is reasonable taking into account all relevant circumstances), to provide such information in the possession, knowledge or control of the Contractor as the Authority may, in its sole discretion, require including information relating to all or any of the following matters:
 - 39.3.1. the obligations currently being carried out by the Contractor;
 - 39.3.2. the obligations to be carried out by the Contractor within a period specified by the

Authority;

39.3.3. the Contractor's current deployment of its employees whether inside or outside of the Authority sites; and/or

39.3.4. all equipment and documentation currently held by the Contractor, and the location of such equipment and documentation,

and the Contractor shall promptly and diligently comply fully with the requirement to provide such information.

39.4. Upon providing the Authority with the information requested pursuant to Clause 39.3, the Contractor shall, upon being so requested by the Authority, discuss in good faith with the Authority any matters which the Authority, in its sole opinion, may consider relevant or appropriate to any proposals the Authority may have for the reallocation of priorities for, or for the reorganisation of, the performance of the Contractor's obligations under this Contract (including the Services carried out, or to be carried out, by the Contractor) to address (in whole or part) the circumstances which gave rise to the issuing of a notice pursuant to Clause 39.1, including the following matters:

39.4.1. the revision (including the early completion, suspension or cancellation) of any Articles or Services to be delivered to the Authority; and

39.4.2. the immediate implementation of new Articles or Services within the contemplation of the Contract,

and the Parties shall endeavour, as far as reasonably possible, to reach agreement as a matter of urgency on such matters.

39.5. Notwithstanding any provision to the contrary in this Contract, and notwithstanding that any of the measures described in Clause 39.4 may or may not have been taken, required to be taken, or completed, the Authority may, at any time and in its sole discretion, Step In to this Contract, pursuant to Clause 24 (Step In) and/or the Authority may instruct the Contractor:

39.5.1. to accelerate to early completion or to suspend, or to cease permanently, any part of the Articles provided or Services carried out by the Contractor for third parties;

39.5.2. to remove (permanently or temporarily) the property of third parties from any Authority Site and to procure that any such action is carried out on terms which result in the least possible losses to the Contractor;

39.5.3. to carry out any amendments whatsoever to this Contract required by the Authority without reference to DEFCON 620 (Contract Change Control Procedure); and/or

39.5.4. to deploy its employees and all Assets or rights used in connection with the specified assets or to use, or make available for use by the Authority or as directed by the Authority, all such Assets or rights in accordance with the Authority's directions,

and the Contractor shall promptly and diligently comply with any instruction issued by the Authority referred to in this Clause 39.5

39.6. If the Authority has instructed the Contractor in accordance with Clause 39.5, then:

39.6.1. for so long as and to the extent that the provisions of Clause 39.4 or any instruction issued by the Authority pursuant to Clause 39.5 prevents the Contractor from performing all or any part of its obligations under this Contract, then the Contractor shall be relieved from its obligations to perform such part(s) of the Contract; and

39.6.2. in respect of the period in which MIAC applies, and provided that the Contractor complies with its obligations under Clauses 39.4 and 39.5, and provided that the Contractor provides the Authority with all reasonable assistance, then the MIAC assistance provided to the Authority by the Contractor shall be at the expense of the Authority to the extent that incremental costs are incurred over and above the payment already being received by the Contractor for the performance of its obligations under this Contract.

- 39.7. MIAC shall cease to apply when the Authority issues a written notice to that effect to the Contractor and thereafter the Contractor shall continue to be bound by the provisions of this Contract.

PART 16 - Earned Value Management EVM

40. Earned Value Management

The Contractor shall develop, deliver and update as needed over the term of this Contract, an Earned Value Management Plan and report in line with this plan on a monthly basis in accordance with SOR 6.61 from Schedule 2 (Statement of Requirements).

Schedule 1 – Definitions

"Admission Agreement"	means in relation to the Contractor or a Subcontractor an agreement made (or to be made) between (1) The Minister for the Cabinet Office (2) the Contractor or the Subcontractor, as the case may be, and (3) the Authority relating to the participation of the Contractor or the Subcontractor, as applicable, in the Schemes for the benefit of those of the Former Authority Employees who are for the time being employed by the Contractor or the Subcontractor, as applicable, and which is substantively in the form set out in Annex A to this Schedule;
"Amended Rectification Plan"	has the meaning given to it in Clause 19.6 or 20.5 (as applicable);
"Annual Contract Review"	means the annual contract review contemplated in Schedule 9 (Governance);
"Assets"	means all assets and rights to enable the Authority or a successor contractor to operate and maintain the Service in accordance with this Contract including: <ul style="list-style-type: none">• any land or buildings; and or• any equipment; and/or• any books and records (including operating and maintenance manuals, health and safety manuals and other know how), performance data or data feeds; and/or• any spare parts, tools and other assets (together with any warranties in respect of assets being transferred); and/or• any revenues, contractual rights, licences or necessary consents; and/or• any IPR; and/or• any Specified Assets; and/or• any Government Furnished Assets,
"Associated Company"	has the meaning given to it in DEFCON 658;
"Articles"	as defined in Clause 1a of DEFCON 501 being any goods (excluding services) purchased by the Contractor that will vest with the Authority under the terms of this Contract;
"Asset Management"	means the planning and management of the replacement and procurement of the Equipment as contemplated in paragraph 2 of Schedule 14 (Fleet Asset Transfer & Management);
"Asset Management Plan" or "AMP"	means the Contractor's plan for Asset Management as contemplated in paragraph 3 (Asset Management Plan) of Schedule 14 (Fleet Asset Transfer and Management);
"Asset Management Proposals"	means the proposals of the Contractor in relation to the Equipment and the manner of their provision as set out in Schedule 3 (Pricing and Payment). Paragraph 4 (Asset Management Programme);

"Authority's Commercial Officer"	means the person detailed in the DEFFORM 111
"Authority's Disclosed Data"	means any information relating to this Contract and/or the Articles or Services disclosed to the Contractor and/or its advisers by or on behalf of the Authority.
"Authority's Representative"	means the person identified as the project manager in the DEFFORM 111
"BPSS"	means the Baseline Personnel Security Standard, as updated from time to time by the Cabinet Office;
"Benchmarking"	the benchmarking process described in Schedule 16 (Benchmarking);
"Business Continuity Plan"	means the business contingency plan as described at Clause 12.3 (Disruption).
"Business Day"	as defined in Clause 1 c of DEFCON 501
"Commencement Date"	
"Confidential Information"	means information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, IPR or know-how of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 2018; and Commercially Sensitive Information;
"Contract"	the Clauses of this Contract together with the Schedules and Annexes to it and any documents referred to in it;
"Contract Award"	the date set out at Page 13 of this Contract;
"Contract Expiry Date"	means the 30 June 2027, unless the Parties agree to extend the Contract in accordance with Clause 3 of this Contract, in which case the Contract Expiry Date shall mean the date which is agreed by the Parties as being the last day of the extended Contract Period;
"Contract Price"	as defined in DEFCON 501;
"Contractor Deliverables"	as defined in Clause 1 of DEFCON 501;
"Contractor's Statement of Work"	means the Contractor's statement of work as set out in Schedule 17 (Contractor's Compliance Matrix);
"Contract Period"	means the period of seven (7) years from and including the Commencement Date to and including the Contract Expiry Date, unless terminated earlier;
"Contract Year"	means an initial period (the Transition In Phase) commencing on the Commencement Date and ending at ISC, followed by periods of 12 months ending on the Contract Expiry Date;

"Contract Period Extension"	as defined at Clause 3;
"Contracts Finder"	means as found at https://www.gov.uk/contracts-finder
"Contractor's Manager"	means the Person detailed in Clause 36 (Notices)
"Dependency"	means any dependency set out in Part B (AmeyBriggs Authority Dependencies) of Schedule 13 (Risk Register, MDAL and List of Authority Dependencies), and "Dependencies" shall be construed accordingly;
"Earned Value Management Plan"	the earned value management plan prepared by the Contractor as detailed at Clause 40 (Earned Value Management Plan);
"Equipment"	means earthmoving, engineer construction and materiel handling capabilities provided as GFA and/or Fleet Assets;
"Equipment Item"	means any single item of Equipment;
"Equipment Type"	Means equipment items grouping as detailed in Serial 16 (Annex O) of Schedule 19 (Referenced Documents)
"Equipment Safety Case"	means as defined in DEFSTAN 56;
"Expected Work Location"	means as defined in Schedule 10 (Personnel);
"Financial Reports"	means the reports required to be submitted by the Contractor to the Authority as detailed under Schedule 3 (Pricing and Payment);
"Fleet Assets"	means earthmoving, engineer construction and materiel handling capabilities provided by and owned by the Contractor (which do not transfer on expiry unless purchased in accordance with paragraph 5.4 of Schedule 14 (Fleet Asset Transfer & Management));
"Force Majeure Event"	<p>means the occurrence after the Commencement Date of:</p> <ul style="list-style-type: none">• acts of nature, flood, earthquake, windstorm or other natural disaster;• war, armed conflict, imposition of sanctions, blockade, embargo, breaking off of diplomatic relations or similar actions;• terrorist attack, civil war, civil commotion or riots;• National Strike;• nuclear, chemical or biological contamination or sonic boom; and• fire, explosion (other than in each case as is caused by a breach of contract by, or assistance of, the Party seeking to rely on the Force Majeure Event); and• failure by any statutory body, utility company, local authority or other like body to carry out essential works or to provide essential services. <p>which directly causes the Contractor to be unable to comply with all or a material part of its obligations under this Contract.</p>

"Former Authority Employee"	means at any time any person whose employment previously transferred to a contractor or its Subcontractor pursuant to the Transfer Regulations and who has, pursuant to this Contract and the Transfer Regulations, transferred to the Contractor or any Subcontractor provided that since such person was employed by the Authority <ul style="list-style-type: none"> • he has not ceased to be eligible for membership of the Schemes; and • any change in his employer has been affected pursuant to the Transfer Regulations;
"Full Service Commencement" or "FSC"	Means as defined in paragraph 6 Annex A Schedule 4 - MITER "Transition In" Performance Indicators (TPIs);
"Government Furnished Assets" or "GFA"	as defined in Clause 1 of DEFCON 501;
"Good Industry Practice"	at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Contractor, such supplier seeking to comply with its contractual obligations in full and complying with applicable Law;
"Government Property"	means all assets, articles, vehicles, aircraft, ships, government owned sites including infrastructure, amenities and buildings owned by the Government;
"HSE"	means the Health and Safety Executive;
"Intellectual Property Rights" or "IPR"	as defined in Schedule 5 (Intellectual Property Rights);
"Initial Service Commencement"	initial capability required by the system is assessed as available for operational use;
"Initial Service Commencement Date" or "ISC Date"	means 1 st June 2021;
"Innovative Proposals"	means the Innovative Proposals more particularly described in Schedule 12 (Opportunities and Innovation);
"Issued Property"	as defined in Clause 1 of DEFCON 501;
"KPI(s)"	means the Key Performance Indicators as defined at Schedule 4 (Performance Measurement and Management);
"KPI Relief Event"	has the meaning given to it in Clause 30 (KPI Relief);
"KPI Target Percentages"	means, in respect of a Key Performance Indicator, the target KPI Percentage for such Key Performance Indicator, as detailed in Schedule 4 (Performance Measurement and Management) Annex C (Key Performance Indicators);
"MI"	means Management Information;

"Measures in a Crisis" or "MIAC"	means, in event that the circumstances set out in Clause 39.2 occur, the rights of the Authority to issue a notice (and exercise rights) in accordance with Clause 39.1 (Measures in a Crisis (MIAC)) of the Contract;
"MITER Capability"	has the meaning given to it in Recital (A);
"National Strike"	means a strike occurring within the United Kingdom: <ul style="list-style-type: none">• which has been called by the national or other principal executive committee of an independent trade union (within the meaning of Section 5 of the Trade Union and Labour Relations (Consolidation) Act 1992) which is a recognised trade union within the meaning of the Trade Union and Labour Relations Act (Consolidation) Act 1992;• which has been endorsed by a properly conducted ballot of the members affected; and in which all or selected members of such a union, whether or not employed by the Contractor or any of its Subcontractors, have been invited by its national or other principal executive committee to withdraw their labour as part of a national campaign of industrial action;
"New Articles"	means entire Equipment Items or external support equipment that shall vest with the Authority provided for the purposes of delivering the Services. It does not include embodied parts, which will be assessed and performance managed through the KPI process;
"Obsolescence Management Plan"	means the plan setting out how the Contractor will manage obsolescence throughout the Contract Period;
"NSN"	means the NATO Stock Number;
"Parties"	means the Authority and the Contractor
"Party"	means individually either the Authority or the Contractor (together the "Parties")
"Performance Indicators" or "PIs"	means the Performance Indicators as detailed at Annex D to Schedule 4 (Performance Measurement and Management) of this Contract;
"Persistent Breach"	has the meaning given to it in Clause 20.1;
"Previous Contractor Employees"	has the meaning given to it in Part A (TUPE) of Schedule 10 (Personnel);
"Pricing Requirements"	means the pricing requirements set out at the beginning of the Contract which identifies, either directly or by reference, the Articles, Services or Contractor Deliverables to be supplied or carried out, the quantities involved and the price or pricing terms in relation to each Article, Service or Contractor Deliverable;
"Prohibited Act"	means the following constitute Prohibited Acts:

- a. to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - i) induce that person to perform improperly a relevant function or activity; or
 - ii) reward that person for improper performance of a relevant function or activity;
- b. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- c. committing any offence:
 - i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - ii) under legislation or common law concerning fraudulent acts;
 - iii) defrauding, attempting to defraud or conspiring to defraud the Authority.
- d. any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

"Property Damage "All Risks" Insurance"	means one Required Insurances as detailed at Schedule 7 (Required Insurance);
"Quality Assurance Representative"	means as detailed in DEFFORM 111;
"Rectification Notice"	has the meaning given to it in Clause 19.2 or 20.1 (as applicable);
"Rectification Plan"	has the meaning given to it in Clause 19.3 or 20.2 (as applicable);
"Relevant Transfer"	means a transfer to the Contractor or an Employing Subcontractor of a Previous Contractor Employee pursuant to this Contract and the Transfer Regulations;
"Relevant Transfer Date"	means the date on which a Relevant Transfer is affected for Previous Contractor Employees;
"Required Insurances"	means the insurances to be maintained or procured by the Contractor in accordance with Clause 29 (Insurance) and Schedule 7 (Required Insurance), together with any other insurances as may be required by law;
"Review Meeting"	means the meetings as detailed in Schedule 9 (Governance);
"Risk Register"	means the table set out at Serial 11 of Schedule 19 (Referenced Documents);
"Schedule of Requirements"	as defined in Clause 1 of DEFCON 501 (and for the avoidance of doubt is set out at pages 7 to 12 (inclusive) at the front of this Contract);
"Service(s)"	as defined in Clause 1 of DEFCON 501;

"Service Provision"	means the provision of the Services (including as required the operation, maintenance, repair and replacement of the Equipment) to meet the Service Provision Requirements in accordance with this Contract;
"Service Provision Fee"	means the fees as detailed in the Schedule of Requirements;
"Service Provision Fixed Price"	means the fixed price as detailed in Schedule 3 (Pricing and Payment);
"Step In"	means the exercise by the Authority of any of the actions the Authority intends to exercise its right to Step In;
"Step In Notice"	means a written notice issued to the Contactor stating that the Authority intends to exercise its right to Step In,
"Step Out Notice"	means a written notice to the Contractor specifying the obligations of the Contractor which are to be reinstated and the date on which the provision of Articles/Services by the Contractor in accordance with such obligations shall recommence;
"Subcontract"	means any Subcontract at any level of the supply chain, whether awarded directly by the Contractor or indirectly by any lower tier Subcontractor or Associated Company, which is entered into as a consequence of or in connection with this Contract;
"Subcontractor"	means a subcontractor of the Contractor or any Associated Company whether a direct subcontractor or at any lower level of the supply chain who provides any Contractor Deliverables in connection with this Contract;
"Technical Publications"	means a document that contains technical information and will use the Army Equipment Support Publication (AESP) format;
"Termination and Expiry Data Pack"	has the meaning given to it in Clause 25 (Exit);
"TPI(s)"	means the Transition Performance Indicators as detailed at Schedule 4 (Performance Measurement & Management);
"Transfer Regulations"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate;
"Trigger Point"	means the point at which the Contractor's performance has reached a performance threshold for which the Authority can deduct a portion of the Management Fee; and
"Unscheduled Maintenance"	means any maintenance carried out on an Asset or Article outside of the Authority's ESRS or OEM predefined maintenance schedules.

Schedule 2 – Statement of Requirements

- 1 The following statements of requirements shall apply to the Contract:
 - 1.1 Statement of Requirement for Project MITER reference RA-09-miter-3282-SOR version 1.3 dated 27 July 2020
 - 1.1.1 Annex A to the Statement of Requirement
Integrated Logistic Support Statement of Work (ILS SOW) for project MITER reference RA18-MITER-3093 ILSSOW version 4 dated 8th April 2019
 - 1.1.2 Annex B to the Statement of Requirement
20180724_MITER_Demand Data v2.0
 - 1.1.3 Annex C to the Statement of Requirement
20200730 - DBAL-V1.2 Deployed Benign Agreed Locations (DBAL)

Schedule 3 – Pricing and Payment

1 Introduction to Schedule 3

The pricing approach is to incentivise the Contractor to reduce the cost of delivering the Service and is incentivised in the Contractor's favour during the early period of the Contract.

- 1.1 The Contractor is also incentivised to identify and execute innovative proposals that reduce the cost without reference to the Authority. The Authority will only be involved in the decision to execute an innovative proposal where there is a necessity to do so (e.g. the replacement of key or specialised Equipment contained within the Asset Management Plan).
- 1.2 In the event that gainshare is made during the Contract Period (as contemplated in paragraph 11 (Gainshare) below, the Authority may consider re-investing its proportion of any Gainshare Amount in the delivery of the Asset Management Plan or another activity that further reduces the cost of this Contract to the Authority.
- 1.3 The Authority will also work with the Contractor to develop the blueprint for the follow-on requirement for this Contract (as listed as a proposal at Annex A to Schedule 12 (Opportunities and Innovation)) and will take this work into consideration in the enactment of Clause 3 (Contract Period Extension).
- 1.4 Whilst the Authority will work with the Contractor in delivering solutions that reduces costs and transforms the Service, the Authority requires that day to day service delivery is not affected by this activity. The Key Performance Indicators (KPIs) as detailed in Schedule 4 (Performance Measurement and Management) will be used to incentivise delivery. In the event of non-performance of the Services, the Management Fee will be at risk of being either temporarily retained or permanently deducted in accordance with Schedule 4 (Performance Measurement and Management).

2 Definitions

- 2.1 The following definitions shall have the meanings given to them below:

"Asset Management Programme"	means the Contractors plan to refurbish and replace the MITER Fleet for the duration of the Contract;
"Demand"	A formal request for Services as described in Schedule 2 (Statement or Requirements);
"Equipment Registration Number"	means a unique identification number identifying Equipment recorded on JAMES;
"Exit Management Plan"	means the exit management plan to be produced by the Contractor as contemplated in TPI 6;
"Firm Price"	as defined in Clause 1 of DEFCON 501;
"Fixed Price"	as defined in Clause 1 of DEFCON 501;
"Gainshare Amount"	means the difference between the Firm/Fixed Price, as detailed within the pricing serials within the Schedule of Requirements table at the beginning of this Contract, for the Contract Year and the outturn costs, excluding NFWT payments and Non-Qualifying Parts Spend for that Contract Year;

OFFICIAL SENSITIVE – COMMERCIAL

"Gainshare Calculation"	means the calculation of the Gainshare Amount as prepared from time to time in accordance with Paragraph 13 (Gainshare) of Part 1 of Schedule 3;
"Global Transportation of Priority Spares"	means consumable and repairable Spares supplied outside of the Firm Base to the point of need via the Joint Support Chain or via Contractor supply chain
"Integrated Logistics Support Plan" or "ILSP"	means as defined in DEF STAN 00-600
"Innovative Proposals"	means the innovative proposals more particularly described in Schedule 12 (Opportunities and Innovation);
"JAMES"	means the Authority's Joint Asset Management and Engineering Solutions logistics database;
"Legacy Spares and Consumables"	means the legacy spares and consumables detailed in Schedule 6 (Government Furnished Assets and Issued Property);
"Management Fee"	means the management fee described in Paragraph 2 (The Management Fee) of Part 1 of Schedule 3;
"Milestones"	means the Transition In Milestones and the Transition Out Milestone;
"Key Performance Indicators" or "KPIs".	means the key performance indicators set out in Schedule 4 (Performance Measurement and Management) (and "Key Performance Indicator" and "KPI" shall be construed accordingly;
"Outturn Service Provision Cost" or "SPC"	means, in respect of a Contract Year, the total amount charged in respect of the Services set out in Schedule 2 (Statement of Requirements) to which the Service Provision Fee applies;
"NFWT Price Menu"	means the price menu in respect of Non-Fair Wear and Tear set out in Serial 18 to Schedule 19 (Referenced Documents);
"Non-Fair Wear & Tear" or "NFWT"	means the damage to Equipment Items and ancillary items outside the expected deterioration as set out in the Fork Truck Association Fair Wear and Tear Guidelines and other equivalent industry guidelines for other equipment;
"Schedule of Requirements"	as defined in Clause 1 of DEFCON 501 (and for the avoidance of doubt is set out at pages 7 to 12 (inclusive) at the front of this Contract);
"Service Provision Fee" or "SPF"	means the service provision fee as described in Paragraph 3 (Service Provision Fee) of Part 1 of Schedule 3;
"Spares"	An individual part, sub assembly, or assembly supplied for maintenance or the repair of systems or equipment. Spare parts can be broadly classified into two groups, repairable and consumable spares;

OFFICIAL SENSITIVE – COMMERCIAL

"Standard Industrial Classification"	means the United Kingdom Standard Industrial Classification of Economic Activities, or UKSIC as detailed by the Office for National Statistics;
"Transition In"	means the transition in process to be more particularly described in the Transition Management Plan;
"Transition In Milestones"	means the five milestones set out in Annex A Schedule 4 - MITER "Transition In" Performance Indicators (TPIs), and "Transition In Milestone" shall be construed accordingly];
"Transition In Phase"	means the transition "in" phase contemplated in the Transition Management Plan
"Transition Management Plan"	means the transition management plan to be produced by the Contractor as contemplated in TPI 1;
"Transition Out"	means the transition out process to be more particularly described in the Exit Management Plan;
"Transition Out Milestone"	means the milestone set out in Annex B to Schedule 4 – Transition Out Phase;
"Transition Out Phase"	means the transition "out" phase contemplated by the Exit Management Plan;
"Transition Performance Indicator" or "TPI"	means each of the transition performance indicators as detailed at Schedule 4 (Performance Measurement & Management);
"Transition Phases"	means the Transition In Phase and the Transition Out Phase;
"Tyres and Batteries"	As detailed at paragraph 10 of Part 1 of Schedule 3: Pricing Provisions
"Un-Qualifying Spares"	As detailed at paragraph 9 of Part 1 of Schedule 3: Pricing Provisions
"Variation of Price" or "VOP"	means the variation of price mechanism provided for in paragraph 14 (Variation of Price (VOP)) of Part 1 of Schedule 3;
"WFA Logistics"	As detailed at paragraph 11 of Part 1 of Schedule 3: Pricing Provisions

3 Organisation of this Schedule 3

- 3.1 This Schedule 3 is split into the following Parts as follows:
 - 3.1.1 Part 1 sets out the provision relating to pricing.
 - 3.1.2 Part 2 sets out the provisions relating to payment.

Part 1 of Schedule 3: Pricing Provisions

1 Overview

- 1.1 The pricing for the provision of Services under this Contract is split into 10 (ten) sections as shown in the Schedule of Requirements at the beginning of this Contract as follows:
 - 1.1.1 the Management Fee as detailed at Paragraph 2 of this Schedule
 - 1.1.2 the Service Provision Fee as detailed at Paragraph 3 of this Schedule
 - 1.1.3 the Asset Management Programme (AMP) as detailed at paragraph 4 of this Schedule (Asset Management Programme)
 - 1.1.4 the Transition Phases (In/Out) as detailed at paragraph 5 of this Schedule (Transition Phases (In / Out));
 - 1.1.5 Employment related costs (TUPE) as detailed at paragraph 6 of this Schedule (Employment Related Costs (TUPE));
 - 1.1.6 Whole Force Approach costs (WFA) as detailed at paragraph 11 of this Schedule (Whole Force Approach (Personnel, Logistics & Infrastructure)).
 - 1.1.7 Non-Fair Wear and Tear (NFWT) at paragraph 7 of this Schedule (Non Fair Wear and Tear (NFWT));
 - 1.1.8 Legacy Spares and Consumables as detailed at paragraph 8 of this Schedule (Legacy Spares and Consumables);
 - 1.1.9 Un-Qualifying Spares as detailed at paragraph 9 of this Schedule (Un-Qualifying Spares);
 - 1.1.10 Tyres and Batteries as detailed at paragraph 10 of this Schedule (Tyres and Batteries).

2 The Management Fee

- 2.1 The Management Fee is the fee associated for delivering all management activities of this contract and shall apply from Initial Service Commencement (ISC) until contract expiry.
- 2.2 The Authority shall pay the Contractor the Management Fee, monthly in arrears, in accordance with the amounts detailed at Table 4 of Annex A to this Schedule 3 for the successful delivery of the Services.
- 2.3 The Management Fee shall be at risk from [REDACTED] if the Contractor fails to achieve the KPIs as detailed in Annex C to Schedule 4 (Performance Measurement and Management).
- 2.4 The Management Fee shall only be amended under the following circumstances:
 - 2.4.1 in accordance with DEFCON 620 (Contract Change Control Procedure), where an Authority authorised increase or reduction in scope as detailed within Schedule 2 (Statement of Requirements) or an increase or decrease of more than [REDACTED] in demand days (as detailed at Annex B to the Statement of Requirement and assessed over a three month period) against each asset type is required.
 - 2.4.2 to reflect any Innovative Proposals included in Schedule 12 (Opportunities and Innovation) that impact either the Management Fee that are agreed on a case by case and implemented in accordance with DEFCON 620 (Contract Change Control Procedure).
 - 2.4.3 to reflect the Service Provision Fee re-baselining process from Contract Year 4 as described in Paragraph 11.
 - 2.4.4 to reflect the increase in costs in relation to the VOP formula from Contract Year 4 in accordance with the process described at Paragraph 14 of Part 1 of this Schedule 3.

- 2.5 The Management Fee will be reviewed at the end of each Contract Year. In support of this activity, the Contractor is to provide all supporting information no later than twenty (20) business days after the end of the Contract Year. This review shall consider the following:
- 2.5.1 the total payments made against the Management Fee during the Contract Year;
 - 2.5.2 a breakdown of all agreed changes made in accordance with DEFCON 620 (Contract Change Control Procedure) that affect the Management Fee;
 - 2.5.3 a breakdown of all performance retentions and/or deductions made during the Contract Year as detailed in Schedule 4 (Performance Measurement and Management).

3 The Service Provision Fee (SPF)

- 3.1 The SPF is the fee associated with the delivery of the activities detailed at Schedule 2 (Statement of Requirements). The SPF shall apply from the Initial Service Commencement Date to the expiry of this Contract.
- 3.2 In consideration of the Contractor delivering this element of the Contract, the Authority shall pay the Contractor, monthly in arrears, the amounts detailed at Table 5 (Service Provision Fee (SPF) Payment Table) of Annex A to this Schedule 3 for the successful delivery of the Services.
- 3.3 The SPF does not include the following;
- 3.3.1 items described at 1.1.1 and 1.1.3 to 1.1.10 of Part 1 of Schedule 3; and
 - 3.3.2 the cost of maintenance (excluding Spares cost), as calculated at paragraph 3.7, resulting from the Authority not completing its share of the maintenance split as described at SOR 1.28 of Schedule 2 (Statement of Requirement).
- 3.4 The Outturn Service Provision Cost (SPC) at the end of a Contract Year will be used as the starting point for the SPF in the following Contract Year. The SPC shall only be amended from the previous Contract Year to reflect:
- 3.4.1 in accordance with DEFCON 620 (Contract Change Control Procedure), where an Authority authorised increase or reduction in scope as detailed within Schedule 2 (Statement of Requirements), or an increase or decrease of more than [REDACTED] in demand days (as detailed at Annex B to Schedule 2 (Statement of Requirements)) as assessed over a 6 month period against each Equipment Type is required.
 - 3.4.2 to reflect any Innovative Proposals included in Schedule 12 (Opportunities and Innovation) that impact the Service Provision Fee that are agreed on a case by case basis and implemented in accordance with DEFCON 620 (Contract Change Control Procedure); and
 - 3.4.3 to reflect the re-baselining process and to reflect the increase in costs in relation to the VOP formula from Year 4 of the Contract (Fixed period) as described in paragraph 14 (Variation of Price (VOP)).
- 3.5 The SPC will be reviewed at the end of each Contract Year. In support of this activity, the Contractor is to provide all supporting information no later than twenty (20) Business Days after the end of the Contract Year. This review shall consider the following;
- 3.5.1 the total payments made against the SPF during the Contract Year.
 - 3.5.2 the breakdown of charges making up the SPC during the Contract Year; and
 - 3.5.3 a breakdown of all agreed changes made in accordance with DEFCON 620 (Contract Change Control Procedure) that affect the SPC.
- 3.6 Any Innovative Proposals that do not require the assistance or co-operation of the Authority shall be implemented outside of DEFCON 620 (Contract Change Control Procedure) but will be presented to the Authority at the monthly contract meetings as detailed in Schedule 9 (Governance). These changes will affect the SPC and will be included in the relevant year's gainshare calculation.

- 3.7 At the end of each Contract Year the hours worked for all 2nd and 3rd line scheduled or unscheduled maintenance on jointly maintained Equipment (the MITER MOTS fleet), excluding non-fair wear and tear, will be assessed using data taken from JAMES for maintenance hours worked in that year on maintenance;
- 3.7.1 Where maintenance hours percentage conducted by the Authority is in the range of [REDACTED] of such total maintenance hours, no payment adjustment shall be made.
- 3.7.2 Where the maintenance hours percentage conducted by the Authority is outside of the range at 3.7.1 above then the impact on the Service Provision Fee will be agreed and implemented in accordance with DEFCON 620 (Contract Change Control Procedure).
- 3.8 Training activity is included within the SPF unless requests fall outside of the agreed rules and processes contained within JSP818. Training recharged in additional to the SPF fee will be charged at the prevailing training course pricing menu.

4 The Asset Management Programme (AMP)

- 4.1 The cost of the procurement and replacement of (and any associated activities in relation to) Fleet Assets (that do not vest with the Authority) and the maintenance of the AMP required in the delivery of this service is included within the SPF as detailed at paragraph 3 to this Schedule 3.
- 4.2 Any cost of Assets and Articles procured by the Contractor that will vest with the Authority shall be treated as a pass-through cost. Any profit added shall be agreed on a case by case basis but capped at the prevailing SSCR baseline profit rate (and adjusted for risk). The cost of procurement over and above that included within the AMP shall be agreed with any change proposal and be implemented in accordance with DEFCON 620 (Contract Control Procedure).
- 4.3 The disposal of any Assets listed at Part B of Schedule 6 (Government Furnished Assets and Issued Property) will be the responsibility of the Authority. However, if the Authority requires the Contractor to dispose of any GFA, as set out in DEFCON 601 (Redundant Material) then the revenues of the sale of those Assets will either be offset against the procurement of new Assets or Articles that will vest with the Authority or be credited to the Authority outside of this Contract.

5 Transition Phases (In / Out)

- 5.1 Transition In
- 5.1.1 In consideration of the Contractor completing the Transition In Milestones, the Authority shall, in respect of this period, pay to the Contractor, in accordance with the Firm Price amounts detailed at Table 3 (MITER Transition Payment Plan) of Annex A to this Schedule 3.
- 5.1.2 The Transition Management Plan is based on the Transition In Milestones which the Contractor is required to meet. The Transition Management Plan includes a percentage of the Transition In Firm Price attributed to each Transition In Milestone to denote its importance to the Authority and its criticality in delivering a successful Transition In Phase.
- 5.1.3 The amounts, in respect of each Milestone detailed at Table 3 (Transition Payment Plan) of Annex A to this Schedule 3 shall be at risk as detailed in paragraph 6 (TPI Performance Retention and Deduction) of Schedule 4 (Performance Measurement and Management).
- 5.2 Transition Out (Including Exit Management Plan (TPI 6))
- 5.2.1 The Contractor shall deliver the Transition Out Phase of this Contract against the delivered and agreed Exit Management Plan. The payment date for successful delivery of the Transition Out Milestone shall be on the last Business Day of this Contract.
- 5.2.2 The amount, in respect of the Transition Out Phase detailed at Table 3 (Transition Payment Plan) of Annex A to this Schedule 3, shall be at risk as detailed in Annex B to Schedule 4 (Transition Out Phase) of Schedule 4 (Performance Measurement and Management).

- 5.2.3 The amount detailed at Table 3 (Transition Payment Plan) of Annex A to this Schedule 3 shall be amended to reflect the increase in costs in relation to the VOP formula from October 2018 as described in paragraph 14 (Variation of Price (VOP))

6 Employment Related Costs (TUPE)

- 6.1 The Authority shall pay the Contractor the Firm Price for the applicable serial entitled "Employment Related Costs (TUPE)" as provided in the Schedule of Requirements on the Initial Service Commencement (ISC) Date. This payment will be for the successful delivery of the transfer of all eligible employees from the outgoing Contractors' workforces in order to deliver the Service.

7 Non Fair Wear and Tear (NFWT)

- 7.1 The Contractor will be entitled to charge the Authority for undertaking NFWT repairs to all Equipment Items and any ancillary items to the Equipment whilst on Demand or returning from Demand.
- 7.2 The Contractor and the Authority will jointly determine the approval process of NFWT repairs. All NFWT repairs shall have quotes prepared prior to work commencing and the Contractor shall either,
- 7.2.1 self-approve quotes up to a value of [REDACTED]; or
- 7.2.2 obtain Authority approval on works over [REDACTED]
- 7.3 The Authority reserves the right to conduct audit checks on quotes provided by the Contractor at paragraph 7.2.1. Should the Authority deem it necessary, it may withdraw the self-approval process with 20 Business Days' written notice.
- 7.4 A full price breakdown shall be included in all quotes. The NFWT Price Menu list at Serial 18 to Schedule 19 shall provide the format for future NFWT pricing and shall underpin the majority of quotes submitted by the Contractor. The Contractor shall develop this price list to cover the entire range of MITER Platforms by ISC.
- 7.5 The NFWT Price Menu shall be updated by the Contractor and agreed with the Authority every six months.
- 7.6 In the event the Authority, with the agreement of the Contractor, undertakes the repairs itself, the Authority shall be responsible for recording all relevant information on JAMES.
- 7.7 The Contractor shall be responsible for reviewing JAMES on a monthly basis. Based on the information recorded on JAMES and any other knowledge the Parties may have such as MFIS records, the Authority will determine that the repair is NFWT. If from this review any repair is determined to be NFWT, the Contractor is entitled to invoice the Authority for the spares recorded as fitted on the Equipment. Any parts demanded through this Contract, used by the Authority to undertake repairs, shall be paid in accordance with paragraph 9 (Un-Qualifying Spares) of Schedule 3.

8 Legacy Spares and Consumables

- 8.1 The Contractor shall manage all Legacy Spares and Consumables as detailed in Schedule 6 GFA from ISC and shall be paid monthly in arrears for the management of those spares and consumables.
- 8.2 Thirty (30) days after Contract Award the Contractor and the Authority shall hold a Legacy Spares and Consumables start-up meeting to develop and agree a process that will allow the Parties to reduce the Authority's inventory of Legacy Spares and Consumables. The process to reduce the Authority's inventory of Legacy Spares and Consumables shall be agreed no later than thirty (30) days after the start up meeting. In the event that the Contractor reduces the inventory of Legacy Spares and Consumables, any savings will be subject to paragraph 2.2.2. (Innovative Proposals) of Schedule 12 (Opportunities and Innovations).

8.3 In consideration of the Contractor delivering this element of the Contract, the Authority shall pay the Contractor, monthly in arrears, the amounts detailed at Table 7 (Management of Legacy Spares and Consumables) of Annex A to this Schedule 3.

8.4 the amounts detailed at Table 7 (Management of Legacy Spares and Consumables) of Annex A to this Schedule 3 shall be amended to reflect the increase in costs in relation to the VOP formula from Year 4 of the Contract (Fixed period) as described in paragraph 14 (Variation of Price (VOP)).

9 Un-Qualifying Spares

9.1 In accordance with the Integrated Logistics Support Plan (ILSP), the Contractor is responsible for fulfilling demands for the timely provision of Spares (common user items) to wider Defence customers for the NATO Stock Numbers (NSNs) for which Project MITER is responsible.

9.2 The Contractor is to adhere to the processes stated within the ILSP in regard to fulfilling demands and notifying the Authority of demands which fall out of the scope of this Contract.

9.3 The Contractor shall be paid cost plus [REDACTED], plus [REDACTED] in arrears and following presentation to the Authority for all spares demands that fall outside of the scope of this Contract.

10 Tyres and Batteries

10.1 The Contractor shall be paid cost plus margin of [REDACTED] in arrears and following presentation to the Authority for all demands for tyres and batteries.

11 Whole Force Approach (Personnel, Logistics & Infrastructure)

11.1 The Authority shall pay the Contractor, monthly in arrears, the amounts detailed at Table 6 (Whole Force Approach (Personnel, Logistics & Infrastructure)) of Annex A to this Schedule 3 for the successful delivery of the WFA elements of the Services as follows;

11.1.1 In consideration of the Contractor delivering the personnel element of the Contract as detailed at Schedule 10 Part B (Whole Force Approach Personnel).

11.1.2 In consideration of the Authority utilising the Contractors' supply chain to deliver WFA Logistics capability where available for the Global Transportation of Priority 1 Spares to a maximum quantity of 11 per year. Any change to the maximum quantity will be agreed and implemented in accordance with DEFCON 620 (Contract Change Control Procedure).

11.2 the amounts detailed at Table 6 (Whole Force Approach (Personnel, Logistics & Infrastructure)) of Annex A to this Schedule 3 shall be amended to reflect the increase in costs in relation to the VOP formula from Year 4 of the Contract (Fixed period) as described in paragraph 14 (Variation of Price (VOP)).

12 Option Years

12.1 If in accordance with Clause 3.2 (Contract Period Extension), should the Authority decide that any or all the Option Years (Years 8, 9 and 10) are to be taken, then in determining the applicable pricing for each of these Option Years it may use as a starting point for those options, one of the following:

12.1.1 the relevant Fixed Price applicable for each Option as set out in the Schedule of Requirements (as adjusted in accordance with paragraph 14 (Variation of Price (VOP)));

12.1.2 the SPC and Management Fee for the prior Contract Year adjusted using the VOP formula at Paragraph 14;

12.1.3 the cost associated with any agreed follow on blueprint design as developed by the Contractor as contemplated in paragraph 1.3 of Part 1 (Introduction) of this Schedule 3.

13 Gainshare

- 13.1 The Contractor is required to reduce the cost of the Services to the Authority by developing and implementing innovative proposals and the Authority shall incentivise them accordingly. These proposals are listed at Schedule 12 (Opportunities and Innovation) and shall be monitored and reviewed in accordance with Schedule 9 (Governance) on a monthly basis.
- 13.2 The savings achieved from delivering proposals listed at Schedule 12 (Opportunities and Innovation) and other savings realised during the Contract Period, shall be shared between the Parties and used to reduce the overall price of this Contract as follows:
 - 13.2.1 the SPF for each Contract Period shall be calculated in line with paragraph 14 Variation of Price (VOP).
 - 13.2.2 if the Contractor has delivered the Service below the SPF, then gainshare will be available for the Parties to share in the following percentages:
 - 13.2.2.1 the Authority share ■% of the outturn below the SPF from Contract Year 2 (two) to Contract Year 4 (four);
 - 13.2.2.2 the Contractor share ■% of the outturn below the SPF from Contract Year 2 (two) to Contract Year 4 (four);
 - 13.2.2.3 the Authority share ■% of the outturn below the SPF from Contract Year 5 (five) to Contract Year 7 (seven); and
 - 13.2.2.4 the Contractor share ■% of the outturn below the SPF from Contract Year 5 (five) to Contract Year 7 (seven)
 - 13.2.3 If the Contractor has delivered the services below the SPF, then the Authority agrees that it may re-invest the Authority's share to deliver measures that provide further cost reductions including the replacement of Equipment in accordance with Schedule 14 (Asset Transfer and Management Plan).
 - 13.2.4 If the Authority requires any of the Authority's share of gainshare to be re-invested outside of this Contract, then it shall give the contractor 6 months' notice of such event. On receipt of such notice the Contractor shall make arrangements for this gainshare to be offset against the next invoice after the end of the Contract Year.
 - 13.2.5 If the Contractor has delivered the Service above the SPF, then no gainshare will be available for the Parties to share. All costs above the SPF and Management Fee Shall be the responsibility of the Contractor.
- 13.3 The Gainshare Calculation shall be prepared in accordance with paragraph 13.4 of Part 1 of this Schedule 3.
- 13.4 Each Gainshare Calculation shall:
 - 13.4.1 be calculated in accordance with the percentages set out in paragraph 13.2.1;
 - 13.4.2 be certified as correct and accurate by the finance director of the Contractor;
 - 13.4.3 calculated as the difference between the SPF and the SPC in respect of a Contract Year;
 - 13.4.4 be accompanied by evidence to support any claim for a gainshare payment.
- 13.5 Following receipt by the Authority of a Gainshare Calculation, the Contractor shall at its own expense provide to the Authority any such additional information as it may reasonably request so that the Authority can verify the accuracy of the Gainshare Calculation. The Authority reserves the right to audit the Gainshare Calculation during this process and at any time during the duration of this Contract.

- 13.6 Should either of the Parties disagree with the Gainshare Amount following the process described at paragraph 13.4, then this disagreement is to be notified in writing to the other Party within five (5) Business Days of the Gainshare Amount being announced.
- 13.7 Any disagreement that cannot be resolved between the Parties shall follow the process as set out in DEFCON 530 (Dispute Resolution).

14 Variation of Price (VOP)

- 14.1 The Schedule of Requirements table is populated with the following:
 - 14.1.1 All Transition In related Serials – Firm Price
 - 14.1.2 All serials for Contract Years 2 and 3 – Firm Price
 - 14.1.3 All serials for Contract Years 4 to 7 – Fixed Price
 - 14.1.4 All serials for Option Contract Years 8, 9 & 10 – Fixed Price
- 14.2 This establishes the Contractor's price at the Commencement Date.
- 14.3 The Fixed Price SPF and SPC (in respect of Contract Years 4 to 7 (inclusive) and (if applicable) Contract Years 8, 9 and 10) shall be varied as follows;
 - 14.3.1 The SPC of the previous Contract Year, updated using the VOP Index (12 Month Average) from the previous Contract Year (the "Varied SPC"), shall be compared to the SPF for the current Contract Year detailed the Schedule of Requirements, updated using the VOP Index (12 Month Average) from October 2018 (the "Varied SPF").
 - 14.3.2 If the Varied SPC is lower than the Varied SPF for the current Contract Year, then the Varied SPF for the current Contract Year shall be updated to the Varied SPC of the previous Contract Year; or
 - 14.3.3 If the Varied SPC is higher than the Varied SPF for the current Contract Year, then no adjustment is made to the Varied SPF.
- 14.4 All other Fixed Price serials (in respect of Contract Years 4 to 7 (inclusive) and (if applicable) Contract Years 8, 9 and 10) shall be varied as follows;
 - 14.4.1 The price of the previous Contract Year shall be updated using the VOP Index (12 Month Average) from the previous Contract Year.
- 14.5 The Prices stated in the Schedule of Requirements from Year 4 are Fixed at October 2018 price levels. Any such variation shall be calculated in accordance with the following formula:

$$V = P(O_i/O_o)$$

Where:

V represents the total price payable adjusted for inflation

P represents the SPF as stated in the Schedule of Requirements, the SPC or other Fixed Price serial of the previous Contract Year

O represents the index K8ZU – All Services

for the SPF, O_o represents the 12-month average of the price index prior to October 2018

for the SPC or other Fixed Price serial, O_o represents the 12-month average of the price index prior to the end of the previous Contract Year

O_i represents the 12-month average of the price index prior to the end of the Contract Year

- 14.6 The Index referred to in Paragraph 14.1 above shall be taken from the following Tables:
- 14.6.1 K8ZU – Top Level Service Producer Price
- 14.7 Indices published with a 'B' or 'F' marker, or a suppressed value, in the last 3 years are not valid for Variation of Price Clauses and shall not be used. Where the price index has an 'F' marker or suppression applied to it during the term of the Contract, the Authority and the Contractor shall agree an appropriate replacement index or indices. The replacement index or indices shall cover, to the maximum extent possible, the same economic activities as the original index or indices.
- 14.8 In all cases the minimum calculated % variation shall be zero.
- 14.9 In the event that any material changes are made to the indices (e.g. a revised statistical base date) during the period of the contract and before final adjustment of the final contract price, then the re-basing methodology outlined by the Office for National Statistics (ONS, the series providers) to match the original index to the new series shall be applied.
- 14.10 In the event the agreed index or indices cease to be published (e.g. because of a change in the Standard Industrial Classification) the Authority and the Contractor shall agree an appropriate replacement index or indices, which shall cover to the maximum extent possible the same economic activities as the original index or indices. The methodology outlined by the Office for National Statistics used for rebasing indices (as in Paragraph 14.6 above) shall then be applied.
- 14.11 Notwithstanding the above, any extant index / indices agreed in the Contract shall continue to be used as long as it is / they are available and subject to ONS revisions policy. Payments calculated using the extant index / indices during its / their currency shall not be amended retrospectively as a result of any change to the index or indices.
- 14.12 The Contractor shall notify the Authority of any significant changes in the purchasing / manufacturing plan on the basis of which these provisions were drawn up and agreed, or of any other factor having a material bearing on the operation of these provisions such as to cause a significant divergence from their intended purpose, in order that both Parties may consider whether any change in this provision would be appropriate.
- 14.13 Prices shall be adjusted taking into account the effect of the above formula as soon as possible after publication of the relevant indices or at a later date if agreed between the Authority and the Contractor. Where an index value is subsequently amended, the Authority and the Contractor shall agree a fair and reasonable adjustment to the price, as necessary.
- 14.14 Claims under this Paragraph shall be submitted to the Authority, certified to the effect that the requirements of this Paragraph 14 have been met.

Part 2 of Schedule 3: Payment Provisions

1 Payments

- 1.1 Payments shall be made as follows for the items detailed in Part 1 of this Schedule and where applicable as detailed in Annex A to Schedule 3 (Payment Tables).

The contractor shall invoice at the end of each calendar month in arrears subject to the provisions of Schedule 4 (Performance Management and Measurement):

- 1.1.1 The Management Fee
- 1.1.2 The Service Provision Fee (SPF)
- 1.1.3 Whole Force Approach (Personnel, Logistics & Infrastructure)
- 1.1.4 Management of Legacy Spares and Consumables
- 1.1.5 NFWT payments against an agreed menu price or where no price exists on a cost plus basis or against an agreed quotation
- 1.1.6 Un-Qualifying Spares Spend agreed on a cost plus basis
- 1.1.7 Tyres and Battery Spend agreed on a cost plus basis

The following fees and payments shall be on delivery of the Assets or Articles:

- 1.1.8 Assets or Articles purchased where the Authority will take ownership under the Asset Management Programme.

The following fees and payments shall be made on achievement of the Transition Milestones:

- 1.1.9 The MITER Transition In and Out as detailed at Paragraph 1.1.4 of Part 1 of Schedule 3

2 Non Fair Wear and Tear (NFWT)

- 2.1 NFWT repairs will be invoiced monthly in arrears to the Authority, referencing the quote numbers and any Authority approval reference, as required.

3 Un-Qualifying Spares

- 3.1 On a monthly basis the Contractor will be entitled to invoice the Authority for Spares provided to the Authority that:
- 3.1.1 Did not have a valid MITER UIN and/or Equipment Registration Number (ERN) quoted on the Demand;
 - 3.1.2 Have been identified as used for a NFWT repair undertaken by the Authority;
 - 3.1.3 Can be shown on a cumulative reconciliation basis to have not been accounted for on JAMES as having been fitted on an Equipment Item or one of its ancillaries items.
 - 3.1.3.1 To allow time for demanded spares to be fitted by the Authority, this reconciliation will be run each month, three months in arrears, using the preceding 12 months data for Spares sold and Spares fitted data. Data will be excluded from the reconciliation after a period of 12 months has elapsed. As this reconciliation is being run on a cumulative basis over a rolling twelve month period, the output in any month may be an invoice.

4 Tyres and Batteries

- 4.1 Tyres and Batteries will be invoiced monthly in arrears to the Authority, referencing the quote numbers and any Authority approval reference, as required.

Annex A to Schedule 3 (Pricing and Payment)

1. Payment Tables

The following tables detail the payment plans for each element of the Schedule of Requirements and are the sums to be paid to the Contractor in the amounts specified by either a date or month.

1.1. Transition In Transition Out

1.1.1. Table 3 provides the amounts agreed as Milestone Payments for Transition In and Transition Out.

Transition Plan Payment Table			
Milestone Description	Milestone Due Date	Milestone Value as % of overall Price	Milestone Price
Deliver Transition Plan	[REDACTED]	[REDACTED]	[REDACTED]
FMIS Delivery	[REDACTED]	[REDACTED]	[REDACTED]
FMIS Training Delivered	[REDACTED]	[REDACTED]	[REDACTED]
ISC Delivered	[REDACTED]	[REDACTED]	[REDACTED]
FSC Delivered	[REDACTED]	[REDACTED]	[REDACTED]
Transition In (Sub Total)		[REDACTED]	[REDACTED]
Deliver Transition Out Phase	(or as agreed in accordance with Clause 3 (Contract Period Extension))	[REDACTED]	[REDACTED]
Total Transition Price			[REDACTED]

Table 3: Transition Payment Plan

OFFICIAL SENSITIVE – COMMERCIAL

1.2. Management Fee

1.2.1. Table 4 provides the amounts agreed for the monthly payment for the Management Fee which is subject to retentions and deductions as detailed in Schedule 4 (Performance Measurement and Management). In the event that the Contractor achieves either a Band C or D score then the Management Fee shall be abated for either a retention or deduction in accordance with the table detailed at Appendix 1 to Annex E to Schedule 4 (Performance Measurement and Management).

Management Fee Payment Table Contract Years 1 to 7							
Contract Year Month	Year 1 (2021)	Year 2 (2021 to 2022)	Year 3 (2022 to 2023)	Year 4 (2023 to 2024)	Year 5 (2024 to 2025)	Year 6 (2025 to 2026)	Year 7 (2026 to 2027)
July							
August							
September							
October							
November							
December							
January							
February							
March							
April							
May							
June							
Total							
Fixed / Firm Price	Firm Price			Fixed price (Subject to Variation of Price (VoP))			

Table 4: Management Fee Payment plan
OFFICIAL SENSITIVE – COMMERCIAL

1.3. Service Provision Fee (SPF)

1.3.1. Table 5 provides the monthly payment due for the Service Provision Fee (SPF) element. These payments are not subject to retention or deduction.

Service Provision Fee (SPF) Payment Table Contract Years 1 to 7							
Contract Year Month	Year 1 (2021)	Year 2 (2021 to 2022)	Year 3 (2022 to 2023)	Year 4 (2023 to 2024)	Year 5 (2024 to 2025)	Year 6 (2025 to 2026)	Year 7 (2026 to 2027)
July							
August							
September							
October							
November							
December							
January							
February							
March							
April							
May							
June							
Total							
Fixed / Firm Price	Firm Price			Fixed price (Subject to Variation of Price (VoP))			

Table 5: Service Provision Fee (SPF) Payment Table

1.4. Whole Force Approach (Personnel, Logistics & Infrastructure)

1.4.1. Table 6 provides the monthly payment due for the Whole Force Approach(Personnel, Logistics & Infrastructure). These payments are not subject to retention or deduction.

Whole Force Approach (Personnel, Logistics & Infrastructure) Payment Table Contract Years 1 to 7							
Contract Year Month	Year 1 (2021)	Year 2 (2021 to 2022)	Year 3 (2022 to 2023)	Year 4 (2023 to 2024)	Year 5 (2024 to 2025)	Year 6 (2025 to 2026)	Year 7 (2026 to 2027)
July							
August							
September							
October							
November							
December							
January							
February							
March							
April							
May							
June							
Total							
Fixed / Firm Price	Firm Price			Fixed price (Subject to Variation of Price (VoP))			

Table 6: Whole Force Approach (Personnel, Logistics & Infrastructure) Payment Table

1.5. Management of Legacy Spares and Consumables

1.5.1. Table 7 provides the monthly payment due for the Management of Legacy Spares and Consumables. These payments are not subject to retention or deduction in accordance with Schedule 4 (Performance Measurement & Management).

Management of Legacy Spares and Consumables Payment Table Contract Years 1 to 7							
Contract Year Month	Year 1 (2021)	Year 2 (2021 to 2022)	Year 3 (2022 to 2023)	Year 4 (2023 to 2024)	Year 5 (2024 to 2025)	Year 6 (2025 to 2026)	Year 7 (2026 to 2027)
July							
August							
September							
October							
November							
December							
January							
February							
March							
April							
May							
June							
Total							
Fixed / Firm Price	Firm Price			Fixed price (Subject to Variation of Price (VoP))			

Table 7: Management of Legacy Spares and Consumables Payment Table

Schedule 4 – Performance Measurement & Management

Introduction – Definitions:

In this Schedule the following words and expressions shall have the meanings set respectively against them:

“**Assessment Period**” is a rolling period of (6) six months, the last month of which is the recent reporting period

“**Remedial Action Plan**” means a plan to rectify a non-performing element of the service

Part 1 – Performance Measurement

1 Performance Measurement System: Overview

- 1.1 The Performance Measurement System is the regime that captures all Key Performance Indicators (KPIs), Transition Performance Indicators (TPIs) and Performance Indicators (PIs) and includes the contractual remedies available to the Authority arising from non-performance of the Services by the Contractor.
- 1.2 The Performance Measurement System frames the Authority's requirements in respect of the performance by the Contractor of those requirements which are the subject of KPIs, TPIs and PIs under this Contract, and that the Contractor's performance of such requirements should be considered in this context.
- 1.3 Performance against the requirements shall be monitored through the KPIs, TPIs and PIs set out in the Annexes to this Schedule 4 (*Performance Measurement and Management*). The KPIs, TPIs and PIs measure the performance by the Contractor of the services, which will be measured and reported at the frequency specified in each KPI, TPI and PI as set out at the Annexes to this Schedule 4.
- 1.4 The Parties further acknowledge that there are obligations under Schedule 2 (Statement of Requirement) to collate Management Information (MI) which is provided for reporting purposes under Schedule 9 (*Governance*) and is not required for the purposes of the Performance Measurement within the scope of this Schedule 4.
- 1.5 For the purposes of KPI and PI performance measurement,
 - 1.5.1 the KPI and PI assessment date will start from [REDACTED] the Contractor shall be provided with a bedding-in period of three months, during which time all KPI retentions and deductions calculated under para 4 and 5 shall be multiplied by [REDACTED]. Notwithstanding the application of the start of the assessment period, the Contractor shall be required to comply with the reporting requirements set out in this Schedule from ISC.
 - 1.5.2 the KPI and PIs will be reviewed prior to the start of the assessment period to verify their validity. Any changes to the KPIs or PIs prior to the assessment period will be in accordance with DEFCON 620 (Contract Change Control Procedure)
 - 1.5.3 the final KPI and PI assessment and MI collection date will take place on the last day of the Contract Period.
- 1.6 For the purposes of TPI performance measurement, the last day of the "transition in" shall be the delivery of TPI 5: (Achievement of Full Service Commencement) and the last day of "transition out" will be the final assessment date for TPI 6. Transition Out (Exit Management Plan)
- 1.7 Unless otherwise stated, where a KPI relates to more than one output in Schedule 2 (Statement of Requirement), each output shall contribute equally to the performance of that KPI.

2 Key Performance Indicators

- 2.1 KPIs and PIs are performance measures detailed in Annex C and Annex D to this Schedule 4 against which the Contractor is measured and are within the Contractor's control to perform. KPIs and PIs are subject to measurement and management in accordance with the remaining paragraphs of this Schedule 4. In particular, there are five (5) remedies available to the Authority in respect of failures of KPIs and TPIs, being:
- 2.1.1 **Performance Retention** (as further described in Paragraph 4 below)
 - 2.1.2 **Performance Deduction** (as further described in Paragraph 5 below)
 - 2.1.3 **Step-in** (as further described in Clause 24 (Step In/Step Out))
 - 2.1.4 **Termination** as further specified in Paragraph 8 below and Clause 19 (Termination for Contractor Default)
 - 2.1.5 an obligation to prepare and comply with the terms of any **Remedial Action Plan** (as further specified in Paragraph 4 (*Remedial Action Plans*) of Part 2 (*Performance Management*) of this Schedule 4 below).
- 2.2 The Parties acknowledge that any event, act or omission which results in a failure of KPIs may also give rise to a separate cause of action against the Contractor under those terms of this Contract not related to the Contractor's performance of the Services. Accordingly, the remedies available to the Authority in respect of the Contractor's failure of performance as set out in Paragraph 2.1 are without prejudice to any such separate cause of action under this Contract which arises from the same event, act or omission.
- 2.3 Each KPI shall be assessed by the Contractor against the performance target specified in that KPI and the level of performance set against such performance target, as set out in Annex C to this Schedule 4. Such assessment will, unless otherwise stated in this Schedule, result in a level of performance allocated to each KPI which falls within a Band range of A to D, where:
- 2.3.1 Band A is performance exceeding the standard required pursuant to the Requirements;
 - 2.3.2 Band B is performance in accordance with the standard required pursuant to the Requirements;
 - 2.3.3 Band C is performance below but not significantly below the standard required pursuant to the Requirements; and
 - 2.3.4 Band D is performance significantly below the standard required pursuant to the Requirements,
- 2.4 Subject to paragraph 2.3, where the Contractor fails to assess a KPI against the Performance Target specified in that KPI, the Contractor's performance for that KPI shall, for the purpose of this Schedule, be:
- 2.4.1 In the case of any KPI assessed for a monthly period deemed to have fallen within:
 - 2.4.1.1 Band C in respect of the first failure to assess such KPI; and
 - 2.4.1.2 Band D in respect of a subsequent consecutive failure to assess such KPI.

3 Transition Performance Indicators (TPIs)

TPIs are performance measures against which the Contractor is measured during the Transition Phase at the commencement and exit of the contract. TPIs shall have the remedies as agreed in Paragraph 6. Each TPI shall be assessed against the milestones contained in the Transition Plan during the Reporting Period against the assessment criteria to that particular TPI, as further set out in Annex A to this Schedule 4.

4 KPI Performance Retentions

- 4.1 If the Contractor's performance against a particular KPI is assessed in the Reporting Period relevant to that KPI as Band C or D, the Authority shall be entitled to retain a portion of the

monthly Management Fee (a Performance Retention), on the terms set out in this Paragraph 4. The value of any Performance Retention which the Authority is entitled to make in accordance with this Paragraph 4 shall be the amount of monthly Management Fee times the percentage attributed to that KPI shown in Appendix 1 to Annex E to Schedule 4 - Table 30, times a percentage specified as follows:

- 4.1.1 if performance is at Band C, the Performance Retention will be the figure specified against that band under "Performance Retention" detailed in that KPI;
- 4.1.2 if performance is at Band D, the Performance Retention will be the figure specified against that band under "Performance Retention" detailed in that KPI,
- 4.1.3 an Assessment Period is a rolling period of (6) six months, the last month of which is the recent reporting period.

provided that the maximum aggregate amount of any monies held by the Authority by way of Performance Retentions shall not at any time exceed the monthly Management Fee as detailed in Annex A of Schedule 3.

- 4.2 Any Performance Retention amount identified shall be withheld from the next Management Fee due to be paid after the assessment of performance giving rise to the right to affect a Performance Retention. In the event of a dispute in respect of such Performance Retention, the retention amount shall still be effected from the same Management Fee provided that where it is subsequently determined that the Authority was not entitled to effect the relevant Performance Retention, such Performance Retention shall be reimbursed to the Contractor. The provisions of this Paragraph are without prejudice to any other terms agreed or determined as part of the as specified in DEFCON 530 (Dispute Resolution).
- 4.3 Any Performance Retention effected pursuant to Paragraph 4.1 shall continue to be retained until the month for which performance against the KPI which gave rise to the Performance Retention reaches the first month of the assessment period, at which point the amount of the relevant Performance Retention will be paid to the Contractor as part of the payment of the next monthly Management Fee due to be paid.

5 KPI Performance Deductions

If the Contractor's performance has reached a Trigger Point (as detailed in 5.1 below), then the Authority shall be entitled to deduct a portion of the monthly Management Fee which would otherwise be payable to the Contractor (a Deduction), on the terms set out in this Paragraph 5. The value of the Performance Deduction shall be determined in accordance with Paragraph 5.2 below.

5.1 For the purposes of Paragraph 5 above:

- 5.1.1 A Trigger Point shall occur when the number of times the Contractor's performance within a KPI's Assessment Period has been assessed as:
 - 5.1.1.1 Band C within the current period and Band C or Band D (whether sequential or not) for three (3) or more occurrences within the Assessment Period
 - 5.1.1.2 Band D within the current period and Band D (whether sequential or not) for two (2) or more occurrences within the Assessment Period

5.2 The value of any Performance Deduction which the Authority is entitled to make in accordance with Paragraph 5.1 shall be the amount of monthly Management Fee times the percentage attributed to that KPI shown in Appendix 1 to Annex E to Schedule 4 - Table 30, times a percentage specified as follows:

- 5.2.1 if a trigger point has occurred as specified against band C, the percentage specified against band C under the heading Performance Deduction in that KPI;
- 5.2.2 if a trigger point has occurred as specified against Band D, the percentage specified against band D under the heading Performance Deduction in that KPI.

- 5.3 Not used.
- 5.4 Any Deduction shall be made from the next Management Fee due to be paid after the occurrence of the Trigger Point and in any case where there is a dispute as to the Authority's right to make a Deduction, 50 per cent of the relevant Deduction (the Initial Deduction) shall be made in accordance with sub-paragraphs (5.1.1.1) and (5.1.1.2) provided that when such dispute is finally determined pursuant to the Dispute Resolution Procedure set out in DEFCON 530 (Dispute Resolution) the Authority shall:
- 5.4.1 reimburse the Contractor the Initial Deduction (if it is determined that the Authority was not entitled to make that Initial Deduction); or
 - 5.4.2 make the Deduction (less the Initial Deduction) from the monthly Management Fee next due to be paid after final determination (if it is determined that the Authority was entitled to make the Deduction),
- in each case in accordance with the determination pursuant to the Dispute Resolution Procedure.
- 5.5 The aggregate amount of any Deductions that may be made shall not at any time exceed:
- 5.5.1 in respect of Deductions only, the limits set out in respect of the Deductions for the corresponding KPIs; and
 - 5.5.2 in any event, limited to [REDACTED] of the Contractor's profit, contained within the management fee, or [REDACTED], whichever is the higher amount in any Contract Year.
- 5.6 If the Authority effects a Deduction pursuant to Paragraph 5, it shall notify the Contractor at least 10 Business Days prior to making any payment to the Contractor of the Management Fee, the reason for the Deduction and the amount of the Deduction.
- 5.7 The provisions of this Paragraph 5 are, subject to Paragraph 2.2, without prejudice to the Authority's other rights and remedies under this Contract.

6 TPI Performance Retention and Deduction

- 6.1 TPIs are the incentive mechanism for the Contractor to deliver the timely transition both in and out of the MITER Contract Period.
- 6.2 Payment against any TPI will only occur once the Milestone has been delivered. If the Milestone has been delivered on time and meets the Performance Target as described in each TPI, the Contractor shall be entitled to claim the full value of the Milestone Payment as detailed at Appendix 1 to Annex A to this Schedule 4.
- 6.3 If the Milestone has not been achieved on time and/or does not meet the description in the Performance Target of each TPI, then the Authority shall be entitled to deduct a proportion of the value of that TPI as described in Table 8. A Remedial Action Plan shall also be agreed between the Parties in accordance with Paragraph 4 (Remedial Action Plans) of Part 2 of Schedule 4 Performance Monitoring to ensure delivery of the Milestone is achieved.
- 6.4 If the Contractor fails to deliver a Milestone by the time that the next Milestone is due, then the Authority shall be entitled to a further deduction of that TPI payment and shall also be entitled to hold a retention of the following Milestones until the preceding Milestone has been successfully delivered.

6.5 Table 8 details the TPI Retentions and Deductions applicable against each Milestone. In the event that individual milestones are not met prior to subsequent Milestones then further deductions against each Milestone shall be made in line with the Secondary and Final deductions detailed in Table 8.

Milestone ID	Description	Milestone Value as percentage of overall Transition Price	Initial deduction for non-performance	Retention of Milestone because of preceding Milestone not being delivered (and then against for each subsequent Milestone missed)	Secondary deduction (cumulative amount) as a result of Milestone not being delivered by Milestone ID +1	Final deduction (cumulative amount) as a result of Milestone not being delivered by Milestone ID +2
1	Deliver Transition Plan	■	■	■	■	■
2	FMIS Delivery	■	■	■	■	■
3	FMIS Training Delivered	■	■	■	■	■
4	ISC delivered	■	■	■	■	■
5	FSC delivered	■	■	■	■	■

Table 8: TPI Retentions and Deductions.

6.6 If the Contractor fails to deliver a Milestone, in line with the Remedial Action Plan, after the final deduction has been made for that milestone, then the Authority reserves the right to terminate this Contract under Clause 19 (Termination for Contractor Default).

7 Annual Reconciliation of Performance Deductions

- 7.1 Within twenty (20) Business days after the end of each Contract Year, the Contractor shall provide to the Authority a consolidated statement setting out details of each Performance Retention or Deduction triggered in the previous Contract Year.
- 7.2 The Authority shall review and verify the information submitted pursuant to Paragraph 7.1 above against:
 - 7.2.1 information relating to KPIs and TPIs included as part of each report submitted for review at each monthly meeting pursuant to Paragraph 11 (*Monthly Review*) of Part 2 (*Performance Management*) of this Schedule 4; and
 - 7.2.2 any other information which the Authority can derive from the performance against the KPIs and TPIs or is otherwise requested from the Contractor.
- 7.3 Following agreement by the Authority of the actual value of Retention and Deductions, which have been made during the previous Contract Year, the Parties shall reconcile the calculated value that should apply to the previous Contract Year.
 - 7.3.1 In the event that the Authority has not deducted or retained the agreed reconciled amounts, then that deduction or retention will be made from the next invoice submitted by the contractor or failing that the contractor shall reimburse the Authority within thirty (30) Business days if there is no invoice to be submitted.

- 7.3.2 In the event that the Authority has deducted or retained amounts above the agreed reconciled amounts then this will be added to the next invoice submitted by the contractor.

8 Termination for Failure of Performance KPIs

- 8.1 For the purposes of Clause 19 (Termination for Contractor Default), a Contractor Default shall occur if, in any period of twelve (12) calendar months during the Contract Period in respect of KPIs where:
 - 8.1.1 5 or more Performance Deductions of KPIs set out in Annex C to this Part 1 of Schedule 4 in respect of that twelve (12) month period.
- 8.2 For the purposes for Clause 20 (Persistent Breach) will occur if the number of KPI retentions exceed six (6) within a rolling six (6) month period.

9 Changes to Performance Measures

- 9.1 Subject to Paragraph 9.4 below, the Parties may agree changes to the Performance Measures on an annual basis at the Annual Contract Review undertaken pursuant to Schedule 9 (Governance) and at any other time as the Parties may agree. Such changes may be as a result of:
 - 9.1.1 Transition of additional scope, responsibility or control to the Contractor which has an impact on the existing Performance Measures;
 - 9.1.2 A requirement of the Authority to measure against aspects of performance which are not existing KPIs or TPIs including the creation of new KPIs or TPIs.
- 9.2 Any changes to KPIs or TPIs (including any changes to the tables set out at (Annex C to this Schedule or introduction of new KPIs or TPIs shall be implemented over the period as agreed between the Parties in accordance with DEFCON 620 (Contract Change Control Procedure)
- 9.3 In addition, if there is a Change to the Services the Parties shall consider as part of such Change any change which may be required to the KPIs, TPs, PIs and MI.
- 9.4 Any changes to the Performance Measures and/or Performance Management System shall be made in accordance with DEFCON 620 Contract (Change Control Procedure).

Annex A Schedule 4 - MITER "Transition In" Performance Indicators (TPIs)

1. Transition into MITER - Overview
 - 1.1. The Transition into MITER is measured by five (5) Transitional Performance Indicators (TPIs). The TPIs are in place to incentivise the Contractor to be ready to deliver the full range of services by the Full-Service Commencement date (FSC) and to highlight any risks in the potential delivery of services.
 - 1.2. Once FSC is achieved and accepted by the Authority, all Transition In TPIs will become redundant. However, all retentions and deductions accrued to FSC will be finalised at the point when FSC is achieved.

2. TPI 1 – Delivery of Transition Management Plan (TMP)

- 2.1. This TPI is to deliver a revised TMP to the Authority and is to incorporate all the activities required by the Contractor to achieve a successful service provision at FSC including all aspects of the Schedule 2 (Statement of Requirement). The TMP is also to include the Transition Out activities.
- 2.2. Whilst the TMP is in force, it will be necessary for the Contractor to update the document on an ongoing basis with progress made and to incorporate changes where the changes achieve transition more efficiently and effectively. This TPI will be used to measure the Contractor’s performance in updating the TMP error free to the Authority on a regular basis.

Milestone	TPI 1 - Delivery of Transition Management Plan (TMP)	
Description	Delivery of Transition Management Plan	
Statement of Requirement Ref	8.1 & 8.2	
Objective Measurement	Transition Management Plan delivered incorporating all aspects of the Schedule 2 (Statement of Requirement) on time, with no major errors	
Incentive	% of cost retained or deducted for achieving Band C Performance or Band D Performance	Performance Retentions and Deductions
Performance Target	A	NOT APPLICABLE
	B	Transition Plan delivered to the Authority at Commencement Date with no major errors
		Major errors include incorrect and/or unreasonable scheduling logic, insufficient activity durations, optimistic assumptions on personnel availability and insufficient Contractor resourcing and/or Authority resourcing.
	C	On time with major errors or 5 Business Days late and free of major errors
D	Major errors include incorrect and/or unreasonable scheduling logic, insufficient activity durations, optimistic assumptions on personnel availability and insufficient Contractor resourcing and/or Authority resourcing.	
	Transition Plan delivered to the Authority over 5 Business Days following Commencement Date, and has major errors	
Measurement Method	The TMP is to incorporate all elements of the Authority’s draft TMP. The Contractor’s TMP is to be free from major errors, clear, concise and unambiguous and is to be presented to the Authority by the due date or earlier if possible.	
Performance Marking Scheme	Refer to Paragraph 6 and Table 8	
Notes	<p>The TMP will be considered a live document and updated as the Transition matures from Commencement Date, Initial Service Commencement up to Full Service Commencement.</p> <p>The TMP will be reviewed and assessed against the Performance Target by the Authority’s Project Manager within one week of delivery and, if requested, two weeks prior to the Commencement Date to identify any major errors in the drafting.</p>	

Table 9: TPI 1: Delivery of Transition Management Plan

3. TPI 2 – Development and delivery of the MITER Fleet Information System (MFIS)
- 3.1. This TPI is to incentivise the Contractor to develop and deliver MFIS in a number of stages (Alpha, Beta and Public versions) with the Public version delivered by [REDACTED]. The Authority considers information to be an important enabler to achieve successful transition across multiple locations and gaining confidence from the Authority's Users.
- 3.2. Whilst the MFIS is being developed, it will be necessary for the Contractor to update and improve the system with input from the Authority's trusted users before it is used by the wider Authority's Users.
- 3.3. Historical data provided by the Authority to the Contractor is to be checked by the Contractor for accuracy and understanding prior to loading onto system. Should further clarity be required, the Contractor is to engage with the Authority as early as possible prior to any data being loaded onto the MFIS.

OFFICIAL SENSITIVE – COMMERCIAL

Milestone	TPI 2 - Development and delivery of the MITER Fleet Information System (MFIS)	
Description	Develop and deliver the MITER Fleet Information System (MFIS) and train the Authority to use the system. Please refer to SOR's 6.1 to 6.22 for underpinning evidence.	
Statement of Requirement Ref	6.1 – 6.22	
Objective Measurement	<p>Alpha Version Acceptance – development system working on representative MODNET system at Land System Reference Centre (LSRC), Blandford with the Authority's Representative and the Authority's Subject Matter Expert. Data as defined in SOR requirements 6.1 – 6.22 will be validated using an input of 100 demands over a period of 1 month.</p> <p>Beta Version Acceptance – system working on representative MODNET system at LSRC Blandford with trusted Authority Users and a representative data set. The Contractor achieves MFIS security accreditation with the Authority's Defence Security Accreditor. Data as defined in SOR requirements 6.1 – 6.22 will be validated using an input of 100 demands over a period of 1 week, allowing the remaining 3 weeks for remedial work and re-tests</p> <p>Public Version Acceptance – system successfully working on MODNET with the Authority's wider Users using historical and current information. The public version is the version delivered to the Authority's wider Users where it goes live before ISC. Data as defined in SOR requirements 6.1 – 6.22 will be validated using an input of 100 demands over a period of 1 month.</p>	
Incentive	% of cost retained or deducted for achieving Band C Performance or Band D Performance	Performance Retentions and Deductions
Performance Target	A	See Paragraph 6 and Table 8
	B	
	C	
	D	
Measurement Method	The TPI will be measured in line with the MFIS milestone for Public Version Acceptance.	
Performance Marking Scheme	Refer to Paragraph 6 and Table 8	
Notes	<p>Authority's Representative – DES LE LCA MITER Snr Mgr. 3 Authority's Subject Matter Expert – (To be advised) Authority's trusted Users – FLC Reps, and Defence Munitions Authority's wider Users – Users from DE&S, Army, Royal Navy, Royal Air Force, Joint Forces Command and Defence Munitions</p> <p>The Authority shall conduct and complete Authority lead activity to assist with workshops in order to agree workflows and functionality in the MFIS portal in line with the agreed MFIS delivery plan.</p> <p>The Authority shall support the testing programme to meet the Alpha test phase, Beta test phase & public testing phase in line with the ITEAP / CDP schedule once agreed.</p> <p>The Authority shall conduct and complete Authority lead activity required to achieve MFIS accreditation, completion of Supplier Assurance Questionnaire and issuing of satisfactory Cyber Risk Profile, in line with the agreed MFIS delivery plan.</p>	

Table 10: TPI 2: Development and Delivery of MFIS

4. TPI 3 – Delivery of Training for new MITER Fleet Information System (MFIS)

- 4.1. This TPI is to incentivise the Contractor to deliver Authority User training for the MFIS to the Authority by the [REDACTED]. The Authority considers training on MFIS to be an important enabler to gaining confidence from the Authority’s Users of the MITER service provision. The Contractor is to gain Authority User’s availability [REDACTED] prior to Authority User training.
- 4.2. Whilst the user training is being developed, it will be necessary for the Contractor to update and improve the training documentation on an ongoing basis.

Milestone	TPI 3 - Delivery of Training for new MITER Fleet Information System (MFIS)	
Description	Delivery of training for MITER Fleet Information System (MFIS)	
Statement of Requirement Ref	2.3, 3.6 – 3.8	
Objective Measurement	Beta Version Training – The Contractor is to achieve an agreed satisfaction from the Authority’s trusted user training. Specific reference to SOR 3.8. Public Version Training - The Contractor is to deliver classroom training on MFIS for up to 150 super users	
Incentive	% of cost retained or deducted for achieving Band C Performance or Band D Performance	Performance Retentions and Deductions
Performance Target	A	See Paragraph 6 and Table 8
	B	
	C	
	D	
Measurement Method	The TPI will be monitored on a fortnightly basis for the first 2 calendar months and then monthly thereafter during the Transition In Phase in line with the MFIS milestones on the TMP as agreed with the Authority and then assessed on [REDACTED]	
Performance Marking Scheme	Refer to Paragraph 6 and Table 8	
Notes	<ul style="list-style-type: none"> • Authority’s Super Users – Users from DE&S, Army, Royal Navy, Royal Air Force, Joint Forces Command and Defence Munitions. • There is a Dependency on the Authority to input to and help inform the Statement of Training Requirements (SoTR) for MFIS. • There is a Dependency on the Authority to provide the agreed users and to complete training in line with the agreed MFIS TNA (TNA will identify user groups). • There is a Dependency on the Authority ensuring User availability • If an individual fails to attend training session or cancels training within 10 working days the KPI will be adjusted accordingly with the attendance being recorded as complete but unattended. 	

Table 11: TPI 3: Delivery of Training for MFIS

5. TPI 4 – Achievement of Initial Service Commencement (ISC) as assessed by ITEAP
- 5.1. This TPI is to incentivise the Contractor to test and demonstrate the complete service provision to the Authority by [REDACTED], in accordance with the ITEAP including, testing all applicable aspects of Schedule 2 (Statement of Requirement).

Milestone	TPI 4 – Achievement of Initial Service Commencement (ISC) as assessed by ITEAP	
Description	Successful achievement of ISC	
Statement of Requirement Ref	Paras 47, 81 – 84, SOR 1.1 – 9.6	
Objective Measurement	ISC is capable of achieving the delivery of all aspects of the Statement of Requirement (Requirements 1.1 – 9.6) as applicable to this TPI 4 (ISC), as assessed by the ITEAP via successful demonstration of the Contractor's CDP.	
Incentive	% of cost retained or deducted for achieving Band C Performance or Band D Performance	Performance Retentions and Deductions
Performance Target	A	[REDACTED] delivered ahead of ITEAP
	B	[REDACTED] delivered on time as per ITEAP
	C	Delivered late (to ITEAP) with recovery plan in place.
	D	Delivered late (to ITEAP) without a recovery plan
		See Paragraph 6 and Table 8
Measurement Method	The TPI will be measured on milestone achievement of [REDACTED] for all items in the ITEAP	
Performance Marking Scheme	Refer to Paragraph 6 and Table 8	
Notes	None	

Table 12: TPI 4: Achievement of ISC

6. TPI 5 – Achievement of Full Service Commencement (FSC) as assessed by ITEAP

6.1. This TPI is to incentivise the Contractor to test and demonstrate the complete service provision to the Authority by [REDACTED], in accordance with the TMP including testing all applicable aspects of Schedule 2 (Statement of Requirements) as detailed within the VVRM and contractors CDP. This incorporates all the activities required by the Contractor prior to achieving FSC as defined in the approved TMP/ITEAP.

Milestone	TPI 5 – Achievement of Full Service Commencement (FSC)	
Description	Successful achievement of FSC	
Statement of Requirement Ref	Paras 48, 81 – 84, SOR 1.1 – 9.6	
Objective Measurement	FSC is achieving the delivery of all aspects of the TMP and Compliance Demonstration Plan to a level sufficient for the Authority to have confidence that the Service is being delivered satisfactorily and without any major errors. This TPI completes the Transition In Phase.	
Incentive	% of cost retained or deducted for achieving Band C Performance or Band D Performance	Performance Retentions and Deductions
Performance Target	A	See Paragraph 6 and Table 8
	B	
	C	
	D	
Measurement Method	The TPI will be measured at FSC in line with the activities in the approved TMP/ITEAP	
Performance Marking Scheme	Refer to Paragraph 6 and Table 8	
Notes		

Table 13: TPI 5: Achievement of FSC

Appendix 1 to Annex A to Schedule 4 – Milestone Value as percentage of overall Transition In Price

Milestone	Description	Due Date	Value
1	Delivery of Transition Management Plan (TMP)	██████████	███
2	Development and delivery of the MITER Fleet Information System (MFIS)	██████████	███
3	Delivery of Training for new MITER Fleet Information System (MFIS)	██████████	███
4	Achievement of Initial Service Commencement (ISC)	██████████	███
5	Achievement of Full Service Commencement (FSC)	██████████	███
Total			100%

Table 14: Transition Milestone Value

Annex B to Schedule 4 – Transition Out Phase

1. Transition Out (Including Exit Management Plan(EMP))

1.1. This TPI is to incentivise the Contractor to deliver an Exit Management Plan(EMP) to the Authority by [REDACTED] and to successfully exit from this contract.

1.2. The EMP will demonstrate maturation of 'Transition Out' providing confidence of an efficient and effective hand-over of the capability back to the Authority. The EMP will include a set of milestones detailing a progressive hand-over of capability back to the Authority spanning the final 3 years of the contract and will at a minimum detail; Transfer of Equipment (subject to paragraph 5 of Schedule 14 (Fleet Asset Transfer & Management), Personnel data (Pensions), Infrastructure handover, Information transfer (documentation, MFIS data output etc.).

Milestone	TP6 – Transition Out	
Description	This TPI is achieving the Transition Out including successful completion of the EMP and all activities needed to transfer the Services back to the Authority to enable the Authority to re-compete the Services.	
Statement of Requirement Ref	8.2	
Objective Measurement	All activities required for Transition Out delivered as agreed within an EMP sufficiently matured to allow a timely delivery of Milestones to the Authority; detailing a transfer of Services back to the Authority allowing sufficient time, for the Authority, to re-compete without a gap in capability to the wider users.	
Incentive	% of cost retained or deducted for achieving Band C Performance or Band D Performance	Performance Retentions and Deductions
Performance Target	A	<ol style="list-style-type: none"> Fully acceptable EMP delivered to the Authority in line with agreed timescales. Milestones are achieved to Schedule and quality to enable the Authority to re-compete the contract.
	B	<ol style="list-style-type: none"> EMP delivered to the Authority in line with agreed timescales but requires minor amendments. MoD changes incorporated within 10 Business Days. Milestones are achieved to Schedule and quality to enable the Authority to re-compete the contract.
	C	<ol style="list-style-type: none"> The EMP delivered in line with agreed timescales but has major errors and/or is late. Impact to 1 significant milestone in the Transition Out timeline.
	D	<ol style="list-style-type: none"> The EMP is delivered late and has major errors. Impact to multiple milestones in the Transition Out timeline.
	To be agreed when EMP is developed	
Measurement Method	The TPI will be measured on a calendar month frequency against activities in the approved EMP	
Performance Marking Scheme	Refer to Appendix 1 to Annex A to Schedule 4	
Notes		

Table 15: TPI 6: Transition Out

Annex C to Schedule 4

Key Performance Indicators (KPIs)

KPI 1 - Fulfilling Demands for Equipment

1.1 The purpose of this KPI is to incentivise the Contractor to deliver against the Authority's demands requested on the MITER Fleet Information System (MFIS) and through the Help Desk in the temporary absence of MFIS connectivity. A demand is satisfied when the Equipment detailed in the demand is delivered to the right location at the right time for the correct duration and is fit for purpose. A demand may comprise of multiple Equipment Items.

Milestone	KPI 1 – Fulfilling demands for Equipment			
Description	The Contractor fulfils the Authority's demands by providing the assets as requested by the Authority on MFIS or the Help Desk.			
Statement of Requirement Ref	1.1 – 1.33, 5.1 – 5.3, 5.6 – 5.7, 6.30 – 6.35			
Objective Measurement	Number of demands completed at the right location at the right time for the correct duration and the Equipment Item is fit for purpose against the number of demands made by the Authority. A demand may comprise of multiple Equipment Items. This includes the performance of the Contractor's Supply Chain.			
Fee at Risk	Percentage Fee at Risk for Performance at Band C and D	Performance Retention	Performance Deduction	
Performance Target	A	Equipment demands completed for: Firm Base exceed [REDACTED] Deployed Benign exceed [REDACTED] Deployed Tactical exceed [REDACTED]	0%	0%
	B	Equipment demands completed for: Firm Base at [REDACTED] Deployed Benign at [REDACTED] Deployed Tactical at [REDACTED]	0%	0%
	C	Equipment demands for: Firm Base less than [REDACTED] Deployed Benign less than [REDACTED] Deployed Tactical less than [REDACTED]	50%	50%
	D	Equipment demands for: Firm Base less than [REDACTED] Deployed Benign less than [REDACTED] Deployed Tactical less than [REDACTED]	100%	100%
Measurement Method	The KPI will be measured by the number of instances in the calendar month of satisfactory completion of demands for Equipment expressed as a percentage of the number of demands due to be satisfied in the calendar month which include those not satisfied from previous reporting periods still to be delivered within the current reporting period.			
Performance Marking Scheme	See Table 30			
Notes	The Contractor shall be required to demonstrate, upon request by the Authority, that all valid Demands in a given month have been fulfilled or attempted with full justification of non-fulfilment.			

Table 16: KPI 1: Fulfilling Demands

2 Provide Operators and Maintainers

2.1 The purpose of this KPI is to incentivise the Contractor to provide operators and maintainers against the Authority’s demands for operators and maintainers on the MITER Fleet Information System (MFIS) and through the Help Desk in the temporary absence of MFIS connectivity. The provision of operators and maintainers has only been met when the personnel are provided to the Authority at the correct location to the timescales requested and are suitably qualified and experienced.

2.2 The SQEP personnel required is defined in Tables 37 to 44, the qualification will be defined in the demand for the Personnel on MFIS.

Milestone	KPI 2 – Provide Operators and Maintainers			
Description	To deliver against the Authority’s demands for operators and maintainers requested by the Authority on the MITER Fleet Information System and through the Help Desk in the absence of MFIS connectivity			
Statement of Requirement Ref	3.1 – 3.4, 4.6 – 4.9			
Objective Measurement	Number of Operator and Maintainer demands met by the Contractor, from point of inception, per month			
Fee at Risk	Percentage Fee at Risk for Performance at Band C and D	Performance Retention	Performance Deduction	
Performance Target	A	Over █████ of Demands met	0%	0%
	B	Over █████ of Demands met	0%	0%
	C	Over or equal to █████ of Demands met	50%	50%
	D	Less than █████ demands met	100%	100%
Measurement Method	The KPI will be measured by the number of instances in the calendar month of satisfactory completion of demands placed through MFIS expressed as a percentage of the number of demands due to be satisfied in the calendar month.			
Performance Marking Scheme	See Table 30			
Notes				

Table 17: KPI 2: Provide Operators and Maintainers

3 Provide Training

3.1 The purpose of this KPI is to incentivise the Contractor to deliver against the Authority’s training demands including but not limited to equipment conversion training, Mechanical Handling Equipment Operator training and MFIS training in Deployed Benign and Firm Base locations. A demand has only been met when the training has been delivered to the Authority at the correct location to the personnel requested and is fit for purpose.

Milestone	KPI 3 – Provide Training			
Description	Deliver training to the Authority – including but not limited to equipment conversion training, Mechanical Handling Equipment Operator training and MFIS user training in Deployed Benign and Firm Base locations			
Statement of Requirement Ref	3.6 – 3.8			
Objective Measurement	Number of training demands in a month as demanded through MFIS.			
Fee at Risk	Percentage Fee at Risk for Performance at Band C and D	Performance Retention	Performance Deduction	
Performance Target	A	Over ████ of Demands met	0%	0%
	B	Over ████ Demands met	0%	0%
	C	Over or equal to ████ Demands met	50%	50%
	D	Less than ████ demands met	100%	100%
Measurement Method	The KPI shall be measured on a calendar month frequency by calculating the number of instances of satisfactory completion of a valid demand for MITER training expressed as a percentage of the total number of demands due to be satisfied in the month (that were placed on the MFIS)			
Performance Marking Scheme	See Table 30			
Notes	<p>If an individual fails to attend training session or cancels training within 10 working days (SOR 3.6) the KPI will be adjusted accordingly with the attendance being recorded as complete but unattended.</p> <p>Requirement under SOR 3.6 for training to be available within 24hrs of a Demand being placed for selected training, for specific COTS/ MOTS Equipment, shall be agreed by exception prior to acceptance of the Demand.</p>			

Table 18: KPI 3: Provide Training

4 Provide Scheduled Maintenance

4.1 The purpose of this KPI is to incentivise the Contractor to plan and carry out Scheduled Maintenance in line with the Authority’s Equipment Standard Regulatory Schedule (ESRS) or if not applicable, OEM predefined schedules whilst on demand. An event has only been met when the maintenance or service is recorded on MFIS.

Title		KPI 4 – Provide Scheduled Maintenance for on demand Equipment.		
Description		To plan and carry out routine maintenance in line with the Authority’s ESRS or if not applicable, OEM predefined maintenance schedules, where demand states that this is to be carried out by the Contractor.		
Statement of Requirement Ref		4.15, 7.35		
Objective Measurement		Percentage of completed maintenance events in a month		
Fee at Risk		Percentage Fee at Risk for Performance at Band C and D	Performance Retention	Performance Deduction
Performance Target	A	NOT APPLICABLE	0%	0%
	B	█ or above	0%	0%
	C	█	50%	50%
	D	█ or below	100%	100%
Measurement Method		The KPI will be measured on a calendar month frequency by the number of instances, in the month, of satisfactory completion of planned maintenance expressed as a percentage of the number of maintenance events due in the reporting period		
Performance Marking Scheme		See Table 30		
Notes		<p>Scheduled maintenance to be completed for jointly managed Equipment in accordance with AESPs and JAMES. In the case of Equipment maintained by the Contractor the maintenance recommendations of the OEM shall be taken into account (SOR - 4.15).</p> <p>Equipment maintenance owner for MOTS Equipment on demand shall be deemed to be the Authority. Any requests to change maintenance owner during a Demand shall follow agreed business rules, authorisation and notice periods contained within JSP 818.</p>		

Table 19: KPI 4: Provide Scheduled Maintenance

5 Equipment Availability – Deployed Tactical Environment

5.1 The purpose of this KPI is to incentivise the Contractor to ensure the Equipment that is demanded for the Deployed Tactical environment on the MITER Fleet Information System (MFIS) can be utilised for the duration of the demand.

Milestone		KPI 5 – Equipment Availability – Deployed Tactical Environment		
Description		Demanded Equipment is available and able to complete the tasking as specified in the demand.		
Statement of Requirement Ref		1.19, 7.35		
Objective Measurement		Number of demands that have successfully completed the task for the durations requested. This will be measured from the point of handover. This includes the performance of the Contractor's Supply Chain.		
Fee at Risk		Percentage Fee at Risk for Performance at Band C and D	Performance Retention	Performance Deduction
Performance Target	A	NOT APPLICABLE	0%	0%
	B	█ or above for all Equipment within the Deployed Tactical environment	0%	0%
	C	NOT APPLICABLE	0%	0%
	D	█ for all Equipment within the Deployed Tactical environment	100%	100%
Measurement Method		<p>The KPI shall be measured by the number of Unscheduled Maintenance occurrences against the number of days used during the reporting period of all Equipment items within the Deployed Tactical environment, as calculated using the formula:</p> <p>█ where;</p> <p>█</p> <p>█</p> <p>█</p> <p>█</p> <p>█</p> <p>For the avoidance of doubt the spreadsheet calculator is included at Serial 19 of Schedule 19 (Referenced Documents)</p> <p>Dependency on the Authority to maintain accurate records on JAMES (usage data is available and recorded on JAMES).</p>		
Performance Marking Scheme		See Table 30		
Notes		<p>This shall be an output of JAMES as MOTS Equipment operating in the Deployed Tactical environment only.</p> <p>The Contractor reserves the right to request Equipment to be repatriated from a Deployed Tactical Environment for inspection of Equipment Items or sub-components to confirm reason for failure (or other suitable method to verify reason for failure e.g. photographs). If</p>		

	<p>the event is found to be NFWT, costs (repatriation and inspection) plus any retention and deductions with interest shall be recoverable from the Authority.</p> <p>The KPI is only applicable if the Equipment Item has been maintained in accordance with the appropriate AESP and that JAMES is updated in accordance with the timescales as detailed within the Schedule 2 (Statement of Requirement).</p> <p>Performance measure applies to Equipment demands fulfilled from ISC only.</p>
--	---

Table 20: KPI 5: Equipment Availability Deployed Tactical Environment

6 Provide Unscheduled Maintenance

6.1 The purpose of this KPI is to incentivise the Contractor to deliver Unscheduled Maintenance when equipment fails or as requested by the Authority. An event has only been met when the equipment, person or service is reinstated to the Authority at the correct location to the timescale requested and is fit for purpose.

Milestone		KPI 6 – Provide Unscheduled Maintenance		
Description		Contractor completed Unscheduled Maintenance and/or repairs to reinstate the Equipment and/or service to the Authority.		
Statement of Requirement Ref		4.10, 4.11, 4.13		
Objective Measurement		Percentage of breakdowns repaired in a month by the Contractor. This is from the time of notification to the Contractor for loss of service or on Authority acceptance of a repair quote – 24 hours, 7 days a week, 365 days a year and 366 days on a leap year.		
Fee at Risk		Percentage Fee at Risk for Performance at Band C and D	Performance Retention	Performance Deduction
Performance Target	A	NOT APPLICABLE	0%	0%
	B	█ or above of equipment restored to service within stated times within SOR, (either by repair or replacement); through the loss of service due to FWT & NFWT / Accidental Damage.	0%	0%
	C	█% of equipment restored to service within stated times, (either by repair or replacement); through the loss of service due to FWT & NFWT / Accidental Damage.	50%	50%
	D	█ or below of equipment restored to service within stated times, (either by repair or replacement); through the loss of service due to FWT & NFWT / Accidental Damage.	100%	100%
Measurement Method		The KPI shall be measured on a calendar month frequency by the number of instances of satisfactory completion of an event expressed as a percentage of the number of demands due in the reporting period (that were reported on the MFIS). Satisfactory completion of event shall be within the timescales highlighted in against SOR 4.13 as shown below.		

	FWT			
	Environment	Variable (Defined in MFIS)	Timescales (4.13)	
	Firm Base	Critical Asset	██████	
		Non-Critical Asset	██████████	
	Deployed Benign	Critical Asset	██████	
		Non-Critical Asset	██████████	
	NFWT / Accidental Damage			
	Environment	Variable (Defined in MFIS)	Timescales (4.13)	
	Firm Base	Critical Asset	██████████	
		Non-Critical Asset	██████████	
	Deployed Benign	Critical Asset	██████████	
		Non-Critical Asset	██████████	
	Performance Marking Scheme	See Table 30		
	Notes	<p>Also, to cover accidental damage as well as breakdown.</p> <p>NFWT ≥ █████ will only be measured from the time the Authority agree the Contractor provided quote and will be against the agreed timescales within the quote.</p> <p>Replacement would cover repair.</p> <p>All Firm Base Locations are covered by this measurement.</p> <p>Deployed Benign Locations are covered by this measurement unless caveated in Schedule 2 Annex - DBAL.</p> <p>The list of caveated locations will be updated on a six-monthly basis.</p> <p>Deployed Tactical is excluded from this measurement.</p> <p>The default will be that demands are "Non-Critical". The process for defining a period of demand as "Critical" and "Non-Critical" shall be individually sanctioned by the Authority's Representative. The notice period required to affect this status shall be detailed within the Business Rules. At all times the KPI shall be based on the site access times available to an engineer to affect repair.</p>		

Table 21: KPI 6: Provide Unscheduled Maintenance

7 Provide Accurate Data for The Service Provision

7.1 The purpose of this KPI is to incentivise the Contractor to ensure that the data provided to the Authority is accurate for the Authority’s Users when required. Data is information that the Authority needs from the Contractor to undertake the Authority’s business in a safe, effective and efficient manner. The Authority considers accurate service data to be an important enabler to achieve a successful Contractor Service Provision, gaining confidence from the Authority’s Users.

7.2 This KPI includes accuracy and validity of invoicing.

Milestone		KPI 7 – Provide accurate data for the service provision		
Description		The data that is used for the service provision by the Contractor and the Authority is accurate for the Authority’s Users to have an effective service. Accurate data is to ensure that the Authority does not expend any additional time and/or financial resource. This KPI includes accuracy and validity of invoicing.		
Statement of Requirement Ref		5.2, 6.23 – 6.29, 6.53, 6.54, 6.59, 6.61, 7.29		
Objective Measurement		Number of instances of accurate data when the data is checked by the Authority, the Authority’s wider Users and the Contractor		
Fee at Risk		Percentage Fee at Risk for Performance at Band C and D	Performance Retention	Performance Deduction
Performance Target	A	█% accuracy	0%	0%
	B	█% accuracy	0%	0%
	C	█% accuracy	50%	50%
	D	█% accuracy	100%	100%
Measurement Method		<p>The KPI will be measured on a calendar month frequency based on the number of instances of inaccurate service data being provided as a percentage of the instance of Material Information (see note below) being provided on a cumulative basis since the last instance of inaccurate service data was reported.</p> <p>█ is the number of instances of inaccurate service data and █ is the cumulative number of Material Information provided since the last instance of an inaccuracy was recorded.</p> <p>In accordance with Clause 1.5.1 this KPI attracts a bedding in period of 4 months from ISC.</p> <p>The measurement shall exclude any data records found to be inaccurate that are provided by the Authority</p> <p>Relief will not be unreasonably withheld where it can be shown that inaccurate data records were ;</p> <ul style="list-style-type: none"> • Provided by or should have been provided by the Authority • Not Material to the decision being taken • Subjective in nature or an estimate / forecast • Identified within the first 3 months of a new report or MFIS development (part of the bedding in) 		

	<ul style="list-style-type: none"> • Provided at short notice from an Authority request and therefore could not be fully quality assured • Is a result of poor Authority source information (e.g. categorisation from JAMES into MFIS) <p>The inaccuracy is capable of remedy without service or financial detriment to the Authority</p>
Performance Marking Scheme	See Table 30
Notes	<p>PI 7.1</p> <p>Authority's wide Users – Users from Army, Royal Navy, Royal Air Force, Joint Forces Command and Defence Munitions</p> <p>Service Data shall be defined as material where:</p> <ul style="list-style-type: none"> • It plays an essential part in the Authority's day to day decision making • Has a financial impact that would be detrimental to the Authority and in excess of █ of invoiced charges in a single period. • It is a minor error but due to repetition has become material (an error not being material as above) that has recurred again for a third time after 6 months of its first identification <p>A defined list of Material Information and the sampling process is to be agreed by the Authority and Contractor within the Transition In Phase. The list is to be updated at 6 monthly intervals alongside a monthly KPI review</p>

Table 22: KPI 7: Provide Accurate Data

8 Safety Management

8.1 The purpose of this KPI is to incentivise the Contractor to deliver a safe service, with safety risks As Low As Reasonably Practicable (ALARP) ensuring all vehicles have a valid Safety Case, appropriate documentation (AESPs, Tech Docs, etc) and ensuring all personnel are SQEP and fully up to date with their training.

Milestone	KPI 8 – Safety Management			
Description	Proactively provide an intrinsically safe service			
Statement of Requirement Ref	1.18, 7.4 – 7.10			
Objective Measurement	<p>1 ISO 45001 gained and maintained</p> <p>2 2 Safety & Environmental Panels (SEP) held annually and actions arising completed on time.</p> <p>3 1 external safety audit (additional to that needed for ISO45001 certification) and specifically for equipment safety undertaken by Authority representative or their nominated auditor; and actions arising completed on a timely basis.</p> <p>4. Pre Delivery Checks (PDCs) completed, confirming equipment delivered to fit form and function and safety/inspection certification present.</p> <p>5 Respond to and support the Authority with all safety incidents when notified in line with timescales as set out below.</p> <p>6 Accident/incident/near miss reports reviewed within 1 Business Day of receipt or notification, with immediate actions (e.g. issue of urgent safety notices) proposed to Authority for implementation.</p> <p>7 When required, Extraordinary Safety Panel (ESP) assembled within prescribed timeframe and action plans drawn up, owners assigned and progressed to agreed timescales.</p> <p>8 All Equipment Safety Cases reviewed annually and hazard logs updated.</p> <p>9 All Safety Case Part 3s (operation and support of Equipment) for all Equipment Types approved by the Authority</p>			
Fee at Risk	Percentage Fee at Risk for Performance at Band C and D	Performance Retention	Performance Deduction	
Performance Target	A	All measures 'Green'	0%	0%
	B	Up to [REDACTED] 'Amber' all others 'Green'	0%	0%
	C	[REDACTED] 'Red' and up to [REDACTED] 'Ambers'.	50%	50%
	D	[REDACTED] or more 'Reds' or [REDACTED] or more 'Ambers'.	100%	100%

Measurement Method	<p>The KPI will be measured on a calendar month frequency, scoring each of the nine elements on a Red/Amber/Green basis, using the scoring criteria below.</p> <p>During transition the KPI shall only apply to the extent that elements are applicable, as agreed at the time with the Authority and responsibility has passed to the Contractor.</p> <p>Scoring Criteria:</p>
--------------------	---

No.	Description	Measure		
		Red	Amber	Green
1	ISO 45001	Certification withdrawn or >2 major non-conformances	No more than 2 major non-conformances may have several minor non-conformances rectification plan agreed	Certificate issued (maybe minor non-conformances)
2	Safety & Environmental Panels (SEP)	No SEP supported (or scheduled) for more than 6 months	SEP supported in last six months, but some actions remain un-started for >30 days since the publication of the minutes	SEP supported in last six months and actions arising in hand
3	External safety audit	Either: Audit not undertaken in last 12 months; or more than 2 major non-conformances; or actions arising not progressed for >30 days from report being issued	Audit undertaken in last 12 months, with no more than 2 major non-conformances reported. Actions started.	Audit undertaken in last 12 months, with just minor non-conformances reported. Actions in hand.
4	Pre-delivery Checks (PDC)	<90% completed	90% to <97% completed	=>97% completed
5	Initial response to safety incidents	Call Received in Working Hours (0800 – 1700 Mon through Fri)		
		>60mins	>30mins<=60mins	<=30mins
		Call received Outside Working Hours		
		Next working day later than 0900	Next working day between 0830 and 0900	Next working day between 0800 and 0830
6	Initial review of accident/incident/near miss reports and notifications	>2 Business Days	>1 Business Day to <= 2 Business Days	Within 1 Business Day
7	Extraordinary Safety Panel (ESP) arranged	>14 days or more than half actions not started	>7 to <= 14 days or more than half actions arising not on schedule to timetable agreed	<= 7 days and any actions arising in hand to timetable agreed
8	Equipment safety cases	<100% reviewed in last 12 months	N/A	100% reviewed in last 12 months
9	Safety Case Part 3s	<100% approved by Authority	N/A	100% approved by Authority
Performance Marking Scheme	See Table 30			

<p>Notes</p>	<p>PI 8.1, 8.2, 8.3</p> <p>Where the Contractor relies upon the Authority to notify it of an incident or event, the time of notification will serve as the trigger point, not the time of the incident or event itself.</p> <p>Similarly, where the Contractor requires the Authority to schedule meetings or audits, any delay in these events occurring when outside of the Contractor's control will be disregarded in the measurement of this KPI and the date that the Contractor can evidence it was available to support the event taking place will be used as the KPI measure.</p> <p>An 'initial response' is considered to be receiving and logging a helpdesk call or acknowledging a MFIS safety incident notification. The subsequent response will depend on the nature of the incident.</p>
--------------	---

Table 23: KPI 8: Safety Management

Annex D to Schedule 4 - Performance Indicators

1 Performance Indicators

1.1 This annex lists the Performance Indicators (PI) that are required to be used which are to align to the KPI e.g. PI 6.1 - Spares Provisioning relates to KPI 6 – Provide Un-Scheduled Maintenance. The Contractor shall propose further PIs to enable the Authority to monitor all aspects contributing to the KPIs. The following Performance Indicators will directly link into the relevant KPI and as such will contribute to the performance score of the Contractor and the remedies available to the Authority.

2 Spares Provisioning

2.1 The purpose of this PI (6.1) is to incentivise the Contractor to ensure that spares are available and delivered on time. A spares demand has only been met when the spare delivered to the Authority is at the correct location to the timescale requested and is fit for purpose.

PI	6.1									
Service Area	Spares Provisioning									
PI Descriptor	Achievement of Supply Chain Pipeline Times for all received demands to specified delivery point.									
Performance Indicator (PI)	Delivery of spares to the specified delivery point before expiry of the Forward and Reverse Supply Chain Pipeline Times (SCPT) detailed below:									
	Forward Supply Chain			Reverse Supply Chain						
	SPC	IMMEDIATE 01 & 05	PRIORITY 02 & 09	ROUTINE 03 & 13 04 & 16	IMMEDIATE 05	PRIORITY 09	ROUTINE 13 & 16			
	Demand Transmission	██████	██████	██████						
	Demand Processing	██████	██████	██████						
	Material Handling	██████	██████	██████						
	Distribution to Purple Gate / LCST	██████	██████	██████						
	Distribution to UK Unit ¹ or POE	██████	██████	██████						
	CLS FSC SCPT	██████	██████	██████						
	Distribution to non UK Unit	See appropriate Theatre FSC SCPT Table within DLF								
	Return to UK							See appropriate Theatre FSC SCPT Table within DLF		
	Time for Distribution within UK							██████	██████	██████
	LCST to notify Contractor							██████	██████	██████

i. ¹ Where direct delivery to units has been agreed or where DSCOM have authorised delivery direct to a secondary purple gate this element of the SCPT shall belong to the Contractor

██████ ² If a Required Delivery Date (RDD) has been specified as 'RDD Essential' by the demanding unit, the SCPT may be extended beyond ██████

	that item ready to collect				
	Contractor to collect from LCST		■	■	■
Measurement Method	A monthly measure of the percentage of the total number of demands in a month that are satisfied within the required timelines / total number of demands in a month				
Performance Marking Scheme	Please refer to KPI 6				
Notes					

Table 24: PI 6.1: Spares Provisioning

3 Provide Accurate data

3.1 The purpose of this PI is to incentivise the Contractor to ensure that the MFIS system is available to provide service provision data.

PI	7.1
Service Area	Provide Service Data – MFIS Availability
KPI Descriptor	% of time that the MFIS is available to Authority staff
Performance Indicator (PI)	Throughout the life of the service the MFIS remains accessible and fully operational not less than █████ over a given 365-day period.
Measurement Method	Number of hours of down time per month based on 24/7 availability
Performance Marking Scheme	Refer to KPI 7 – Provide accurate data for the service provision
Notes	This measure excludes authorised scheduled downtime for maintenance activities

Table 25: PI 7.1: Provide Accurate data

4 Technical Publications

4.1 The purpose of these PIs (8.1 and 8.2) is to incentivise the Contractor to ensure Technical Publications are updated and available to the User community. A Technical Publication update has only been met when the update has been accepted by the Authority.

PI	PI 8.1
Service Area	Publications
PI Descriptor	Review and Update of Publications (Routine)
Performance Indicator (PI)	Percentage of agreed changes, reflected in the next update of the AESP on TDOL and relevant Service Publications
Measurement Method	A 6-monthly measure of the percentage of the number of publication updates agreed and implemented / the number of publication updates agreed
Performance Marking Scheme	Refer to KPI 8 – Safety Management
Notes	Routine changes agreed at the 6 monthly publications working group and shall be updated and available to the User prior to the next working group.

Table 26: PI 8.1: Review and Update of Publications (Routine)

PI	PI 8.2
Service Area	Publications
PI Descriptor	Review and Update of Publications (Priority and Immediate)
Performance Indicator (PI)	Percentage of changes initiated by the PT and available on TDOL within the agreed timeframe: <div style="background-color: black; width: 150px; height: 15px; margin: 5px 0;"></div> <ul style="list-style-type: none"> • <div style="background-color: black; width: 100px; height: 15px; display: inline-block;"></div>
Measurement Method	A 6-monthly measure of the percentage of the number of priority and immediate publication amendments completed within the timeframe / the number of publication amendments completed
Performance Marking Scheme	Refer to KPI 8 – Safety Management
Notes	The Authority shall determine if the update is either priority or immediate

Table 27: PI 8.2: Review and Update Publications (Priority and Immediate)

Annex E to Schedule 4 – KPI to SOR matrix

TPI	SOR Ref
TPI 1: Delivery of the TMP	8.1,
TPI 2: Development & Delivery of MFIS	6.1 – 6.22
TPI 3: Delivery of Training for MFIS	2.3, 3.6, 3.7, 3.8
TPI 4: Achievement of ISC	Paras 47, 81 – 84, SOR 1.1 – 9.6
TPI 5: Achievement of FSC	Paras 47, 81 – 84, SOR 1.1 – 9.6
TPI 6 Exit Plan	8.2

Table 28: TPI to SOR Reference

KPI	SOR Ref
KPI 1: Fulfilling Demands	1.1 – 1.33, 5.1 – 5.3, 5.6 – 5.7, 6.30 – 6.35
KPI 2: Provide Operators & Maintainers	3.1 – 3.4, 4.6 – 4.9
KPI 3: Operate the Equipment – Provide Training	3.6 – 3.8
KPI 4: Provide Scheduled Maintenance	4.15, 7.35
KPI 5: Equipment Availability – Deployed Tactical	1.19, 7.35
KPI 6: Provide Unscheduled Maintenance	4.10, 4.11, 4.13
KPI 7: Provide Accurate Data	5.2, 6.23 – 6.29, 6.53, 6.54, 6.59, 6.61, 7.29
KPI 8: Safety Management	1.18, 7.4 – 7.10

Table 29: KPI to SOR Reference

Appendix 1 to Annex E to Schedule 4 – Percentage Fee at Risk against KPI Performance

Table 30 provides the Authority's relative importance of the KPIs detailed at Annex C to Schedule 4 (Performance Measurement & Management).

1. Table 30 denotes the monthly Management Fee at risk to the Contractor in the event of Performance Failure as detailed in Paragraph 5.5.2 of this Schedule, noting that fee at risk is capped at either [REDACTED] of the Contract Year profit element contained within the Management Fee, whichever is the higher amount.

KPI Number	Description	Fee at Risk as a % of the monthly Management Fee
1	Fulfilling Demands for Equipment	[REDACTED]
2	Provide Operators and Maintainers	[REDACTED]
3	Provide Training	[REDACTED]
4	Provide Scheduled Maintenance	[REDACTED]
5	Equipment Availability	[REDACTED]
6	Provide Unscheduled Maintenance	[REDACTED]
7	Provide Accurate Data	[REDACTED]
8	Safety Management	[REDACTED]
Total:		[REDACTED]

Table 30: KPI Fee at Risk

Part 2 of Schedule 4 – Performance Monitoring

1 Performance Monitoring

- 1.1 The performance of The Contractor shall be reviewed:
 - 1.1.1 monthly at the meeting of the Contract Management Group (CMG) in accordance with Paragraph 2 of this Part 2 of Schedule 4; and
 - 1.1.2 annually as part of the Annual Contract Review undertaken pursuant to Schedule 9 (Governance) (Reviews).
- 1.2 The Contractor shall:
 - 1.2.1 produce or otherwise make available to the Authority access to the underpinning Performance data which has been produced and used to determine or report KPI and TPI performance.
 - 1.2.2 prepare, maintain and update a register of Remedial Action Plans (the RAP Register) in accordance with Paragraph 3 of this Part 2 of Schedule 4; and
 - 1.2.3 where required by the Authority or by any provision of this Contract, prepare and implement a Remedial Action Plan in accordance with Paragraph 4 of this Part 2 of Schedule 4.

2 Monthly Review

- 2.1 Within ten (10) Business Days after the end of a Contract Month, the Contractor shall report its relevant KPI and TPI performance in respect of any Reporting Period which ended in the previous Contract Month for review at the next meeting of the CMG convened pursuant to the terms of Schedule 9 (Governance).
- 2.2 The report submitted pursuant to Paragraph 1.1 of this Part 2 of Schedule 4 shall report against each KPI and TPI with a Reporting Period falling due for measurement at the end of the previous Contract Month as specified in Part 3 (Performance Management Reporting) of this Schedule 4.
- 2.3 The matters to be discussed at each meeting of the CMG shall include:
 - 2.3.1 areas where KPIs and/or TPIs are on track
 - 2.3.2 assessment of any potential gainshare and whether the Management Fee is at Risk
 - 2.3.3 any Improvements presented to the extant KPIs, PIs or TPIs
 - 2.3.4 areas where KPIs, PIs or TPIs have not been achieved;
 - 2.3.5 areas where either Party is of the view that KPIs, PIs or TPIs are not likely to be achieved;
 - 2.3.6 other areas where performance is falling below the standards required by this Contract;
 - 2.3.7 any other issues in relation to performance and service levels;
 - 2.3.8 progress under any outstanding Remedial Action Plan;
 - 2.3.9 areas to be addressed in additional Remedial Action Plans;
 - 2.3.10 any proposals which either Party may have for improving performance or for addressing performance-related issues; and
 - 2.3.11 any other contract management issues relating to Contractor Performance.

3 Remedial Action Plan Register

- 3.1 The Contractor shall develop and maintain a Remedial Action Plan (RAP) Register in accordance with the provisions of Paragraph 2

- 3.2 The Contractor shall promptly:
 - 3.2.1 on performing in respect of a KPI or TPI at band C or band D prepare a Remedial Action Plan and record in the RAP Register the circumstances giving rise to the need for the Remedial Action Plan (or the revisions thereto);
 - 3.2.2 following preparation or revision of such Remedial Action Plan, record in the RAP Register:
 - 3.2.2.1 details of such Remedial Action Plan or of the revisions thereto (as relevant) (including the timeframe specified for rectifying the relevant performance failure); and
 - 3.2.2.2 where revisions (or further revisions) to the Remedial Action Plan are required, details of such revisions or further revisions; and
 - 3.2.3 following implementation of the Remedial Action Plan:
 - 3.2.3.1 details of such implementation; and
 - 3.2.3.2 the date on which the Remedial Action Plan has been satisfied or, where the relevant performance failure has not been rectified to the reasonable satisfaction of the Authority on expiry of the timeframe specified in the Remedial Action Plan, the details of the continuing performance failure.

4 Remedial Action Plans

- 4.1 The Contractor shall by no later than (ten) 10 Business Days after the date of the relevant KPI or TPI failure (or such other date as the Authority may agree) prepare a Remedial Action Plan for each relevant area of performance setting out:
 - 4.1.1 how the relevant performance failure is to be rectified or avoided; and
 - 4.1.2 the timeframe for such rectification or the timeframe for the measures and actions to be taken to avoid a failure in the coming month(s).
- 4.2 Each Remedial Action Plan prepared by the Contractor or, where relevant, any revisions to any Remedial Action Plan shall be submitted to the Authority for acceptance.
- 4.3 The Contractor shall implement each Remedial Action Plan (or revised Remedial Action Plan) in accordance with its terms.
- 4.4 For the avoidance of doubt, The Contractor shall remain responsible for rectifying a performance failure notwithstanding acceptance by the Authority of a Remedial Action Plan (or revised Remedial Action Plan) addressing such performance failure or any comments made by the Authority on a proposed Remedial Action Plan (or revised Remedial Action Plan).
- 4.5 If, on review of the progress of a Remedial Action Plan as part of a CMG meeting convened in accordance with Schedule 9 (Governance), the Authority is satisfied that the performance failure the subject of a Remedial Action Plan has been rectified and such performance failure is, in the reasonable opinion of the Authority, unlikely to recur, the Authority shall confirm to the Contractor that the relevant Remedial Action Plan has been satisfied, and such Remedial Action Plan shall cease to apply forthwith or with effect from such other date or subject to such conditions as the Authority may specify.

5 Annual Contract Review

- 5.1 The report submitted pursuant to the Annual Contract Review shall include:
 - 5.1.1 overall performance of the contractor
 - 5.1.2 any performance trends identified during the contract year
 - 5.1.3 the status of any retentions and deductions during the contract year
 - 5.1.4 areas where KPIs or TPIs have not been achieved;

- 5.1.5 areas where either Party is of the view that KPIs or TPIs are not likely to be achieved;
- 5.1.6 other areas where performance is falling below the standards required by this Contract;
- 5.1.7 any other issues in relation to performance and service levels;
- 5.1.8 progress under any outstanding Remedial Action Plan;
- 5.1.9 areas to be addressed in additional Remedial Action Plans;
- 5.1.10 any proposals which either Party may have for improving performance or for addressing performance-related issues;
- 5.1.11 the extent to which Innovation, including any scope transfer, responsibility and control have impacted on the existing Performance Measures and agree Changes (if any) to the Performance Management System (for the avoidance of doubt, any changes agreed in respect of the Performance Management System shall be made in accordance DEFCON 620 (Contract Change Control Procedure); and
- 5.1.12 any other contract management issues relating to Contractor Performance.

Schedule 5 – Intellectual Property Rights (IPR)**1 Definitions**

- 1.1 In addition to the defined terms set out in of Schedule 1 (Definitions), the following capitalised terms shall have the following meanings where used in this Schedule 5.
- 1.1.1 **"Affiliates"** means in relation to any company, any subsidiary of that company, and any (and every) holding company of that company, and any subsidiary of any such holding company, in each case from time to time with those terms having the meanings given in section 1159 of the Companies Act 2006;
- 1.1.2 **"Asset Provision"** means the provision (including, to the extent applicable, design, development, construction, manufacture, installation, testing, delivery and commissioning) of the Specified Assets so as to meet the Asset Provision Requirements in accordance with this Contract;
- 1.1.3 **"Asset Provision Requirements"** means the requirement for Asset Provision to be provided in accordance with the Asset Provision Proposals and so as to meet the Authority's Requirements;
- 1.1.4 **"Authority Background IPR"** means the Background IPR owned by the Authority whether arising before or after the Commencement Date;
- 1.1.5 **"Authority Requirements"** means the requirements detailed in the Statement of Requirements at Schedule 2 (Statement of Requirements);
- 1.1.6 **"Background IPR"** means any IPR created or subsisting prior to or outside the scope of this Contract;
- 1.1.7 **"Contractor Background IPR"** means the Background IPR owned by the Contractor at the time it is licensed to the Authority under Paragraph 5 (Licence of Contractor Background IPR and Contractor Foreground IPR) necessary for the performance of the Project a list of which is an Annex A to this Schedule 5;
- 1.1.8 **"Contractor Foreground IPR"** means any IPR (other than Authority Foreground IPR) created by the Contractor or its Subcontractors and their holding companies or subsidiaries from time to time for the purposes of this Contract (excluding the manifestations of any Contractor Background IPR and/or any Third Party IPR and/or Authority Background IPR);
- 1.1.9 **"Contractor Related Party"** means the Contractor and their Affiliates
- 1.1.10 **"Follow-on Contractor"** is as defined as the transfer of responsibility for Asset Provision and/or Service Provision (or part of Asset Provision and/or Service Provision) from the Contractor to any person, or to the Authority or to another Contractor;
- 1.1.11 **"Intellectual Property Rights"** or **"IPR"** shall mean patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
- 1.1.12 **"Representative of the Indemnifying Party"** means Representative of the Indemnifying Party;
- 1.1.13 **"Service Provision Requirements"** means the requirement for Service Provision to be provided so as to meet the Authority's Requirements;

- 1.1.14 "**Specified Assets**" means those items identified as "Specified Assets" in Schedule 6 (Government Furnished Assets and Issued Property);
- 1.1.15 "**Technical Support Contractors**" means a Third Party who has Contractual relationship with the Authority to provide technical support to the Authority;
- 1.1.16 "**Third Party**" shall mean any party other than the Authority, the Contractor and their Affiliates;
- 1.1.17 "**Third Party Confidential Information**" means Confidential Information owned by a Third Party; and
- 1.1.18 "**Third Party IPR**" shall mean IPR owned by a Third Party.

2 Ownership of IPR

- 2.1 The Contractor, and/or any Subcontractor, shall not by virtue of this Contract acquire title to or rights in any Authority Background IPR other than under the licences set out expressly in this Contract. The Authority shall not by virtue of this Contract acquire title to or rights in any Background IPR owned by the Contractor or any Third party other than under the licences set out in this Contract.
- 2.2 Subject to Paragraph 2.3 the Party creating any IPR in the course of this Contract shall own that IPR.
- 2.3 Subject to Paragraph 2.1 all IPR in any materials comprising:
 - 2.3.1 databases;
 - 2.3.2 information, plans and process plans relating to the operation, repair and maintenance of Government Furnished Assets and Specified Assets;
 - 2.3.3 modifications, updates and developments to Authority Background IPR;
 - 2.3.4 Third party IPR, and any modifications, updates and developments to third party IPR, supplied by the Authority to the Contractor for the purpose of this Contract or otherwise;
 - 2.3.5 training material (including training syllabuses, lessons, records, course training plans and courseware) relating to the subject matter of the Contract prepared by or on behalf of the Authority and / or
 - 2.3.6 records and information relating to the Authority and Authority-sponsored personnel created and/or modified by the Contractor and any Subcontractor under the Contract for use or otherwise created, in connection with the Services under the Contract; andall other modifications updates and developments to Authority Background IPR or Third Party IPR supplied by the Authority to the Contractor, and/or to any Subcontractor, for the purpose of this Contract, shall be the Property of the Authority (the Authority Foreground IPR).
- 2.4 The Contractor assigns and shall procure that each Subcontractor creating or modifying Authority Foreground IPR assigns, all IPR created by the Contractor and Subcontractor as the case may be which would constitute Authority Foreground IPR to the Authority with full title guarantee.
- 2.5 The Contractor and any Subcontractor shall mark any copyright work comprising Authority Foreground IPR with the legend "© Crown-owned copyright [insert the year of generation of the work]".
- 2.6 The Contractor and any Subcontractor shall procure the waiver by its employees of any moral rights that they might have in the Authority Foreground IPR.
- 2.7 Subject to Paragraph 2.3, the Contractor and any Subcontractor shall not assign, or otherwise transfer or sell, any Contractor Foreground IPR to any Third party without the prior written consent of the Authority. Any such assignment, transfer or sale shall be subject to the licence granted under Paragraph 5 (Licence of Contractor Background IPR and Contractor Foreground IPR).

Interpretation of Schedule 5

- 2.8 For the purposes of this Schedule 5, "Subcontractor" shall mean a subcontractor to the Contractor, a Subcontractor of a subcontractor to the Contractor, and any other subcontractor of whatever tier involved in Asset Provision and /or Service Provision.

Application of Schedule 5

- 2.9 The Provisions of Paragraph 3 and Paragraph 5.1 to Paragraph 9.1 (inclusive) shall apply only in relation to Service Provision.
- 2.10 The Provisions of paragraphs 9.2 to 17.15 (inclusive) shall apply only in relation to Asset Provision.
- 2.11 The Provisions of Paragraph 4 shall apply only in relation to Asset Provision and Service Provision.

3 Licence of Authority Background IPR and Authority Foreground IPR

- 3.1 Subject to Paragraphs 3.4, 3.5 and 3.7, the Authority grants to the Contractor a non-exclusive, non-sub-licensable, non-transferable, royalty-free licence for the Contract Period to use all Authority Foreground IPR that is and to the extent necessary for the purpose of the Contractor's performance of the Contract for the Authority.
- 3.2 The Contractor shall be entitled to sub-licence the Authority Foreground IPR that is and to the extent necessary for the purpose of the Contractor's performance of the Contract to the following Subcontractors on substantially similar terms to those contained in paragraph 2.1 as listed at Annex B to this Schedule 5 (Intellectual Property Rights)
- 3.3 Subject to Paragraphs, 3.4, 3.5 and 3.6 the Authority shall make available to the Contractor all Authority Background IPR the Authority believes is relevant to, together with such relevant Authority Background IPR as the Contractor reasonably requests for, the Contractor's performance of the Contract. The Authority grants a licence to the Contractor for the Contract Period on a non-exclusive, non-sub-licensable, non-transferable, royalty-free basis to use the Authority Background IPR relevant to the Contractor's performance of the Contract solely for the purpose of the Contractor's performance of the Contract for the Authority.
- 3.4 The Authority may at its discretion and by written notice to the Contractor impose restrictions and limits on the Contractor's use of such Authority Background IPR and Authority Foreground IPR to specific purposes within the scope of this Contract.
- 3.5 The Contractor shall not use Authority Background IPR or Authority Foreground IPR for any purpose other than those specified in Paragraphs 3.1 and 3.3 without the prior written consent of the Authority's Representative, which, if given, will include conditions attaching to such wider use.
- 3.6 The Authority gives no warranty as to the suitability for the Contractor's purpose of any Authority Background IPR and/or any Authority Foreground IPR licensed under Paragraphs 3.1, 3.3 and / or following any consent under Paragraph 5. The Contractor shall not do anything or act in any way which will prejudice the rights of ownership by the Crown or the Authority of any Authority Background IPR and/or any Authority Foreground IPR.
- 3.7 The Contractor may sub-licence the licences granted under Paragraphs 3.1 and 3.3 to Subcontractors engaged in the performance of any part of this Contract for the Contractor provided that such Subcontractors have entered into a confidentiality undertaking with the Authority in the same form as that set out in Schedule 5 Part A (Form of Confidentiality Undertaking). The licence rights set out in Paragraphs 3.1 and 3.3 are otherwise non-transferable and no other sub-licence may be granted by the Contractor.

4 Sub-Licence of Third Party IPR provided by the Authority

- 4.1 The Authority shall at its discretion, and where possible, make Third Party IPR that is the subject of a licence or other agreement between the Third Party and the Authority available to the

Contractor, where the Authority has reason to believe that use by the Contractor of such Third Party IPR is necessary to the Contractor's performance of the Contract.

4.2 Subject to Paragraphs 4.3 and 4.4, to the extent that the Contractor:

4.2.1 requests a sub-licence to use such Third Party IPR from the Authority for a specific purpose within its obligations to perform this Contract for the Authority; and

4.2.2 provides the Authority with a reasonable justification for its request with which the Authority agrees,

the Authority, so far as it is lawfully able to do so, grants a sub-licence to the Contractor on a non-exclusive, non-transferable, royalty-free basis, to use the Third Party IPR for that specific purpose with the right, upon written request to the Authority, for the Contractor to grant a sub-sub-licence to Subcontractors engaged in the performance of any part of this Contract for the Contractor to use the Third Party IPR on a non-exclusive, non-transferable, and royalty-free basis for that specific purpose.

4.3 The sub-licence or where relevant the sub-sub-licence, referred to in Paragraph 4.1 shall only be granted to the Contractor, or where relevant the Subcontractor, if the Authority has determined that:

4.3.1 it is encompassed by the Authority's rights under such licence or other agreement with the Third Party concerned; and

4.3.2 the sub-licence, or sub-sub-licence, is necessary for the specific purpose notified to the Authority by the Contractor.

4.4 Any sub-licence or sub-sub-licence referred to in Paragraph 4.1 shall only be permitted to be granted to a Subcontractor who has entered into a confidentiality undertaking with the Authority in the same form as that set out in Schedule 5, Part A (Confidentiality Agreement).

5 Licence of Contractor Background IPR and Contractor Foreground IPR

5.1 The Contractor grants to the Authority for the Contract Period and for all times thereafter in respect of IPR it owns or controls a perpetual, non-exclusive, irrevocable, transferable, sub-licensable, royalty-free licence or sub-licence including, without limitation the right for the Authority as licensee or sub-licensee:

5.1.1 to copy, modify, disclose and use, with the right to grant sub-licences, the Contractor Background IPR and Contractor Foreground IPR in order for the Authority or the Authority's sub-licensee to:

5.1.1.1 receive and use the Services and/or the benefit of this Contract and replace, substitute or follow on services and substantially similar assets; and

5.1.1.2 operate, perform, maintain, modify, update and develop the Services and replace, substitute or follow services provided that no such act constitutes a material change to the Authority's Requirements;

5.1.1.3 integrate the Services with the Authority's procurement, operation and support of Authority assets with which the Services are reasonably associated at any time during or after the Contract Period;

5.1.1.4 conduct any UK Governmental purpose which may be connected with the use of the Services by the Authority provided always that such purpose does not extend to the commercial exploitation of such rights during or after the Contract Period;

5.1.1.5 re-compete and continue the provision of replacement, substitute or follow –on services or assets similar in addition to the provisions of Paragraph 5.1.1.2;

5.1.1.6 otherwise perform the Authority's duties and obligations under the Contract;

5.1.1.7 carry out, or have carried out, any Required Action; and/or

5.1.1.8 perform any review, audit, or legal duty (statutory or otherwise).

for the avoidance of doubt, notwithstanding any provision to the contrary, the Contractor shall not be liable for any failure caused by any modification of the Contractor Background IPR and or Contractor Foreground IPR by the Authority which has not been previously approved in writing by the Contractor

5.2 The Contractor shall not assign, or otherwise transfer or sell any and shall procure that no Subcontractor shall assign, or otherwise transfer or sell, any Contractor Background IPR or Contractor Foreground IPR to any third party during or after the Contract Period without:

5.2.1 preserving for the Authority the rights granted to it under this Contract; and

5.2.2 providing prior written notice of such assignment, sale or transfer to the Authority.

6 Licence and Sub-Licence of Third Party IPR provided by the Contractor

6.1 The Contractor shall:

6.1.1 promptly notify the Authority's Representative whenever the Contractor or any of its Subcontractors, including for the avoidance of doubt a Contractor Related Party, requires use of Third Party IPR and/or IPR owned by a Contractor Related Party, other than Third Party IPR provided by the Authority under Paragraph 4.1, for the purpose of meeting the Authority's requirements; and

6.1.2 enter into, or procure the entering into of, a licence with such Third Parties and/or a Contractor Related Party for the right to use Third Party IPR and/or IPR owned by a Contractor Related Party notified in accordance with Paragraph 6.1.1.

6.2 The Contractor shall ensure that all licences entered into with Third Parties and/or a Contractor Related Party for the right to use Third Party IPR and/or IPR owned by a Contractor Related Party, including those notified in accordance with Paragraph 6.1, shall be held either in the Contractor's name or that of its relevant Subcontractor as licensee.

6.3 Subject to Paragraph 6.4 which shall apply in respect of non-Contractor Related Parties only, in respect of all licences referred to in Paragraph 6.2, the Contractor and/or the relevant Subcontractor, as licensee, shall ensure that the licence either:

6.3.1 grants to the Contractor or Subcontractor the right to grant a perpetual, irrevocable and transferable sub-licence with the right to grant sub-sub licences of the Third Party IPR and/or IPR owned by a Contractor Related Party to the Authority or to any other party nominated by the Authority for the Contract Period and all times thereafter; or

6.3.2 grants to the Authority for the Contract Period and all times thereafter, a non-exclusive, perpetual and irrevocable right, with the right to grant sub-licences, in the Third Party IPR and/or IPR owned by a Contractor Related Party (including, in that limitation, the licence right to copy, modify, disclose and use),

in both cases 6.3.1 and 6.3.2 to a substantially similar extent to that licensed to the Contractor or Subcontractor to enable the Authority, other party nominated by the Authority or sub-licensee of the Authority to:

6.3.2.1 receive and use the Services, and substantially similar services;

6.3.2.2 operate, perform, maintain, modify, update and develop the Services, and substantially similar services provided that no such act constitutes a material change to the Authority's Requirements;

6.3.2.3 benefit from all of the purposes set out in Paragraph 5.1.1.1 to 5.1.1.8; and

6.3.2.4 for the Authority to:

6.3.2.4.1 otherwise perform the Authority's duties and obligations under the Contract; and

6.3.2.4.2 perform any review, audit, or legal duty (statutory or otherwise); and

- 6.3.2.4.3 integrate the Services with the Authority's procurement, operation and support of Authority assets and services falling outside the Contract with which the Services are reasonably associated at any time during or after the Contract Period; and
 - 6.3.2.4.4 conduct any UK Governmental purpose which may be connected with the use of the Services by the Authority provided always that such purposes do not extend to the commercial exploitation of such rights during or after the Contract Period.
 - 6.3.3 and, in either case in Paragraphs 6.3.1 or 6.3.2, ensure that any such licence includes:
 - 6.3.3.1 the right to sub-licence to the Authority or any other party nominated by the Authority; or
 - 6.3.3.2 a direct licence to the Authority, and
 - 6.3.3.3 the ability for the licence or sub-licence to be capable of assignment, novation or transfer to a public body and/or Follow-On Contractor subsequently responsible, or substantially responsible, for performing the obligations of the Authority.
 - 6.4 If, where the Third Party to the licence is a Third Party and for the avoidance of doubt is not the Contractor or a Contractor Related Party, after the exercise by the Contractor and/or Subcontractor of reasonable endeavours, a licence as set out in Paragraph 6.3 is not available, the Contractor and/or Subcontractor shall:
 - 6.4.1 procure the grant to the Authority of a licence of that Third Party IPR on the best available terms closest to those set out in Paragraph 6.3; and
 - 6.4.2 consult with the Authority's Representative prior to the grant of that licence set out in Paragraph 6.4.1 on:
 - 6.4.2.1 the terms of the licence; and
 - 6.4.2.2 whether any such Third Party IPR or any equivalent Third Party IPR which:
 - 6.4.2.2.1 is acceptable to the Contractor on technical grounds; and
 - 6.4.2.2.2 will not be detrimental to the Contractor's ability to undertake Asset Provision and/or Service Provision in accordance with the terms of this Contract or disproportionately increase the Contractor's costs,is available on better terms in order to mitigate the effect of such a licence.
 - 6.5 Subject to Paragraph 7.2, any royalties and/or other fees payable to the owners of Third Party IPR and/or IPR owned by a Contractor Related Party in obtaining or exercising any licence or sub-licence under this Paragraph 6 or any fees which are incurred using any right granted there under in accordance with the terms and conditions of this Contract during the Contract Period shall be for the account of the Contractor.
- 7** Transfer of Licences in Third Party IPR on termination or expiry
- 7.1 On the Termination Date or the Expiry Date, as applicable, the Contractor and/or Subcontractor shall procure the novation, free of charge, of all licences of Third Party IPR and/or IPR owned by a Contractor Related Party obtained by the Contractor in accordance with Paragraphs 6.1 to 6.4 to the Authority or, at the Authority's request, to a Follow-on Contractor in respect of which it has managed to secure novation rights.
 - 7.2 On the expiry of the Contract Period, the Authority shall become responsible for the payment of royalties or other fees which may be payable under such licences of Third Party IPR and/or IPR owned by a Contractor Related Party for continued use after the end of the Contract Period.

8 Collaboration

- 8.1 Schedule 5 Part D (Collaboration Agreements) shall apply in respect of Collaboration Agreements.

9 Subcontracting

- 9.1 The Contractor shall ensure that the provisions of Paragraphs:

- 2 (Ownership of IPR);
- 3 (Licence of Authority Background IPR and Authority Foreground IPR);
- 4 (Sub licence of Third Party IPR provided by the Authority);
- 5 (Licence of Contractor Background IPR and Contractor Foreground IPR),
- 6 (Licence and sub-licence of Third Party IPR provided by the Contractor),;
- 7 (Transfer of Licences in Third Party IPR on termination or expiry) .; and
- 8 (Collaboration Agreement) and Schedule 5 Part D (Collaboration Agreements)

are, in accordance with Schedule 5 Part C (Subcontractor IPR), flowed down as obligations on Subcontractors to the Subcontractor(s) of the Contractor. In accordance with Schedule 5 Part C (Subcontractor IPR), the Authority shall be entitled to directly enforce its contractual rights from the Subcontractors pursuant to its rights under the Contracts (Rights of Third Parties) Act 1999.

- 9.2 Where the Contractor is procuring products, inventions and/or designs whose ownership shall pass to the Authority as part of the delivery of the Service Provision, the Contractor shall ensure that the provisions of Paragraphs 10 to 17 are, in accordance with Schedule 5 Part C (Subcontractor IPR), additionally flowed down to Subcontractors of the Contractor. In accordance with Schedule 5 Part C (Subcontractor IPR), the Authority shall be entitled to directly enforce its contractual rights from the Subcontractors pursuant to its rights under the Contracts (Rights of Third Parties) Act 1999.

10 Procurement of commercial off the shelf products

- 10.1 The Contractor grants to the Authority, and/or shall procure from the Contractor's suppliers for the benefit of the Authority; the rights set out in Paragraph 10.2 below, in respect of commercial off the shelf products and associated requirements as set out in Contractors Proposal.

- 10.2 The Contractor shall ensure that the Authority has the right to:

10.2.1 copy, amend, extend or have copied, amended or extended any technical documentation called for under the Authority's Requirements, irrespective of whether in hard or soft format, or any part thereof including any such part when incorporated in any amended or extended version of such technical documentation; and

10.2.2 circulate, use or have used said technical documentation including any amended or extended version and any copies thereof for any United Kingdom Government purpose.

- 10.3 In respect of any separable software a licence as set out in Schedule 5 Part E (Head Agreement) direct with the Authority.

11 Procurement of non-software products developed using Authority Funding

- 11.1 The Contractor grants to the Authority and/or shall procure from the Contractor's suppliers for the benefit of the Authority, the rights set out in Paragraph 11.4 in respect of non-software products developed or modified using Authority funding as set out in Contractor's Proposals.

- 11.2 Paragraphs 11 (Procurement of non-Software Products Developed using Authority Funding) to 12 (Inventions and Designs) apply to deliverable Information relating to and necessary for the manufacture, operation, repair and maintenance of the Specified Assets.

- 11.3 All IPR generated in the performance of work under the Contract shall, subject to any rights of the Crown or any third party and to Paragraphs 2.3 and 11 (Procurement of non-Software

Products Developed using Authority Funding) to 12 (Inventions and Designs), belong to the Contractor.

- 11.4 Subject to the provisions of Paragraphs 11 (Procurement of non-Software Products Developed using Authority Funding) to 12 (Inventions and Designs), and to the rights of third parties, the Authority and any other United Kingdom Government Department shall have, during the period of the Contract and at all times thereafter, the right, anywhere in the world for the services of and/or use by the United Kingdom Government, to:
- 11.4.1 copy, in whole or in part, and use any information to which Paragraphs 11 (Procurement of non-Software Products Developed using Authority Funding) to 12 (Inventions and Designs) apply to;
- 11.4.1.1 monitor work under the Contract and to inspect, test and evaluate the delivered information, articles and Specified Assets;
- 11.4.1.2 define the relevant interfaces to enable information, articles and Specified Assets to interface or cooperate with other equipment and to use the resultant interfaces for the purposes of designing, developing and manufacturing such other equipment;
- 11.4.1.3 design, develop and produce trainers and simulators relating to information, articles and Specified Assets;
- 11.4.1.4 design, develop and produce jigs, tools, and test equipment relating to information, articles and Specified Assets;
- 11.4.1.5 manufacture information, articles and Specified Assets or, where the development of a process or material was specifically called for in the Authority's Requirements use that process or to produce that material;
- 11.4.1.6 modify the design of information, articles and Specified Assets, including the carrying out of design investigations, or where the development of a process or material was specifically called for in the Authority's Requirements;
- 11.4.1.7 modify that process or material and to produce design, manufacturing, user and other documentation relating to the modifications or to the modified design;
- 11.4.1.8 dismantle, scrap or otherwise destroy any information, articles and Specified Assets;
- 11.4.1.9 carry out maintenance and repair of articles and Specified Assets owned or in use by the Authority;
- 11.4.1.10 design, develop and produce jigs, tools and test equipment for the in-service support of articles and Specified Assets; and
- 11.4.1.11 operate articles and Specified Assets.
- 11.5 The Authority shall also have the right to sell, hire, lease or otherwise dispose of anything manufactured in exercise of the rights granted under Paragraph 11.4, which is either outworn or surplus stock.
- 11.6 If the Authority sells, hires, leases or otherwise disposes of any information, articles and/or Specified Assets, pursuant to Paragraph 11.5, the Authority may supply relevant user handbooks and maintainer information supplied under the Contract (or copies thereof) to the recipient and permit the recipient to copy and use such information for operation and maintenance of any such information, articles and/or Specified Assets.
- 11.7 The rights set out in Paragraphs 11.4 to 11.6 may be exercised by:
- 11.7.1 the Authority;
- 11.7.2 any other United Kingdom Government Department; and/or
- 11.7.3 any agent acting on behalf of, or a contractor in pursuance of a contract with, the Authority or any such UK Government Department.

- 11.8 The rights granted to the Authority, and to any other United Kingdom Government Department or to any agent acting on behalf of, or a contractor in pursuance of a contract with, the Authority or any such UK Government Department, under this Contract are additional to any rights under any other contract. The rights include the right to copy and to issue any information, articles and/or Specified Assets the subject of Paragraphs 11 (Procurement of non-Software Products Developed using Authority Funding) to 12 (Inventions and Designs), as necessary to prospective tenderers for the purposes of establishing their interest in tendering and of preparing tenders for anything to be done or proposed to be done pursuant to Paragraphs 11.4 or 11.5.
- 11.9 Except as otherwise provided in the Contract, the Contractor shall not be entitled to receive any royalty or other payment in respect of the exercise of the rights granted under Paragraphs 11.4 to 11.8.
- 11.10 The Contractor shall not be entitled, otherwise than by express agreement between the Authority and the Contractor, to enforce any rights against the Authority or any other party in respect of any patented invention, registered design or unregistered design right owned or controlled by the Contractor and used in the exercise of the rights granted under Paragraphs 11.4 to 11.8.
- 11.11 Subject to Paragraph 2.3, nothing in Paragraphs 11.9 and 11.10 shall affect the rights of the Contractor in or grant to the Authority or any other United Kingdom Government Department any rights in, any IPR not covering the information, articles and Specified Assets.
- 11.12 Where information, articles and/or Specified Assets, to which Paragraphs 11 (Procurement of non-Software Products Developed using Authority Funding) to 12 (Inventions and Designs) apply, is used by or for the Authority otherwise than for the purpose for which the Information was supplied, the Contractor shall have no liability whatsoever for any direct or indirect consequences, including losses, damages or injuries caused to the Authority or any third party, arising from its use.
- 11.13 The Authority shall ensure that any and all release of information, articles and/or Specified Assets to any Third party under Paragraphs 11 (Procurement of non-Software Products Developed using Authority Funding) to 12 (Inventions and Designs) is limited to that reasonably necessary for the task on which the third party is engaged.
- 11.14 All information, provided to the Authority subject to this Paragraphs 11.1 to 11.26 (Procurement of non-Software Products Developed using Authority Funding) are disclosed in confidence and shall only be copied, disclosed and used in accordance with the provisions of Paragraphs 11 (Procurement of non-Software Products Developed using Authority Funding) to 12 (Inventions and Designs). The Authority shall ensure that all disclosures of information, to any third party shall be under conditions of confidentiality between the Authority and the third party or, at the Authority's sole discretion, between the Contractor and the third party where the Authority has accepted use of the conditions concerned.
- 11.15 At the request of the Authority, or any other United Kingdom Government Department, at any time during the period for which the Contractor is required by this or any subsequent contract to retain the information, articles and/or Specified Assets, the Contractor shall, subject to the availability of resources and within the United Kingdom, provide assistance to the Authority, the other Department or their agents or contractors in exercising the rights granted under Paragraphs 11 (Procurement of non-Software Products Developed using Authority Funding) to 12 (Inventions and Designs). Such assistance shall be limited to that required to enable a third party of similar skill to the Contractor in the relevant area of technology to interpret any information, articles and/or Specified Assets supplied under the terms of Paragraphs 11.1 to 11.26 (Procurement of non-Software Products Developed using Authority Funding). The Contractor shall be entitled to payment by the Authority or other United Kingdom Government Department on fair and reasonable terms for any such assistance provided.
- 11.16 Any information supplied subject to Paragraphs 11 (Procurement of non-Software Products Developed using Authority Funding) to 12 (Inventions and Designs) may be marked by the Contractor with a copyright and/or other restrictive legend provided that the legend acknowledges the Authority's rights under Paragraphs 11 (Procurement of non-Software

Products Developed using Authority Funding) to 12 (Inventions and Designs). Any such marking shall be perpetuated in any copies of the information, articles and/or Specified Assets made by the Authority or any other United Kingdom Government Department or its agents or contractors.

11.17 The Contractor shall not:

11.17.1 sell any articles developed under the Contract, otherwise than for the purposes of and to the United Kingdom Government; or

11.17.2 grant any licence to manufacture such articles or any materials or processes the design or development of which was called for in the Schedule B (Statement of Requirements)

without first agreeing with the Authority the sum or sums (if any) which should reasonably be paid to the Authority by the Contractor in respect of such sale or grant having regard, among other things, to the amounts paid or payable to the Contractor by the Authority under the Contract.

11.18 During the Contract Period and thereafter for not less than three years, or such other period as may be specified in the Contract:

11.18.1 the Contractor shall maintain at least one copy (hereinafter called the Control Copy) of all deliverable information to which Paragraphs 11 (Procurement of non-Software Products Developed using Authority Funding) to 12 (Inventions and Designs) apply;

11.18.2 the Control Copy shall be maintained in media and formats agreed to by the Authority, and it shall not be altered by the Contractor in any way which changes the build standard except as authorised in writing by the Authority. The Control Copy shall be deemed to be the property of the Authority, and the Authority may take possession of it notwithstanding any administration, receivership, winding-up or liquidation of the Contractor or any transfer of its assets to any third party; and

11.18.3 copies of all or any information held on the Control Copy shall be supplied as required from time to time by the Authority at the Authority's expense.

11.19 If the Contractor enters into another contract with the Authority regarding maintenance of the Control Copy, the Contractor's obligation under Paragraph 11.18 shall be governed by that contract at the end of the period referred to in Paragraph 11.18. Otherwise he may destroy or amend the Control Copy as he sees fit, but before destroying the Control Copy he shall offer to supply it to the Authority and give the Authority 60 days to confirm such supply.

11.20 Paragraphs 2.3, 11.21 to 11.26 shall apply to all copyright works to include any works, data or other materials in which a database right subsists, which are generated pursuant to the Asset Provision Requirements, or Service Provision Requirements, other than those works encompassed by the provisions of Paragraphs 11.1 to 11.19.

11.21 Subject to Paragraph 2.3, the Contractor shall use all reasonable endeavours to ensure that such copyright in any work generated under the Contract shall be the property of and vest in the Contractor, subject to the rights of third parties in pre-existing works.

11.22 The Contractor agrees not to publish any such copyright work generated under the Contract without the consent in writing of the Authority. The Authority will not raise objection to publication unless delay or limited publication is considered by the Authority to be in the national interest. The Authority will review, upon request by the Contractor, any such restriction on publication.

11.23 Subject to Paragraph 2.3, the Authority shall have, in respect of any copyright work to which Paragraph 11.20 applies, a royalty-free, perpetual licence:

11.23.1 to copy the work and to circulate and use the work or any copy thereof within any United Kingdom Government Department (which term includes the United Kingdom Armed Forces) provided that no part of the work nor any copy thereof shall, except with the prior written permission of the Contractor or pursuant to Paragraphs 11.23.2 or 11.24.3, be made available to any third party;

11.23.2 to issue the work or any part of the work or any copy of the work or any part thereof to another supplier or potential supplier to the United Kingdom Government for the purpose

of use only under a contract, or tendering for a proposed contract, for a United Kingdom Government purpose, provided that the supplier or potential supplier is placed under an obligation which restricts disclosure and use of such work to the said purposes;

- 11.23.3 to issue the work or any part of the work or any copy thereof to a foreign government(s) or inter-government organisation(s) in pursuance of information exchange arrangements for defence purposes, provided that the recipient is placed under an obligation not to use such work for other than information purposes or disclose it to a third party.
- 11.24 Subject to Paragraph 11.25, as soon as the Contractor becomes aware that any such copyright work or part thereof delivered or proposed to be delivered is a work subject to special conditions or any third party rights known to the Contractor, or is a work or part thereof not generated under the Contract, the Contractor shall:
 - 11.24.1 inform the Authority;
 - 11.24.2 upon delivery, appropriately mark such work or part thereof to identify the same and indicate the relevant conditions or rights; and
 - 11.24.3 ensure that the Authority shall enjoy the rights as set out in Paragraph 11.23 in such appropriately-marked works.
- 11.25 The Contractor may mark or include in any copyright work to which Paragraph 11.24 applies a copyright notice provided that such copyright notice acknowledges the Authority's rights under this contract. Any such notice shall be perpetuated in any copies of such work made by the Authority or any other United Kingdom Government Department or its agents or contractors.
- 11.26 Paragraphs 11 (Procurement of non-Software Products Developed using Authority Funding) to 12 (Inventions and Designs) shall constitute an agreement to the contrary for the purposes of Section 48(5) of the Copyright, Designs and Patents Act 1988.
- 12 Inventions and Designs – Crown Rights and Ownership of Patents and Registered - Designs
Design or invention made under or resulting from the Contract
 - 12.1 The provisions of Schedule 5 Part F and/or Schedule F Part G, shall apply in relation to any invention or design made in the course of or resulting from work carried out by the Contractor under the Contract (hereinafter respectively referred to as the invention and the design).
- 13 Procurement of software products developed using Authority funding
 - 13.1 For the purposes of this Paragraph 13:
 - 13.1.1 Software shall mean all or any part of any:
 - 13.1.1.1 Object Code (as defined below);
 - 13.1.1.2 Source Material (as defined below);
 - 13.1.1.3 associated user documentation; and
 - 13.1.1.4 anything further specified as Software in the Authority's Requirements;
 - 13.1.2 **Deliverable Software** shall mean all or any of the Software delivered or to be delivered or which forms an integral part of any Article delivered or to be delivered by the Contractor to the Authority in accordance with the requirements of the Contract;
 - 13.1.3 **Object Code** shall mean machine code executable by a data processing system;
 - 13.1.4 **Source Material** shall mean that material, taken individually or in any combination thereof, which is:
 - 13.1.4.1 Source Code, that is to say, a representation of Object Code in or readily translatable into a form suitable for human understanding and transformable into the Object Code;

- 13.1.4.2 a representation or identification of the data processing system configuration, computer programs, procedures, rules and associated documentation generated by or for the Contractor under the Contract;
 - 13.1.4.3 a representation or identification of the data processing system configuration, computer programs, procedures, rules and associated documentation used to generate the Object Code, but not generated by or for the Contractor under the Contract, when in sufficient detail and suitable form, subject to sub-paragraph 13.4.2, to permit replication of such data processing system configuration, computer programs, procedures, rules and associated documentation independently of the Contractor;
 - 13.1.4.4 subject to Paragraph 13.4.2, and to the extent necessary to enable modification and testing of the Object Code independently of the Contractor, documentation on the specification, design rules, design, testing, analysis, function, usage and capabilities of the Object Code and of the material at Sub-Paragraph 13.1.4.1, 13.1.4.2 and 13.1.4.3;
- 13.1.5 **to modify** shall mean to change or alter whether by means of adaptation, translation, extension, reduction by means of merging with other material, or by any other means, and the words 'modified' and 'modification' shall be construed accordingly;
- 13.1.6 the Relevant Period
- 13.1.6.1 shall mean the currency of the Contract plus a period of six years from the completion of the Contract or such other period as may be specified in the Contract. Completion of the contract shall be deemed to occur on the date when all work under the Contract is completed;
 - 13.1.6.2 The Contractor shall ensure that the relevant period in any subcontract shall expire on the same date as that applicable under Paragraph 13.1.6.1.
- 13.2 Subject to Paragraph 17 (The Authorities rights to have access to interface information), the Contractor shall ensure that all IPR in any Software generated under the Contract shall be the property of and vest in the Contractor, subject to any pre-existing rights of the Crown or of third parties.
- 13.3 The following user rights and related terms apply:
- 13.3.1 the Contractor grants to the Authority and all other United Kingdom Government Departments to the extent that he has the right to do so, a royalty free, perpetual and irrevocable licence:
 - 13.3.1.1 to copy, modify and use any Deliverable Software for the services of the Authority and/or the United Kingdom Government, whether by themselves, their agents or their contractors;
 - 13.3.1.2 to issue any Deliverable Software or copies of any Deliverable Software, in whole or in part, to any contractor or potential contractor of the Authority and/or to the United Kingdom Government for the purpose of use only in connection with a contract or the tendering for a proposed contract for a United Kingdom Government purpose.
 - 13.3.2 The Contractor shall as soon as he becomes aware:
 - 13.3.2.1 notify the Authority of any limitations as to the use of any Deliverable Software, the IPR in which are owned by the Contractor or a third party; and
 - 13.3.2.2 give to the Authority full details of the provisions of such limitations and any associated cost.
 - 13.3.3 Except as provided for by Paragraph 13.5.1.2, the Authority shall have a right to exercise any of the rights referred to at Paragraph 13.3.1 in respect of Deliverable Software notified to the Authority in accordance with Paragraph 13.3.2 the IPR in which are owned by the Contractor, subject to fair and reasonable terms. The exercising of any such right

shall not be conditional upon prior agreement on the need for, the amount of or the making of any payment therefor.

- 13.3.4 The Contractor shall, if requested to do so by the Authority, endeavour to secure for the Authority those rights listed at Paragraph 13.3.1 in Deliverable Software notifiable to the Authority in accordance with Paragraph 13.3.2 the IPR in which are owned by a third party on terms and conditions to be agreed with or approved by the Authority.
- 13.3.5 Subject to the provisions of Paragraph 13.3.2 but notwithstanding the provisions of paragraph 13.6.2, the Contractor grants to the Authority the right to issue the Deliverable Software, in whole or in part, or a copy thereof, only to the government(s) of the nation(s) prescribed in the Contract, for information only, in pursuance of information exchange arrangements for defence purposes, provided that:
 - 13.3.5.1 the recipient government is placed under an obligation not to:
 - 13.3.5.1.1 use the released Deliverable Software other than for information purposes; and
 - 13.3.5.1.2 disclose the Deliverable Software to a third party;
 - 13.3.5.2 where the supply of Source Code is contemplated, and subject to any pre-existing rights of the Authority, this Paragraph 13.3.5 shall only apply to the work or any part of the work or any copy of the work or any part thereof if such work or part thereof is generated under the Contract.
- 13.4 In respect of Software, other than Deliverable Software, generated under the Contract:
 - 13.4.1 if, during the Relevant Period, the Authority requests the Contractor to deliver to the Authority any Software generated under the Contract which is not Deliverable Software, then:
 - 13.4.1.1 such Software shall be delivered by the Contractor to the Authority at a reasonable charge based on the cost of providing such Software as a minimum as it exists at the date on which the Authority makes its request to the Contractor; and
 - 13.4.1.2 from that date of delivery by the Contractor, such Software shall be deemed to be Deliverable Software (except for the purposes of Paragraph 13.10 provided always that the Authority shall not be liable to pay more than once for the supply of Software required by the Authority); and
 - 13.4.1.3 delivery to the Authority shall not be conditional upon prior agreement on the need for, the amount of, or the making of any payment.
 - 13.4.2 Notwithstanding anything to the contrary herein, other than in respect of any actual or alleged infringement of copyright, breach of confidence or IPR-related breach of contract, the Contractor shall have no liability whatsoever in respect of any consequence arising from the possession or use by or on behalf of the Authority of any such Software which is deemed to be Deliverable Software pursuant to Paragraph 13.4.1.
- 13.5 In respect of subsequent deliveries of Software:
 - 13.5.1 Subject to Paragraph 13.5.3, during the Relevant Period, the Contractor shall at the request and to the requirements of the Authority and to the extent he is able to do so in relation to third party software:
 - 13.5.1.1 deliver further copies of the Deliverable Software to the Authority at a reasonable charge based on the cost of providing such copies;
 - 13.5.1.2 where the Contractor is unable or unwilling to support, maintain or modify the Deliverable Software, deliver all Software, including such records as are specified in Paragraph 13.5.3, necessary for the Authority, its contractors or agents to independently support, maintain or modify the Deliverable Software for the services of the United Kingdom Government. All such Software shall be supplied on fair and

reasonable terms, but delivery shall not be conditional upon prior agreement on the need for, the amount of or the making of any payment therefor.

- 13.5.2 The Contractor shall retain for the Relevant Period a copy of such Software as is required for the performance of his obligations under Paragraph 13 (Procurement of software products developed using Authority funding).
- 13.5.3 If the Software generated under the Contract is subsequently modified by or on behalf of the Contractor for the Authority, the Software to be retained under Paragraph 13.5.2 shall be the latest modified version and any other version that may be specified by the Authority no later than the time of delivery of the succeeding modified version. The Contractor shall additionally maintain sufficient records to enable the changes introduced by each such modification to be identified so as to provide traceability back to the version originally accepted by or for the Authority.
- 13.6 The Authority undertakes to:
 - 13.6.1 receive and hold in confidence all Deliverable Software;
 - 13.6.2 enforce all reasonable regulations and precautions in relation to confidentiality upon the officers, agents, contractors and employees of the Authority and of all other United Kingdom Government Departments in order to preserve the confidential nature of the Deliverable Software;
 - 13.6.3 not disclose the Deliverable Software outside United Kingdom Government Departments and establishments, except as expressly permitted by any other provision of this Contract or otherwise expressly agreed in writing by the Contractor.
- 13.7 Before disclosing any Deliverable Software outside United Kingdom Government Departments and establishments, the Authority shall, subject to:
 - 13.7.1 Paragraphs 13.8 and 13.9;
 - 13.7.2 the provisions of Schedule 5 Part D (Collaboration Agreements) (called up by Clause 6.1. (Contractor's Obligation and responsibilities)) and/or
 - 13.7.3 agreement in writing by the Contractor stating that this Paragraph 13.7 shall not apply,
 - 13.7.3.1 ensure that the recipient enters into a confidentiality agreement with the Contractor under which the recipient's use of the Deliverable Software is limited to use for the services of the United Kingdom Government. A confidentiality agreement shall be concluded within 30 days, or whatever other period as may be mutually agreed by the Authority and the Contractor, of the Authority giving written notice to the Contractor of his intention to make the disclosure. If a confidentiality agreement is not concluded within that period then, notwithstanding the absence of a confidentiality agreement, the Authority shall have the right to make the disclosure on condition that in making the disclosure, the Authority shall place upon the recipient an obligation of confidence and a limitation of use as aforesaid. In these circumstances the Authority shall:
 - 13.7.3.1.1 consult with the Contractor on the measures to be employed to protect any trade secrets, know-how or other information in the Deliverable Software;
 - 13.7.3.1.2 have regard to any representation made by the Contractor at any time before disclosure takes place as to the protection of any trade secrets, know-how or other information in the Deliverable Software; and
 - 13.7.3.1.3 give consideration to any proposals the Contractor may make for:
 - 13.7.3.1.3.1 the preparation of a special version of the Deliverable Software;

- 13.7.3.1.3.2 the disclosure of the Deliverable Software in parts or stages; and
 - 13.7.3.1.3.3 restrictions on the circulation, copying or use of the Deliverable Software to be disclosed.
- 13.8 The obligations imposed by Paragraphs 13.6 and 13.7 of this Paragraph shall not apply to Deliverable Software that:
- 13.8.1 is, or becomes, rightfully in the possession of the Authority without relevant restrictions;
 - 13.8.2 is in or enters the public domain without breach of the Contract and is available for unrestricted use;
 - 13.8.3 is received by the Authority from a third party who himself has the right to disclose without relevant restrictions;
 - 13.8.4 is or was independently developed by the Authority;
 - 13.8.5 can be disclosed by the Authority under Paragraph 13.9;
 - 13.8.6 is approved by the Contractor, in writing, for unrestricted release by the Authority;
 - 13.8.7 is required to be disclosed by Legislation.
- 13.9 Subject to Paragraph 13.10, notwithstanding the provisions of this Contract relating to the disclosure of the Deliverable Software, the Authority is entitled to disclose the Deliverable Software immediately where:
- 13.9.1 it considers that it is in the national interest to disclose the Deliverable Software; and
 - 13.9.2 after notification in writing to the Contractor by a senior civil servant at One Star Level of the Authority in person holding a commercial delegation.
- 13.10 Unless the Authority considers immediate disclosure is in the national interest, the Authority will endeavour to give the Contractor a reasonable opportunity to make representations about such disclosure. However, the Authority's decision shall be final and conclusive. In making disclosure in this circumstance the Authority shall place upon the recipient an obligation of confidence and a limitation of use as set out in Paragraphs 13.6 and 13.7.
- 13.11 In respect of output from the Deliverable Software:
- 13.11.1 subject to the rights of the Contractor and third parties, the Authority shall have the right, free of charge, to use in any manner and for any purpose anything which has been produced by or for the Authority with the aid of any Deliverable Software provided that if the result so produced reproduces or discloses the whole or a significant part of any of the Software used or generated in the performance of this Contract then such shall be deemed to be Deliverable Software and subject to the provisions of the Contract. If, however, the material produced contains other information, the IPR in which are owned by the Contractor or a third party and in which the Authority has no user rights, then the conditions under which that information has been made available to the Authority shall prevail in respect of such other information; and
 - 13.11.2 if Deliverable Software is required by the Authority under the Contract for the purpose of producing an output for incorporation in a data processing system, then, notwithstanding Paragraph 13.11.1 of this contract or any other provision of the Contract, the Authority shall have the right to use to have used, free of charge, such output for the services of the United Kingdom Government.
- 13.12 The Contractor may make or include in any Deliverable Software to which this Paragraph applies a copyright notice provided that such copyright notice acknowledges the Authority's rights under this contract. Any such notice shall be perpetuated in any copies of the Deliverable Software made by the Authority or any other United Kingdom Government Department or its agents or contractors.

- 13.13 The Contractor shall agree with the Authority the sum or sums (if any) which shall be paid to the Authority in respect of Software generated under the Contract having regard to the amounts paid or payable to the Contractor by the Authority under the Contract before:
- 13.13.1 assigning, selling or otherwise disposing of any IPR subsisting in such Software;
 - 13.13.2 disclosing, licensing or selling any material reproducing such Software;
 - 13.13.3 using any such Software for the purpose of generating any Software for disclosure, licensing or sale to a third party.
- 13.14 Should Software and/or Deliverable Software generated under the Contract be modified at any time, then each party shall enjoy the same rights and be bound by the same obligations provided by this Paragraph in respect of any of those parts of the modified Software which were present in the Software prior to modification.
- 13.15 This Paragraph shall constitute an 'agreement to the contrary' for the purposes of Section 48(5) of the Copyright, Design and Patents Act 1988.
- 14 Procurement of non-separable pre-existing software products**
- 14.1 In respect of any non-separable software delivered but not deemed developed under the Contract:
- 14.1.1 in consideration of the Authority placing the Contract with the Contractor, the Contractor grants to the Authority a royalty-free, non-exclusive, non-transferable, perpetual licence to:
 - 14.1.1.1 copy, modify (to the extent modifications may occur during normal use of the delivered software through the configuration features contained therein), use; and
 - 14.1.1.2 have copied, modified, or used, the delivered software (but excluding source code) and associated information in respect of products with which it was supplied for the services of the United Kingdom Government; and
 - 14.1.1.3 issue any such delivered software and associated information to any contractor or potential contractor in connection with a contract or the tendering for a proposed contract for any United Kingdom Government purpose, but only when the Contractor or potential Contractor has entered into a non disclosure agreement with the Contractor in the form of Schedule 5 Part A, (Confidentiality Agreement).
- 14.2 Subject to Paragraph 14.3, the licence granted to the Authority under Paragraph 14.1.1:
- 14.2.1 is limited to the operation of the products supplied and for using the articles that include embedded deliverable software in other systems as required from time to time by the Authority; and
 - 14.2.2 does not extend to using the delivered software on a stand-alone basis and/or disembodied from the hardware.
- 14.3 The Contractor agrees that where the Authority requires a licence in relation to the delivered software for use on terms outside of the scope of the licence granted under Paragraph 13.4.a., this will be licensed to the Authority on fair and reasonable terms.
- 15 Procurement of separable pre-existing software**
- 15.1 The Contractor grants to the Authority and/or shall procure from the Contractor's suppliers for the benefit of the Authority, a licence, as set out in Schedule 5 Part E (Head Agreement) in respect of any delivered separable software not generated under the Contract.
- 16 Copyright Clause – technical support contractors**
- 16.1 Subject to Paragraph 2.3 and notwithstanding any restrictions which may otherwise apply under the Contract, subject to the rights of third parties, the Contractor grants to the Authority in respect of any copyright work to which this Contract applies, a royalty-free, perpetual, irrevocable,

licence to copy and use, or have used, by the Authority and its technical support contractors, the work or any copy thereof for the purposes of:

- 16.1.1 any Required Action;
- 16.1.2 monitoring work under this Contract and/or any follow on contract(s) which the Authority places with the Contractor for the performance of further work towards the development of systems and equipments supplied or to be supplied by the Contractor pursuant to this Contract or any follow on contract(s);
- 16.1.3 the supply and/or support of that system and equipment;
- 16.1.4 inspecting, testing and evaluating information and articles delivered under the Contract; and/or
- 16.1.5 evaluating the information contained in the work, information and articles delivered under the Contract with a view to procuring equipment for use with the systems and equipments supplied or to be supplied by the Contractor pursuant to this Contract and/or any follow-on contract(s), (hereinafter called Permitted Purposes), provided that the Authority shall ensure that:
 - 16.1.5.1 access to the information contained in the work is confined to those employees of the its technical support contractors who require access for the Permitted Purposes;
 - 16.1.5.2 access by an employee of a technical support contractor shall not be permitted until the technical support contractor has entered into a non-disclosure agreement with the Authority; and
 - 16.1.5.3 no part of the work or any copy thereof shall otherwise be made available to any third party, without prior written notice to the owner of the information.

17 The Authority's rights to have access and use of Interface Information

- 17.1 Notwithstanding those rights under Paragraph 11 (Procurement of non-software products developed using Authority Funding), the Authority's right to use Interface Information contained within deliverable documentation is governed by Paragraphs 17.1 to 17.15.
- 17.2 For the purposes of this Paragraph 17 the following terms shall have the following meanings:
 - 17.2.1 Article means part or the whole of any article which the Contractor is required under the Contract to supply;
 - 17.2.2 Information means for the purposes of this Paragraph 17 (The Authority's rights to have access and use of Interface Information), technical information or other information relating to Articles, processes or materials whether in human readable form or in machine readable form, or in any other form;
 - 17.2.3 Interface means those tangible or intangible features of a system, equipment, module or application-including those outlined in ISO 7498 (Basic reference Model for Open Systems Interconnection) which must be compatible with those tangible or intangible features of one or more other systems, equipments, modules or applications in order to enable their successful integration and interoperation;
 - 17.2.4 Interface Information means the Information which is necessary and sufficient to describe, define and implement an Interface, including its operating and physical features.
- 17.3 The Contractor shall make Interface Information available to the Authority as it relates to a production standard Article.
- 17.4 Subject to Paragraph 17.5, at the request of the Authority, the Contractor shall, in respect of any Interfaces, provide, free of charge:
 - 17.4.1 the Interface Information in paper form; and
 - 17.4.2 the relevant API object code implementation, to the Authority in order to assist:
 - 17.4.2.1 the Authority with any Required Action; and

- 17.4.2.2 a third party (receiving Interface Information in accordance with Paragraph 17) in the designing, developing, integration and manufacture of applications and equipment which are intended to make use of the Interface Information in order to enable the Articles to interface or cooperate with other equipment.
- 17.5 The API object code shall be provided under Paragraph 17.4 at no charge in the first instance. The Contractor shall be reimbursed for the reasonable costs of compilation and delivery for any subsequent requests for the same API object code to be provided. Subject to the rights of third parties and to the provisions of Paragraph 17, the Authority shall have the following rights to copy and use, and have copied and used, the Interface Information.
- 17.6 Subject to Paragraph 17.7, the Authority shall have a royalty-free licence to copy Interface Information and to circulate, use, or have used the copies for any UK Governmental Purpose. Subject to any pre-existing rights, the Contractor shall use all reasonable endeavours to ensure that it owns the rights in any Interface Information.
- 17.7 Interface Information shall only be passed to and used by third parties, where the third party is a tenderer or contractor, under conditions of confidentiality being Schedule 5 Part A (Form of Confidentiality Undertaking), or an applicable narrative provision as the case may be or under appropriate confidentiality conditions where the recipient is a foreign government or NATO.
- 17.8 Where the Authority has no right to release Interface Information to other than its technical support contractors, or no right to receive Interface Information at all, then the Contractor will cooperate with the Authority's contractors by supplying Articles or accepting directed Subcontracts, on fair and reasonable terms for work in relation to the provision of Articles or modified Articles.
- 17.9 The rights of the Authority under Paragraphs 17.9 to 17.15 shall be available for as long as the Articles remain in service with the UK Armed Forces or any UK Government Department, and shall extend solely to activities pursuant to a UK Government requirement (which includes provision to NATO or a foreign government) but specifically excluding overseas sales by the UK Government.
- 17.10 The grant of rights to the Authority under Paragraph 17.6 shall be subject to the Authority, ensuring that Information released to any third party is limited to that necessary for the purpose for which the third party is engaged or in the case of NATO or a foreign government limited to that for interoperability between the UK and those organisations.
- 17.11 The Contractor shall provide to the Authority one copy of all Interface Information promptly upon the request of the Authority.
- 17.12 The Contractor shall retain a copy of all Interface Information (including API Object code) which copy shall be owned by the Authority and shall only be amended with the prior written consent of the Authority.
- 17.13 Subject to Paragraph 17.14, if the Authority or a third party on its behalf requires any of the Interface Information (except for a first request for specific API Object Code which shall be free) from the Contractor beyond the copy provided pursuant to Paragraph 17.11, then the Contractor shall provide such Interface Information to the Authority or the third party promptly.
- 17.14 Where the Authority requests Interface Information pursuant to Paragraph 17.13, the Contractor shall be reimbursed for the costs of compilation and delivery of that Interface Information. The provision and rights to use Interface Information shall be in accord with Paragraph 17.
- 17.15 Notwithstanding the free right for the Authority to modify or have modified Interface Information in accord with Paragraph 17.6, where the Authority requires and requests that the Contractor modifies the Articles for the purposes of integration and interoperation, then to the extent that the Contractor owns or controls the relevant Information the Contractor shall promptly provide the modification on fair and reasonable terms which are consistent with the Authority's standard pricing conditions.

18 Reciprocal IPR Indemnity

- 18.1 Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved."
- 18.2 The Contractor shall fully and effectually indemnify and hold harmless the Authority on demand from all claims relating to:
- 18.2.1 any actual or alleged infringement by the Contractor or Contractor Related Parties of IPR arising:
- 18.2.1.1 from the Contractor's performance of the Contract and the Authority's receipt and use of the Services and exercise of its rights granted under the Contract; or
- 18.2.1.2 in respect of any Item supplied under the Contract or otherwise in the performance of the Contract;
- 18.2.2 misuse of any Confidential Information by the Contractor in performing the Contract; and
- 18.2.3 provision to the Authority or Authority Related Parties of any information or material which the Contractor or Contractor Related Parties does not have the right to provide for the purpose of the Contract.
- 18.3 The Authority shall fully and effectively indemnify and hold harmless the Contractor on demand from all claims relating to:
- 18.3.1 infringement or alleged infringement by the Contractor or Contractor Related Parties of any IPR in respect of any Item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract; and
- 18.3.2 alleged misuse of any Third Party Confidential Information by the Contractor as a result of use of information provided by the Authority for the purposes of the Contract, but only to the extent that Contractor's use of that information is for the purposes intended when it was disclosed by the Authority.
- 18.4 The Indemnity at Clauses 18.1 and 18.2 to this Schedule shall not apply in respect of a claim:
- 18.4.1 that arises from any use by or for the Indemnifying Party of Third Party IPR in combination with any item not supplied or approved by the Indemnified Party where, were it not for that use in combination, a claim would not have arisen; or
- 18.4.2 that arises from the use of Background IPR or Contractor Foreground IPR or Third Party IPR by the Indemnifying Party otherwise than in accordance with the terms of this Contract and any applicable licence or sub-licence conditions provided that these have been notified to the Indemnifying Party's Representative on the grant of the applicable licences or sub-licence; or
- 18.4.3 that arises from any modification, updating or development carried out by or for the Party to any item supplied by a Party under this Contract, where such modification, updating or development is not authorised or approved by the supplying Party.

Annex A to Schedule 5 Intellectual Property Rights (IPR) – List of Third Party IPR

1. Table 31 provides the list of Third Party IPR provided by the Contractor at Contract Award in accordance with paragraph 6.4 of this Schedule 5 (Intellectual Property Rights (IPR)).
2. Any amendments to this Table 31 may only be authorised in accordance with the process set out within DEFCON 620 (Contract Change Control Procedure).

Serial	Description of Third Party IPR	Ownership of Third Party IPR	Remarks
1	[REDACTED]	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]	[REDACTED]
4	[REDACTED]	[REDACTED]	[REDACTED]
5	[REDACTED]	[REDACTED]	[REDACTED]

Serial	Description of Third Party IPR	Ownership of Third Party IPR	Remarks
			[REDACTED]
6	[REDACTED]	[REDACTED]	[REDACTED]
7	[REDACTED]	[REDACTED]	[REDACTED]
8	[REDACTED]	[REDACTED]	[REDACTED]
9	[REDACTED]	[REDACTED]	[REDACTED]
10	[REDACTED]	[REDACTED]	[REDACTED]
11	[REDACTED]	[REDACTED]	[REDACTED]
12	[REDACTED]	[REDACTED]	[REDACTED]

Table 31: List of Third Party IPR

Annex B to Schedule 5 Foreground IPR – List of Sub-contractors

1. Table 32 provides the list of Sub-contractors provided by the Contractor during the Contract as Foreground IPR in accordance with paragraph 3.2 of this Schedule 5 (Intellectual Property Rights (IPR)).

Serial	Subcontractor	Scope / Remarks
To be updated as required during the Contract Period		

Table 32: List of Licenced Authority IPR

Part A Schedule 5 – IPR Confidentially Agreements

Intellectual Property, Information and Disclosure

Part A

Form of Confidentiality Undertaking

Ministry of Defence

Confidentiality Agreement

THIS AGREEMENT is made the day of 20.

BETWEEN

[hereinafter called "the Holder"] of the one part, AND

[hereinafter called "the Recipient"] of the other part.

WHEREAS

- A. The Holder is in possession of certain valuable Proprietary Information relating to the delivery of the design, procurement and installation of military air traffic management capability and the provision of certain services in support thereof (the "Purpose").
- B. The Recipient is willing to receive and hold the above mentioned Proprietary Information subject to the terms of this Agreement;

NOW the Parties to this Agreement agree that in consideration of the disclosure of Proprietary Information by the Holder to the Recipient:

1 As used in this Agreement the term "Proprietary Information" shall mean any information, whether in writing or other documentary form, in oral or visual or machine readable form, or in the form of samples or models, disclosed by one Party (the "Holder") to the other Party (the "Recipient"), provided that:

2

- 2.1 where such information is in writing or other documentary form, it is clearly and conspicuously marked at the time of disclosure as proprietary or commercially sensitive (for example with a marking such as "Proprietary" or "Commercial-in-Confidence") and disclosed under the aegis of this Agreement; or
- 2.2 where such information is disclosed in oral or visual or machine readable form, or in the form of samples or models, it is designated proprietary or commercially sensitive at the time of disclosure and is confirmed by the Holder as such in documentary form within thirty (30) days from its being disclosed, in which event all the protections and restrictions in this Agreement as to the use and disclosure of said information shall apply retrospectively during the said period of thirty days.

Proprietary Information shall also include any information which can be obtained by examination, testing or analysis of any hardware, software or material samples provided by the Holder, notwithstanding that the requirements for marking and designation referred to above shall not have been fulfilled.

- 3 The Recipient shall, subject to the provisions of this Agreement, hold the Proprietary Information under conditions of strict confidence and shall not use, copy, or disclose to other than the Holder the Proprietary Information in whole or in part in any manner or form for other than the defined 'Purpose'.
- 4 The Recipient may disclose the Proprietary Information only to those of its officers and employees as need to know the information for the Purpose. The Recipient shall take all reasonable precautions necessary to ensure that all Proprietary Information disclosed to the Recipient by or on

behalf of the Holder under or in connection with the Purpose is treated in the strictest confidence, including ensuring that it:

- 4.1 is disclosed to its employees only to the extent necessary for the performance of a Contract or work directly related to the Purpose; and
 - 4.2 is treated in confidence by its employees and not disclosed except with prior written consent of the Holder or used otherwise than for the purpose of performing work or having work performed for the Holder for defined the Purpose.
- 5** The Recipient shall ensure that its employees are aware of its obligations under this Agreement and its arrangements for discharging those obligations before they receive Proprietary Information and take such steps as may be reasonably practical to enforce such arrangements.
- 6** The Recipient undertakes to respect and observe all regulations and restrictions relating to any security classification called up in the Proprietary Information.
- 7** The Recipient shall not disclose the Proprietary Information to any third party without the Holder's written approval. Where such approval is granted, the Recipient shall before passing the Proprietary Information to the third party, obtain from the third party an agreement on behalf of the Holder in the same form as this Agreement, and forward it promptly to the Holder.
- 8** The restrictions and obligations in this Agreement as to the use and disclosure of Proprietary Information shall not apply to any information which the Recipient can show:
- 8.1 is already known to the Recipient (without restrictions on disclosure or use) prior to its disclosure to the Recipient directly or indirectly from the Holder; or
 - 8.2 is received by the Recipient without any obligation of confidence from a third party having a right to disclose it; or
 - 8.3 has been generated independently by the Recipient; or
 - 8.4 is in or enters the public domain otherwise than by breach of this or another undertaking (e.g. already published or otherwise publicly available);
- provided the relationship to the remainder of the Proprietary Information is not revealed.
- 9** Nothing contained in this Agreement shall be construed as:
- 9.1 diminishing obligation of confidence, whether arising under contract or otherwise, between the Recipient and the Holder in respect of the Proprietary Information; or
 - 9.2 constituting or implying any transfer, assignment or licence or rights in any Proprietary Information, whether or not identified in Appendix 1, owned by the Holder, other than that specified in paragraph 2; or
 - 9.3 diminishing the rights either the Recipient or the Holder has under Statute; or
 - 9.4 implying that a further contractual arrangement will be concluded between the Recipient and the Holder; or
 - 9.5 overriding or prejudicing any Government security classification or export control regulations applicable to any part of the Proprietary Information.
- 10** The Recipient hereby acknowledges that the Proprietary Information is disclosed to the Recipient by the Holder on the basis that the disclosure does not constitute a warranty as to the accuracy of the Proprietary Information or the suitability thereof for any purpose whatsoever and the Recipient will bring no claim against the Holder in relation to the Information or any use of it.
- 11** All Proprietary Information disclosed hereunder, and any copies thereof made by the Recipient, shall be returned promptly by the Recipient to the Holder on receipt of the Holder's written request therefore. The same applies on completion or termination of the Purpose and the related contracts.
- 12** If the Recipient is in breach of the terms of this Agreement the Recipient shall indemnify and keep indemnified the Holder from and against any claims, demands, liabilities, expenses, damages or losses incurred or suffered by the Holder by reason of or in connection with any such breach.

- 13 Neither party shall be in breach of this Agreement 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 Proprietary 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 Agreement.
- 14 The Authority shall not be in breach of this Agreement where it can show that any disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 ("the Act") or the Environmental Information Regulations 2004 ("the Regulations"). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the other party where the Authority is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the other party of any decision to disclose the Information. The other party acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.
- 15 This Agreement is personal to the Holder and the Recipient and shall not be assigned by either one of them without the prior written consent of the other which shall not be unreasonably withheld or delayed; provided that in all cases of assignment the assignee effectively undertakes to perform all the obligations of the assignor as though the assignee had been an original party to this Agreement.
- 16 This Agreement (including Appendix 1) sets out the entire agreement between the Holder and the Recipient in connection with the subject matter of this Agreement. However, nothing in this Agreement shall affect the rights or obligations of either party in relation to the Holder in respect of the Information.
- 17 This Agreement shall remain in force for the duration of the Marshall contract and any extensions thereof after which it will terminate except to the extent that it is superseded by another relevant agreement or contract between the Parties. The obligations and restrictions relating to the disclosure and use of Proprietary Information shall survive the termination of this Agreement for a period of seven (7) years.
- 18 Neither this Agreement nor any of its provisions shall be amended or waived unless agreed to in writing by duly authorised representatives of the Holder and the Recipient. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.
- 19 A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This paragraph does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 20 This Agreement is made subject to English law and to the exclusive jurisdiction of the English courts, and shall be effective as from the date of the lattermost signature.

Signed on behalf of

Signed on behalf of

the Recipient by:

the Holder by:

In the capacity of:

In the capacity of:

Date:

Date:

INFORMATION TO BE PROTECTED UNDER THIS CONTRACT

[To be completed before the relevant agreement is executed]

Part B Schedule 5 – IPR Commercially Sensitive Information

Part B

IPR Sensitive Information

Serial	Details of Commercially Sensitive or Confidential Information not be disclosed in the event of request under the Freedom of Information Act 2000	Duration of exemption from disclosure under the Freedom of Information Act 2000 FOIA	Contractor's explanation of why Commercially Sensitive or Confidential Information should be exempt from disclosure under the Freedom of Information Act 2000 FOIA

Table 33: Commercially Sensitive Information (IPR)

Part C Schedule 5 – Sub Contractor IPR

- 1 To the extent relevant to the scope of supply of the Subcontractor, all Subcontracts shall include:
 - 1.1 a licence for the Authority under Subcontractor IPR in the same terms as the licence the Authority receives in relation to Contractor IPR as set out in Paragraph 5 (Licence of Contractor Background IPR and Contractor Foreground IPR);
 - 1.2 provisions which oblige the Subcontractor to comply with the obligations imposed on the Contractor (and Subcontractor where specified) under Paragraphs:
 - 1.2.1 2.1 to 2.7D (Ownership of IPR);
 - 1.2.2 5 (Licence of Contractor Background IPR and Contractor Foreground IPR);
 - 1.2.3 6 (Licence and Sub-Licence of Third Party IPR Provided by the Contractor);
 - 1.2.4 7 (Transfer of Licences in Third Party IPR on termination or expiry);
 - 1.2.5 8 (Collaboration) and Part D (Collaboration Agreements) of Schedule 5; and
 - 1.2.6 12 (Inventions and Designs – Crown Rights and Ownership of Patents and Registered - Designs Design or invention made under or resulting from the Contract),
 - 1.3 provisions to ensure that the provisions of Paragraphs 10 to 17 are, additionally flowed down to Subcontractors of the Contractor;
 - 1.4 an assignment of rights in Subcontractor IPR in the same terms as the assignment to the Authority of Contractor IPR as set out in Paragraph 9 (Subcontractors);
 - 1.5 an assignment of rights in Authority Foreground IPR in the same terms as set out in Paragraph 2.3 (Ownership of IPR); and
 - 1.6 provisions such that the Subcontract shall not be rescinded, or varied in such a way as to alter or extinguish any rights granted to the Authority without the prior written consent of the Authority's Representative; and
 - 1.7 provisions that the Authority's rights referred to in this Paragraph 1, which are otherwise enforceable under the Contracts (Rights of Third Parties) Act 1999, are not rendered unenforceable; and
 - 1.8 a requirement that either party to the Subcontract may release to the Authority any of those parts of the Subcontract as are necessary to be sufficient to demonstrate compliance with the provisions of this Paragraph and that any such release shall not amount to a breach of any provision of confidentiality contained within the Subcontract; and
 - 1.9 provisions that the Authority and the Contractor may register any licence of registered Third Party IPR against that IPR.

Part D to Schedule 5 - Collaboration Agreements**Collaboration Agreements**

1

- 1.1 Subject to the rights of third parties arising otherwise than from work performed under the Contract and subject to the provisions of paragraphs 1.1 to 1.11 of this Part D, the Authority shall have the right under this Part D to:
- 1.1.1 copy any copyright work and/or other IPR furnished by the Contractor and/or Subcontractor under the Contract, the copyright in which belongs to the Contractor or Subcontractor; and
 - 1.1.2 issue and/or disclose for information only such IPR, copyright work or copy,
- in both cases, for the purpose of promoting the establishment of a Collaboration Agreement and for the purpose of technical oversight of a Collaboration Agreement.
- 1.2 The Contractor shall, if requested by the Authority within the period prescribed in the Contract, provide the Authority with such assistance and further information as the Authority may reasonably require for issue, disclosure, promotion and/or technical oversight set out in paragraph 1.1 a reasonable charge for this service, based on the documented cost of providing it, will be borne by the Authority.
- 1.3 If the Authority agrees that any results produced under the Contract shall be utilised in work undertaken or shared by or on behalf of another party to a Collaboration Agreement then, to the extent of the Contractor's right to do so and on fair and reasonable terms approved by the Authority, the Contractor shall, if requested by the Authority, within the period prescribed in the Contract, make available under licence to that other party to the Collaboration Agreement or his nominee, for use for the purpose provided in the Collaboration Agreement only:
- 1.3.1 any information which the Authority is entitled to receive under the Contract; and
 - 1.3.2 any technical assistance and background information necessary for the effective application of such information.
- 1.4 If disclosure by the Authority under paragraph 1.1 of any copyright work would affect any rights of the Contractor or third parties arising otherwise than from work performed for the purposes of the Contract, the Contractor shall have the right to place on such copyright work a notice stating that the work;
- 1.4.1 is supplied under contract to the Authority; and
 - 1.4.2 may not be issued outside United Kingdom Government Departments except in accordance with the conditions of the Contract.
- 1.5 Before the Authority exercises its rights under paragraph 1.1 in respect of any work bearing the notice set out in paragraph 1.4, the Authority shall:
- 1.5.1 give to the Contractor fifteen days prior written notice (or such other shorter period as may be agreed) of his intention to do so;
 - 1.5.2 have regard to any representations or proposals made by the Contractor at any time before issue takes place as to the protection of any separately identifiable trade secrets, know-how, or similar proprietary information arising otherwise than from work performed under the Contract;
- 1.6 The Contractor shall be free under the terms of paragraph 1.5 above to make any proposals for the protection of the information referred to herein in particular the Authority shall:
- 1.6.1 give full consideration to any proposals the Contractor may make for the preparation of a special Collaboration Report, for the release of information in stages, or for restrictions on the circulation of the information to be released; and

- 1.6.2 be entitled to make issue contrary to such representations and proposals fifteen days after notifying the Contractor in writing that he considers it in the national interest to do so.
- 1.7 The Authority shall not have the right and the Contractor shall not be obliged under this Condition to disclose to a third party, directly or indirectly, manufacturing or design information with respect to units, sub-units or components not developed or designed under the Contract.
- Provided that if:
- 1.7.1 the Contractor has not granted and does not wish to grant a licence to a manufacturer in the country of the other party to the Collaboration Agreement; and
- 1.7.2 there is no reasonable substitute article available in that other country;
- the Contractor shall be obliged to:
- 1.7.2.1 make the disclosure referred to in paragraphs 1.1 and 1.6;
- 1.7.2.2 grant a licence directly to at least one manufacturer in the country of the other party to the Collaboration Agreement, to be approved by the Contractor; and
- 1.7.2.3 on request, supply the identification and shape, size and function of such units, sub-units and components to that same manufacturer.
- 1.8 The Contractor shall on request, insofar as he may be able to do so, supply or procure the supply of such of the units, sub-units and components referred to in paragraph 1.7 as may be required to such other party within a reasonable timescale and on reasonable commercial, non-discriminatory terms.
- 1.9 If the Authority makes issue of information contrary to the Contractor's representations under paragraph 1.1 as to the protection of trade secrets, know-how and similar proprietary information, the Contractor shall be entitled to such compensation, if any, as is fair and reasonable in the circumstances.
- 1.10 If the Contractor is party to a licence or other agreement relating to the use of inventions, designs or technical information which restricts his freedom to supply or authorise the disclosure or use of information for the purposes of this Part D the Contractor shall, when tendering, quoting a price for the Contract, or offering to perform it (or, if at these times the restriction is not apparent, as soon thereafter as it is):
- 1.10.1 notify the Authority; and
- 1.10.2 at the Authority's request use all reasonable efforts with the assistance and at the expense of the Authority to abate the restrictions to the extent required.
- 1.11 without the prior consent in writing of the Authority, the Contractor shall not:
- 1.11.1 make use in the performance of the Contract of inventions, designs or technical information which are the subject of any agreement made after the date of the Contract; or
- 1.11.2 make any grant of rights in the results of work under the Contract which he knows would restrict his freedom as aforesaid.
- 1.12 The Authority undertakes that he will consult with the Contractor as early, as frequently and as fully as is reasonably practicable in the consideration of any International Collaboration Agreement into which he may wish to enter and will pay due regard to any representations of the Contractor
- 1.13 Notwithstanding any provision in this Part D, the Authority shall have the right, without restriction, to loan any products delivered under this Contract to be operated and maintained for a period not exceeding 6 months to a United Kingdom statutory body or government of another country for the purposes of support to the local community in the event of a civil emergency.

Part E to Schedule 5 Head Agreement

HEAD AGREEMENT FOR LICENCE TERMS FOR COMMERCIAL SOFTWARE PURCHASED BY THE SECRETARY OF STATE FOR DEFENCE

This Agreement is made this day of in the year.....

BETWEEN

The Secretary of State for Defence, a corporation sole, (afterwards referred to as the A) as represented by the Directorate of Intellectual Property Rights, Poplar 2a #2218, MOD Abbey Wood, Bristol BS34 8JH

AND

[Insert company's name, registration number and corporate address] (afterwards referred to as the); each being referred to as a "Party" and collectively as the "Parties".

BACKGROUND

- I. The wishes to agree standard terms of licence with the COMPANY which will apply to "Commercial Software" products it procures from the COMPANY in order to avoid the need to negotiate individual terms each time those products are purchased; and
- II. The COMPANY is prepared to agree standard terms of licence with the AUTHORITY in order to facilitate sales of Commercial Software to the AUTHORITY.

For the purpose of this Agreement "Commercial Software" means software available commercially including that software modified on sale to suit the requirements of a customer.

THE HEAD AGREEMENT

- 1 The Parties agree that they will adopt the terms of licence set out in the Annex to this Head Agreement (the "Annex"), as the standard terms of licence for the procurement of Commercial Software by the from the COMPANY and from any of its wholly owned subsidiaries for which the COMPANY is entitled to make this Head Agreement. This shall not imply that either Party may not propose other conditions for any particular licence or that either Party shall be bound to accept any particular licence in the terms set out in the Annex.
- 2 Each software licence which is to be procured subject to the standard terms of licence set out in the Annex, shall be established by a Schedule (the "Schedule") which incorporates those terms by making reference to this Head Agreement and the Annex. Each licence so concluded shall be legally separate from this Head Agreement.
- 3 Each Schedule will take the format provided in the Attachment to the Annex. Individual Schedules may include special conditions adding to, varying, or setting aside any condition set out in the Annex and in the event of any conflict between the terms of the Annex and the special conditions of a Schedule the latter shall prevail.
- 4 Either Party shall be entitled to terminate this Head Agreement at any time on written notice to the other Party but the termination shall not vary the conditions of or terminate any extant Licences.
- 5 This Head Agreement shall be subject to and construed and interpreted in accordance with the Laws of England and shall be subject to the jurisdiction of the Courts of England. Other jurisdictions may apply solely for the purpose of giving effect to this Agreement and for the enforcement of any judgement, order or award given under English jurisdiction.

Signed for and on behalf of the Secretary of State for Defence

.....

[Print name]

In the capacity of[Insert capacity of signatory]

Signed for and on behalf of the COMPANY [Insert name of company]

.....

[Print name].....

In the capacity of[Insert capacity of signatory]

Annex to HEAD AGREEMENT

**ANNEX TO THE HEAD AGREEMENT FOR LICENCE TERMS FOR COMMERCIAL SOFTWARE
BETWEEN THE SECRETARY OF STATE FOR DEFENCE ANDDATED**

AGREED STANDARD CONDITIONS

1 DEFINITIONS

- 1.1 "AUTHORITY" shall mean the Secretary of State for Defence.
- 1.2 "LICENSOR" shall mean the Company identified in the Head Agreement or the wholly owned subsidiary of the Company identified in the Schedule as being the Party granting the Licence to the AUTHORITY.
- 1.3 "Licensed Software" means the computer programs listed in Part I of the Schedule together with any user documentation, update programs and anything else furnished to the AUTHORITY by the LICENSOR under the Licence in connection with those listed programs, and any portion and copy of any of them.
- 1.4 "Use" (or "to Use") in relation to the Licensed Software means copying the software from a store unit or medium into equipment, customising it within its existing functionality and consistent with the user documentation, running or processing it, operating upon it, all of these acts either alone or with other programs, and producing copies including, where appropriate, in eye-readable form.
- 1.5 "Designated Equipment" means that equipment in respect of which Use of the Licensed Software is licensed. It shall be the equipment specified in Part II of the Schedule unless changed to alternative equipment in accordance with the provisions of Paragraphs 2.3 or 2.4.
- 1.6 "Designated Site" means that site for which the Licensed Software is licensed. It shall be the site specified at Part III of the Schedule unless changed to an alternative site in accordance with the provisions of Paragraph 2.3.
- 1.7 "Licence" means the rights granted by the LICENSOR to the AUTHORITY in respect of the Licensed Software and all the conditions associated with it, as set out in the Standard Conditions in combination with a relevant Schedule.
- 1.8 "Schedule" means a Schedule to the Head Agreement (in the format provided in the Attachment to this Annex) established by signature of the AUTHORITY and the LICENSOR, under which the LICENSOR undertakes to supply the Licensed Software for Use by the AUTHORITY under the conditions of the Licence. Each Schedule, in combination with these Standard Conditions, constitutes a distinct Licence independent of any other Licence existing by operation of the Head Agreement.
- 1.9 "Standard Conditions" means the conditions set out in this Annex to the Head Agreement, comprising Paragraph 1 to 15.
- 1.10 "Special Conditions" means those conditions (if any) specified in Part VIII of the Schedule.

2 LICENCE GRANT

- 2.1 The AUTHORITY may Use the Licensed Software on the Designated Equipment at the Designated Site in accordance with the Licence from the date of receipt of the Licensed Software by the AUTHORITY.
- 2.2 The AUTHORITY may allow contractors of the AUTHORITY and their subcontractors to Use the Licensed Software on the Designated Equipment at the Designated Site on AUTHORITY contracts only, provided that the AUTHORITY ensures or procures that those contractors and subcontractors are bound by the conditions of the Licence and that, unless prevented by security considerations, the AUTHORITY shall notify the LICENSOR of the identity of those contractors or subcontractors as soon as is reasonably practical. The AUTHORITY shall not charge for that Use.

- 2.3 The AUTHORITY may specify alternative Designated Equipment or an alternative Designated Site by notification to the LICENSOR, in which case Paragraph 2.1 shall apply only to the alternative Designated Equipment or Designated Site as notified. However, in the event that the alternative Designated Equipment shall be equipment of a greater processing capacity or capability or a different operating system outside the parameters of the original Designated Equipment the LICENSOR may require the AUTHORITY to pay a fair and reasonable additional fee which will not exceed the difference between the corresponding fees shown in respect of Use of the Licensed Software on the existing and alternative Designated Equipment respectively in the LICENSOR's price list current at the time when the AUTHORITY has specified the alternative Designated Equipment.
- 2.4 The AUTHORITY may Use the Licensed Software on alternative equipment if the Designated Equipment is temporarily inoperative until the Designated Equipment is again operative without notification or additional payment to the LICENSOR.
- 2.5 Notwithstanding the above, the AUTHORITY may copy the Licensed Software in machine-readable form for back-up purposes for Use of the Licensed Software. The AUTHORITY may also create eye readable copies of documentation solely for utilisation by operating personnel of the Licensed Software. All copyright in such copies shall remain the property of the LICENSOR.

3 DELIVERY AND ACCEPTANCE

- 3.1 The LICENSOR shall deliver the Licensed Software at a time and to a place agreed with the AUTHORITY.
- 3.2 The LICENSOR or the AUTHORITY as mutually agreed shall install each program of the Licensed Software on the Designated Equipment and test it against acceptance tests if agreed between the LICENSOR and the AUTHORITY.
- 3.3 The AUTHORITY may reject the Licensed Software within the acceptance period specified in Part IV of the Schedule only (which period starts on receipt of the Licensed Software by the AUTHORITY) if it fails an agreed acceptance test or if it does not perform on the Designated Equipment in accordance with the functionality set out in an agreed statement or user document provided by the LICENSOR. The AUTHORITY shall be understood to have accepted the Licensed Software if it has not been validly rejected before the expiry of the acceptance period.
- 3.4 If the AUTHORITY rejects the Licensed Software in accordance with Paragraph 3.3 the Licence for it shall terminate and the AUTHORITY shall be entitled to reimbursement of any fees paid in respect of the Licensed Software.
- 3.5 The AUTHORITY and the LICENSOR may mutually agree to extend the acceptance period, or to amend the Schedule appropriately, for any Licensed Software that would otherwise have been rejected under Paragraph 3.3.

4 PAYMENT

- 4.1 The LICENSOR will invoice the AUTHORITY for the agreed licence fees in the amount and in accordance with the invoice arrangements set out respectively in Parts V and VI of the Schedule on or after receipt by the AUTHORITY of the Licensed Software.
- 4.2 The AUTHORITY shall pay the invoice value within 30 days from the later of delivery of the Licensed Software or the date of receipt of a valid invoice related to that Licensed Software. Payment does not constitute acceptance of the Licensed Software.

5 CONFIDENTIALITY

- 5.1 Subject to Paragraph 5.2 and except as otherwise agreed in writing, the AUTHORITY and the LICENSOR shall each hold in confidence and shall not use, disclose or otherwise make available, except in accordance with the Licence, all the following information received from the other under or in connection with the Licence:
 - 5.1.1 the Licensed Software;
 - 5.1.2 details of the AUTHORITY's use and application of the Licensed Software;

- 5.1.3 any other information which is identified as being disclosed in confidence at the time of disclosure

provided that:

the obligation for 5.1.2 and 5.1.3 relates only to information received in writing or other material form; and

if such information is disclosed orally, the obligation shall apply for 30 days unless the discloser confirms such information in writing or other material form within 30 days when the obligation of confidence shall apply thereafter.

- 5.2 The obligations under Paragraph 5.1 shall not require the receiving Party to maintain confidence in, or refrain from using, any part of the information to the extent that the receiving Party can show that such part of the information:
- 5.2.1 was already known to that Party, without restraint on use or disclosure, prior to the date of receipt or acquisition under or in connection with the Licence; or
 - 5.2.2 has been received by that Party, without restraint on use or disclosure, from a third party having the right to disclose it; or
 - 5.2.3 has entered the public domain otherwise than in breach of the Licence or any other agreement between the Parties; or
 - 5.2.4 was generated by that Party independently of the information which is subject to Paragraph 5.1;

provided that the relationship of such part of the information to the remainder of the information which is subject to Paragraph 5.1 is not revealed.

- 5.3 The obligations under Paragraph 5.1 shall be perpetual.
- 5.4 The AUTHORITY shall ensure or procure that any individual to whom the Licensed Software is made available is made aware of, and complies with, the obligations as to confidentiality and other relevant conditions of the Licence.
- 5.5 The AUTHORITY shall reproduce and maintain any copyright notices and trade marks on or in any of the copies of the Licensed Software made in accordance with the Licence, including partial copies, and on any software changed under the terms of the Licence.

6 IPR ACTIONS AND LIABILITIES FOR IPR INFRINGEMENT

- 6.1 The LICENSOR declares that he is entitled as either owner or licensee to provide the Licensed Software to the AUTHORITY on the terms and conditions of the Licence.
- 6.2 Subject to the limitations imposed in Paragraphs 6.3 and 6.4, the LICENSOR shall assume all liability and indemnify the AUTHORITY against all costs or liabilities arising under any valid claim or action brought by a third party against either Party, or against any of its contractors (which expression shall include any subcontractor) engaged in tasks relevant to the provision of the Licensed Software or to the AUTHORITY's exercise of the Licence, in respect of any third party intellectual property right, including a patent, registered or unregistered design right, trade mark, copyright, trade secret or confidential information, which relates to the supply of the Licensed Software or the Use of the Licensed Software in accordance with the Licence by the AUTHORITY or its contractor, then:
- 6.2.1 If the claim or action is brought against the LICENSOR, he shall take full responsibility for dealing with settling or defending the claim or action;
 - 6.2.2 If any claim is made against the AUTHORITY or its contractors the LICENSOR shall be given full responsibility for dealing with settling or defending the claim as appropriate in his judgement;
 - 6.2.3 If legal action is taken against the AUTHORITY or its contractor that Party shall be entitled to join the LICENSOR in the action.

- 6.3 Paragraph 6.2 shall not apply, and the AUTHORITY shall assume all liability for and indemnify the LICENSOR and its contractors, against all costs and liabilities under the claim or action in the event that it arises as a consequence of any of :
- 6.3.1 Use of the Licensed Software by the AUTHORITY, or by a contractor permitted to use the Licensed Software pursuant to Paragraph 2.2, outside the LICENSOR's specification or user documentation on the Designated Equipment or in a manner outside the reasonable knowledge or expectation of the LICENSOR or in circumstances particular to the AUTHORITY as distinct from other customers for the equivalent Licensed Software;
 - 6.3.2 Use of modifications to the Licensed Software not provided or not approved in writing by the LICENSOR;
 - 6.3.3 infringement by the LICENSOR of any third party intellectual property right by reason only of use of any material provided by the AUTHORITY for the purposes of the Licence, but only to the extent that this material is held and used within the terms under which it was provided and used solely for the purposes of the Licence.
- 6.4 Paragraph 6.2 shall not apply in the event that, without the consent of the LICENSOR (which shall not be unreasonably withheld) the AUTHORITY:
- 6.4.1 has made or makes an admission of any sort to the third party relevant to the claim or action;
 - 6.4.2 the AUTHORITY has entered or enters into negotiations with the third party relevant to the claim or action;
 - 6.4.3 the AUTHORITY has made or makes an offer to the third party for settlement of the claim or action.
- 6.5 Each Party undertakes to notify and consult the other promptly in the event of any enquiry, claim or action brought or likely to be brought against it or its contractor or the Parties jointly, which relates to infringement of any third party intellectual property right in connection with the supply or Use of the Licensed Software under the Licence. By joint agreement, the AUTHORITY may take the lead in dealing with settling and defending any such enquiry claim or action made against it directly in consultation with the LICENSOR and, subject to the LICENSOR's agreement as to the terms of any settlement, this shall not displace any liability of the LICENSOR arising under Paragraph 6.2. If any claim is made against the AUTHORITY under Section 55 of the Patents Act 1977 as a result of the AUTHORITY's use of the Software, and if the AUTHORITY offers a settlement of the claim, otherwise than as a result of a Court order and without the agreement of the LICENSOR, the LICENSOR shall be relieved of any liability which might otherwise arise under Paragraph 6.2.
- 6.6 In the event that any claim or action is made which is subject to Paragraph 6.2 or if in the LICENSOR's reasonable opinion such claim or action is likely to be made, the LICENSOR shall promptly utilise all reasonable endeavours to:
- 6.6.1 establish or secure the AUTHORITY's right to continue to Use the Licensed Software or, failing to do so,
 - 6.6.2 avoid that claim or action by, and after consultation with the AUTHORITY as to how to minimise the AUTHORITY's loss of Use of the Licensed Software, replacing or modifying the Licensed Software without significant change to the specification of the Licensed Software all at the LICENSOR's expense, including installation and testing.
- 6.7 In the event of the LICENSOR being unable to satisfy the requirements of sub-Paragraphs 6.6.1 or 6.6.2 the LICENSOR may terminate the Licence relating to the Licensed Software upon not less than three months written notice unless a lesser period is determined by any court order, and the LICENSOR shall make a refund of the licence fee to the AUTHORITY, either in full or with the agreement of the AUTHORITY (which shall not be unreasonably withheld) of a portion of the licence fee representing the lost portion of the Licence.

- 6.8 The conditions set forth in paragraphs 6.2 to 6.7 represents the total liability and responsibility of each Party to the other under a Licence in respect of any actual or alleged infringement of any intellectual property right owned by a third party, and take precedence over any other liability condition in the Licence.

7 WARRANTY

- 7.1 LICENSOR warrants that discrepancies between Licensed Software and the LICENSOR's specification or user documentation current at the time of delivery reported and demonstrated by the AUTHORITY during the warranty period stated in Part VII of the Schedule will be remedied by LICENSOR without unreasonable delay in a manner commensurate with good software industry practice and without payment by the AUTHORITY. During the warranty period the LICENSOR undertakes to provide to the AUTHORITY free of charge corrections to material errors known to the LICENSOR.
- 7.2 All warranties in the Licensed Software and its user documentation other than that given under Paragraph 7.1 are hereby excluded including, without limitation, the implied warranty and conditions of satisfactory quality and fitness for a particular purpose, but this shall not prejudice the right of the AUTHORITY to reject the Licensed Software in accordance with Paragraph 3.3.
- 7.3 No oral or written information or advice given by the LICENSOR, its agents or employees shall create a warranty or extend the scope of the warranty given under Paragraph 7.1.
- 7.4 The LICENSOR shall utilise all reasonable endeavours to ensure that any Licensed Software supplied, irrespective of the mode of delivery, is free from any published computer virus. In the event that it can be shown that, at the time of delivery, the Licensed Software incorporated such a virus then the AUTHORITY may require the LICENSOR to remove the virus and within the limits of backup data provided by the AUTHORITY to restore any computer system incorporating the Designated Equipment to its pre-infected state or bear the cost of the necessary restoration work.

8 GENERAL LIABILITY CONDITIONS

- 8.1 The LICENSOR shall have no liability to the AUTHORITY for any indirect or consequential damages or losses which might arise by reason of Use of the Licensed Software by or for the AUTHORITY including, without limitation, loss of profit, loss of revenue, loss of use, loss of business information produced by Use of the Licensed Software.
- 8.2 The exclusion provided under Paragraph 8.1 shall not apply where the AUTHORITY suffers loss because of a defect within the Licensed Software which defect is known to the LICENSOR at the time the Licensed Software is furnished to the AUTHORITY unless the AUTHORITY has previously been made aware of and accepted the presence of the defect and its relevance to the AUTHORITY's application of the Licensed Software.
- 8.3 The total of the LICENSOR's liability under or in connection with this Agreement (whether arising from contract, negligence or any other basis) is limited in respect of each event or series of connected events to the value given in Part IX of the Schedule, provided that no limitation shall apply in respect of liability for death of or injury to persons arising from the LICENSOR's negligence, as provided by the Unfair Contracts Act 1977, and, except in relation to sub-Paragraph 13.2.2, no limitation shall apply in respect of any liability arising under the provisions of Paragraph 6.2.

9 TERM AND TERMINATION OF THE LICENCE

- 9.1 Each Licence shall continue until the AUTHORITY terminates it by written notification to the LICENSOR, or it is terminated pursuant to Paragraphs 3.4 or 6.7.
- 9.2 The AUTHORITY shall within thirty days of termination of a Licence, through all reasonable endeavours and to the best of its knowledge, return or destroy, at the LICENSOR's option, all originals and destroy all copies of the Licensed Software including partial copies and modifications except that the AUTHORITY may on prior written authorisation from the

LICENSOR retain one copy for archival purposes only. The AUTHORITY shall promptly certify in writing once it has so done.

9.3 In the event of the LICENSOR drawing the attention of the AUTHORITY to a breach of any condition of a Licence then:

9.3.1 where the breach is of a nature that cannot be remedied, the AUTHORITY undertakes to settle with the LICENSOR on fair and reasonable terms and to utilise all reasonable endeavours to ensure that a further breach does not occur,

9.3.2 where the breach is capable of being remedied, the AUTHORITY shall promptly remedy the breach and where appropriate put in place measures to ensure that a further breach does not occur. The AUTHORITY shall indemnify the LICENSOR for all loss and damage incurred by him as a result of the breach.

9.4 The termination of any Licence shall be without prejudice to the continuation of the Head Agreement or any other Licence under it.

10 COMBINATION OF SOFTWARE

10.1 The AUTHORITY may combine all or part of the Licensed Software with other materials to form a new work. Any portion of the Licensed Software included in a new work shall be Used only on Designated Equipment and shall be subject to the conditions of the Licence. The LICENSOR shall be absolved from any obligation or liability under the Licence to the extent that this arises as a result of the creation or use of any new work not approved in writing by the LICENSOR.

11 OUTPUT

11.1 The AUTHORITY may freely copy and utilise any output resulting from Use in accordance with LICENSOR - supplied documentation of the Licensed Software.

12 DISPUTES

12.1 Other than for any claim arising from non payment of a valid invoice should any question, dispute or difference whatsoever arise between the AUTHORITY and LICENSOR in relation to or in connection with this Agreement or the Schedule of any Licence granted under it, the AUTHORITY or the LICENSOR may give notice to the other in writing of the existence of that question, dispute or difference and both Parties will attempt to reach a solution. If no mutually acceptable solution is found the AUTHORITY or the LICENSOR may give notice to the other in writing (the ADR notice) that the matter is to be referred to Alternative Dispute Resolution (ADR).

12.2 Upon receipt of the ADR notice and subject to sub-Paragraph 12.3, the Parties shall define the type of ADR to be adopted and the rules for its implementation. Failing agreement to adopt, or to achieve, resolution by one such type, the Parties may decide to adopt a second type of ADR. The Parties agree that after a period of two (2) months from the date of receipt of the ADR notice, or such other date as may be agreed by the Parties, and provided that the dispute remains unresolved, it shall finally be settled by arbitration by a sole arbitrator at the request in writing by either party to the other. Failing agreement on the appointment of the arbitrator within 14 days of receipt of such request, the arbitrator shall be appointed by the President for the time being of the Law Society, in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment of it. The costs of any ADR shall be shared equally by the AUTHORITY and the LICENSOR; however, the costs of arbitration shall be settled by the arbitrator.

12.3 Where a Party rejects the referral of the matter to ADR he shall promptly notify the other Party in writing of that rejection and the reasons for it.

13 TRANSFER

13.1 The LICENSOR shall not assign his interest in any Licence or the intellectual property licensed thereunder without providing for the continuance of the AUTHORITY'S rights under the Licence and without notifying the AUTHORITY in writing of the identity of the assignee.

- 13.2 Unless prevented by law or national regulation the AUTHORITY shall have the right to novate any Licence to a separate legal entity, without charge to itself or the legal entity, upon two months written notice to the LICENSOR, as provided below:
- 13.2.1 following a transfer from the AUTHORITY to the legal entity of any function of the AUTHORITY for which the Licensed Software has been obtained; or
 - 13.2.2 on disposal to the legal entity of surplus Designated Equipment where the Licensed Software is essential to the running of that equipment, whether or not it is embedded in the equipment, provided that all warranties (whether express or implied) and all indemnities shall be void, the Licensed Software shall be supplied "as is", and the liability referred to in Paragraph 8.3 shall be ten pounds sterling only.

PROVIDED THAT the Licensed Software novated in accordance with this sub-Paragraph may only be used for the same purposes for which the Authority was licensed in accordance with Paragraph 2 and wider use shall require the written approval of, and the grant of a further licence by, the LICENSOR.

14 DISCONTINUANCE OF BUSINESS

- 14.1 The AUTHORITY shall have the right to secure from the LICENSOR, or from the authorised trustees or receivers acting on behalf of the LICENSOR, in the event of the LICENSOR permanently ceasing to maintain the Licensed Software or the LICENSOR permanently discontinuing in business because of bankruptcy, receivership, dissolution, or other form of permanent business disruption and that business is not continued by a successor in interest to the LICENSOR to whom the benefits and obligations of this Agreement and any licence granted under it have been assigned, Licensed Software documentation including program source code in the possession and control of the LICENSOR, but no more than the LICENSOR uses himself, as the AUTHORITY shall consider necessary for it to maintain and continue its normal Use of the Licensed Software for the duration of the Licence but for no other purpose.
- 14.2 If so required by a Special Condition, the LICENSOR shall compile and maintain, at a price or in accordance with a price formula identified in the Special Condition, an up to date copy of the Licensed Software documentation to which the AUTHORITY is entitled under Paragraph 14.1 which copy shall be held by the LICENSOR as a bailee without lien for the AUTHORITY and be made available to the AUTHORITY without additional charge. In the absence of such a Special Condition, the copy shall be prepared on the AUTHORITY's demand and it shall be made available to the AUTHORITY at a fair and reasonable price based on the cost of compilation, reproduction and dispatch.
- 14.3 The AUTHORITY shall have the right to utilise the Licensed Software documentation to which it is entitled under Paragraph 14.1 for the purpose of maintaining its Use of the Licensed Software for the duration of the Licence but for no other purpose. The AUTHORITY shall hold in confidence all information in the documentation.

15 GENERAL

- 15.1 If any provision of this Agreement is held to be invalid, illegal or unenforceable to any extent then:
- 15.1.1 that provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be understood not to be included in the Agreement but without invalidating any of the remaining provisions of the Agreement; and
 - 15.1.2 the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable provision the effect of which is as close as possible to the effect of the invalid, illegal or unenforceable provision.
- 15.2 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.

- 15.3 No waiver of any right or remedy shall operate as a waiver in respect of any other right or remedy.
- 15.4 Neither the LICENSOR nor the AUTHORITY shall be liable for failure to perform any of its obligations under the Licence if that failure results from circumstances beyond its reasonable control.
- 15.5 Headings have been included for convenience only and shall not be used in construing any condition of the Licence.
- 15.6 The Licence shall be subject to and construed and interpreted in accordance with the Laws of England and shall be subject to the non-exclusive jurisdiction of the Courts of England for the enforcement of any arbitral decision.
- 15.7 The Licence shall constitute the entire agreement between the Parties relating to the Licensed Software and supersedes any previous agreement.
- 15.8 No right is granted to any person who is not a Party to the Licence to enforce any term of the Licence in his own right and the Parties declare that they have no intention to grant any such right.

Part F - Schedule 5 Inventions and Designs - Crown Rights and Ownership of Patents and Registered Designs

- 1 The provisions of either of Part A and Part B hereof or of Part B only as applicable to the Security Grading of the Contract shall apply in relation to any invention or design made in the course of or resulting from work carried out by the Contractor under the Contract (hereinafter respectively referred to as 'the invention' and the 'design').
- 2 Where any invention or design, to which the provisions of this condition apply, is made outside the UK and where local laws so require, any application may, notwithstanding the provisions of sub-paragraph 3.1 of this condition, be made under conditions of secrecy at the local Patent Office of the territory where the invention or the design was made. Where local laws so require, the supply of a copy of the application under sub-paragraph 5.1 of this condition shall be subject to any necessary approval of the local Patent Office but the application number and date of filing shall be notified to the Authority in all cases.

Part A - Contracts For Work Classified As 'Restricted' Or Higher

- 3
 - 3.1 The Contractor shall ensure that he and any Patent Agent or Attorney engaged by him shall treat the invention or design as bearing a Security Classification at least as high as the work to which it relates pending formal determination of its appropriate classification.
 - 3.2 The preparation and filing of applications to which this Paragraph 3 relates shall be handled by the Contractor's own Patent Department under the conditions of security applicable under the Contract. If the Contractor does not have his own Patent Department he shall, before initiating the preparation of any application, secure the written Agreement of the Authority (1) as to the Patent Agent or Attorney that he proposes to employ for the preparation and filing of such an application.
 - 3.3 Every application to which this paragraph 3 relates, whether filed by the Contractor or by a Patent Agent or Attorney engaged by him, shall be filed direct with the Security Section of the UK Patent Office, who shall be notified at the time of filing that the invention or design forming the subject of the application is related to classified Government work. The notification shall also quote the number of the Contract and the name and address of the Authority.

Part B - All Contracts

- 4 The Contractor shall ensure, to the extent he is legally able to do so, that any invention to which this Condition relates and made by an employee of the Contractor in the course of duties as defined in Section 39(1) of the Patents Act 1977 and any design to which this Condition relates and made by an employee of the Contractor shall vest in the Contractor.
- 5
 - 5.1 The Contractor shall within 60 days of filing a first patent application or any subsequent patent application claiming priority from a first patent application and directed towards obtaining protection in the UK (including a European Patent Application or an International Patent Application designating the UK) for the invention or any application for registration of the design provide the Authority (1) (2) with a copy of that application together with the number of the Contract.
 - 5.2 The Contractor shall promptly notify the Authority if he becomes aware of any application as aforesaid by any person who is, or has been an employee or agent of the Contractor or a Subcontractor and provide the Authority with relevant particulars insofar as he can obtain them and has the right to provide them.
- 6 If an employee of the Crown is a joint inventor of the invention or part author of the design to which any application as is referred to in Paragraph 5 above relates and the portion of or share in the invention or design made by that employee belongs to the Crown and neither the Crown nor that employee is the person, or one of the persons, making the application, the Contractor shall if so requested by the Authority take all such steps and do all such things as are in his power and as

may be necessary to ensure either that the Authority or the employee concerned joins in the application or, at the option of the Contractor, and if the application is one for a patent, that it is either withdrawn or amended by the deletion from the application of any reference to that part of the invention made by the employee of the Crown, or, if the application is one for a Registered Design, that it is withdrawn.

- 7 If an employee of the Crown is a party to any such application as is mentioned in paragraphs 5 and 6 above and the Authority so requests, the Contractor shall at the expense of the Authority take such reasonable steps as are in his power and may from time to time be necessary to ensure that the Authority is substituted for the employee of the Crown as co-applicant and shall give all such consents and do all such things as may from time to time be necessary to enable:
- 7.1 the employee of the Crown to assign to the Authority his interest in the application and in any Patent or Registered Design granted pursuant thereto, and
 - 7.2 the Authority to assign its own interest therein to the National Research Development Corporation.

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

- 8 Subject to the provisions of paragraphs 6 and 7 above and to the rights of the Authority as set out in Paragraph 9 below the invention or design shall belong to the Contractor.
- 9 Any Government Department and any person authorised by a Government Department may in any part of the world do in relation to the invention any act as defined in Section 55(1) (a) to (e) of the Patents Act 1977 or use the design for the services of the Government of the United Kingdom.
- 10 Subject to Paragraph 16 the Contractor shall not be entitled to any payment whatsoever in respect of anything done in accordance with Paragraph 8 above (whether by the Authority, a Government Department or any person whomsoever) and if any directions relating to the invention are given under Section 22(1) or 22(2) of the Patents Act 1977 the Contractor shall not have any claim for any such compensation as is mentioned in Section 22(7)(b).
- 11 If any question under this Condition shall arise between the Contractor and the Authority as to whether an employee of the Crown is a joint inventor of the invention or a part author of the design or as to whether the invention or design was made in the course of or resulted from work carried out by the Contractor under the Contract, that question shall be referred for decision to such person as may be agreed upon between the Contractor and the Authority or in default of such agreement as may be appointed by the President for the time being of the Chartered Institute of Patent Agents, and the decision of any such person on that question shall be final and conclusive.
- 12 The Contractor shall at the request and expense of the Authority take all such reasonable steps as are within his power and may from time to time be necessary to enable the Authority to register in the UK Patent Office or elsewhere its interest in the invention or design. (3)
- 13 The rights conferred by this Condition shall be in addition to and not in derogation of the rights exercisable by virtue of Sections 55 to 59 of the Patents Act 1977 and Section 12 of the Registered Designs Act 1949.
- 14 In this Condition references to a Government Department are references to a Department of Her Majesty's Government in the United Kingdom.
- 15 The foregoing provisions of this Condition shall have effect both during the period the Contractor is carrying out the other provisions of the contract and at all times thereafter.
- 16 The Contractor shall include, in any subcontract which he may enter into for the purpose of the Contract, provisions as in this Condition, but with the substitution therein of references to the Subcontractor for references to the Contractor, and of references to the subcontract for references to the Contract, and the Contractor shall at all times use all reasonable endeavours to secure the full and effectual observance by the Subcontractor of those provisions and that the Authority and all Government Departments obtain the benefit thereof, and to advise the Authority if he becomes aware of any breach of the provisions. Provided that this Paragraph shall only apply to any

subcontract for the carrying out of any work for research, design or development under the Contract.

- 17 Nothing herein shall prejudice the rights of either party arising otherwise than by virtue of this Condition.

Notes

- 17.1 The agreement of the Authority is to be sought from and the information addressed to: DCD-DIPR-AS2
Directorate of Intellectual Property Rights
Poplar 2 #2218
MOD Abbey Wood
BRISTOL BS34 8JH
- 17.2 If an extra copy of the Patent Application or the application for registration of the design has been provided to the Patent Office for onward transmission to the Authority then that copy will be regarded as having been provided for the purpose of this Condition and no separate copy need be sent to the Authority direct provided that the Contractor indicates on the copy sent to the Patent Office for onward transmission to the Authority the number of the Contract.
- 17.3 Any communication from the Authority to the Contractor on the subject of Paragraph 12 is to be addressed to the Contractor's address for service for the application.

Part G - Schedule 5 Design Rights and Patents (Subcontractor's Agreement)

Design Rights and Patents (Subcontractor's Agreement)

THIS AGREEMENT is made the _____ day of _____ 20____

BETWEEN

whose registered office is at

(hereinafter called "the Subcontractor") of the one part and THE SECRETARY OF STATE FOR DEFENCE (hereinafter called "the Secretary of State") of the other part

WHEREAS:-

- 1 The Secretary of State has placed with (hereinafter called "the main contractor") a contract bearing the reference number (hereinafter called "the main contract") for the design and development of the effect of which is that the costs of such design and development (including the cost referable to any Subcontracts hereinafter referred to) will be substantially borne by the Secretary of State.
- 2 The main contractor contemplates that the design development and supply of certain components needed for performance of the main contract will be undertaken by various third parties in pursuance of Subcontracts made between them and the main contractor.
- 3 With a view to securing to the Secretary of State rights as regards inventions designs and other related matters in respect of any Subcontract the main contract provides that the main contractor shall not enter into any Subcontract for any component aforesaid without obtaining the prior approval of the Secretary of State.
- 4 The main contractor has now informed the Secretary of State that for the purpose of performing the main contract he wishes to place with the Subcontractor a Subcontract for the design and development of the items described in the First Schedule (hereinafter called "the Subcontracted items") and has requested the Secretary of State's approval of the Subcontract accordingly.
- 5 The Secretary of State has signified his willingness to approve the Subcontract on condition that in consideration of his giving approval the Subcontractor enters into a direct Agreement with the Secretary of State concerning the matters hereinafter appearing and the Subcontractor has signified his willingness to enter into such an agreement.

NOW THIS AGREEMENT made in consideration of the premises and of the rights and liabilities hereunder mutually granted and undertaken WITNESSETH AND IT IS HEREBY AGREED AND DECLARED as follows:-

- 1 The Subcontractor and the Secretary of State hereby agree to be bound to each other by the provisions of the Conditions as set out in the Second Schedule hereto.
- 2 No extension alteration or variation in the terms of the Subcontract between the main contractor and the Subcontractor and no other agreement between the main contractor and the Subcontractor relating to the work to be done under the Subcontract or any modification now or hereafter made thereto shall prejudice the operation of this Agreement which shall in all respects apply to the Subcontract as so extended altered varied supplemented or modified as if such extension alteration variation supplementation or modification had been originally provided for in the Subcontract and the expression "the Subcontract items" shall have effect accordingly.

IN WITNESS whereof the Parties hereto have set their hands the day and years first before written

Signed on behalf of
the Subcontractor

(in capacity of)

Signed on behalf of
The Secretary of
State for Defence

Schedule 6 – Government Furnished Assets and Issued Property

1. In accordance with DEFCON 611 (Issued Property), the following list of Government Furnished Assets (GFA) will be transferred to the Contractor at the Initial Service Commencement (ISC) date in a fit for demand state.
2. Six weeks prior to ISC, the Parties shall meet and agree the final list of both GFA and Issued Property and update this Schedule 6 accordingly. For Protected Plant affected by Asbestos in Ashchurch, this can be extended to three (3) months following ISC.
3. **Specified Assets:**
Unused
4. **Vehicles:**
 - 4.1. Protected Plant
 - 4.1.1. Table 34 Government Furnished Assets below shows the forty four (44) Vehicle Registration Numbers (VRN) that have been selected to be provided to the Contractor at ISC. Any changes to Table 34 shall be in accordance with DEFCON 620 (Contract Change Control Procedure).

VRN	Model	Location
TRAINING EQUIPMENT		
██████████	CATERPILLAR CAT 938 PHN01819	██████████
██████████	CATERPILLAR CAT 257 SLK 08687	██████████
██████████	CATERPILLAR LWT 434 FSH1388	██████████
██████████	IVECO TRAKKER WJMJ4CT900C240289	██████████
██████████	IVECO SLDT PG10AB	██████████
██████████	CATERPILLAR MTL 257 SLK06762	██████████
Training School Reserve		
██████████	CATERPILLAR CAT 938 PHN00538 (TRAINING AID)	██████████
██████████	CATERPILLAR CAT 434 FSH 1387	██████████
██████████	IVECO SLDT PG09AB	██████████
██████████	CATERPILLAR MWT 938 PHN02218	██████████
██████████	CATERPILLAR CAT 434 FSH 1377	██████████
██████████	CATERPILLAR MTL 257 SLK05244	██████████
██████████	CATERPILLAR MTL 257 SLK06303	██████████
R3 Fleet		
██████████	CATERPILLAR CAT 938	██████████
██████████	CATERPILLAR CAT 938	██████████
██████████	CATERPILLAR CAT 938	██████████

VRN	Model	Location
[REDACTED]	CATERPILLAR CAT 938	[REDACTED]
[REDACTED]	CATERPILLAR CAT 938	[REDACTED]
[REDACTED]	CATERPILLAR CAT 938	[REDACTED]
[REDACTED]	CATERPILLAR CAT 938 R9 NOT REPAIRED	[REDACTED]
[REDACTED]	CATERPILLAR CAT 434	[REDACTED]
[REDACTED]	CATERPILLAR CAT 434	[REDACTED]
[REDACTED]	CATERPILLAR CAT 434	[REDACTED]
[REDACTED]	CATERPILLAR CAT 434	[REDACTED]
[REDACTED]	CATERPILLAR CAT 434	[REDACTED]
[REDACTED]	CATERPILLAR CAT 434	[REDACTED]
[REDACTED]	CATERPILLAR CAT 434 R9	[REDACTED]
[REDACTED]	IVECO SLDT	[REDACTED]
[REDACTED]	CATERPILLAR MTL 257	[REDACTED]
[REDACTED]	CATERPILLAR MTL 257	[REDACTED]
[REDACTED]	CATERPILLAR MTL 257	[REDACTED]
[REDACTED]	CATERPILLAR MTL 257	[REDACTED]
[REDACTED]	CATERPILLAR MTL 257	[REDACTED]
[REDACTED]	CATERPILLAR MTL 257	[REDACTED]
[REDACTED]	CATERPILLAR MTL 257	[REDACTED]
[REDACTED]	CATERPILLAR MTL 257	[REDACTED]
[REDACTED]	CATERPILLAR MTL 257	[REDACTED]
[REDACTED]	CATERPILLAR MTL 257	[REDACTED]

Table 34: Government Furnished Assets

4. Specialist Tools and Test Equipment (STTE) and CES

[REDACTED]

The content of the CES can be found on TDOL as listed below:

[REDACTED]

5. Issued Property

a. Documents

ILS artefacts and Safety Cases for the PP Fleet shall be transferred to the Contractor at an acceptable standard for MITER.

b. IT / IS

[REDACTED] to enable assess to JAMES – serials to be provided 3 months prior to ISC as part of transition

6. Legacy Spares and Consumables

6.1 as detailed at Serials 6 and 7 of Schedule 19 (Referenced Documents)

)

Schedule 7 – Required Insurance

Policies of insurance to be taken out and maintained by the Contractor and / or for the Contractor to procure the taking out and maintenance of.

1 Property Damage "All Risks" Insurance

1.1 Insureds

1.1.1 Contractor

1.1.2 Authority

each for their respective rights and interests in the Project.

1.2 Insured property

Any property of whatsoever nature or description, including but not limited to all vehicles and plant, GFE, GFA, GFF and Articles, which is the subject matter of the Project and which is the property of the Insured or for which the Insured may be responsible including property for which the insured has an obligation to insure under the Contract.

1.3 Basis of coverage

"All Risks" of physical loss or damage to the insured property from any cause not excluded.

1.4 Sum insured

At all times an amount not less than the total reinstatement or replacement value of the insured property plus provision to include other cover features and extensions, as appropriate.

1.5 Period of insurance

From the date the Contractor first receives any vehicles, plant, GFE, GFA, GFF or Articles, which is the subject matter of the Contract and for the duration of the Contract (to the extent that there is relevant insured property) and renewable on an annual basis unless agreed otherwise.

1.6 Cover features and extensions

1.6.1 Terrorism (restricted to United Kingdom - excluding Northern Ireland)

1.6.2 Automatic reinstatement of sum insured.

1.6.3 Capital additions paragraph.

1.6.4 Seventy two (72) hour paragraph.

1.6.5 Professional fees

1.6.6 Debris removal.

1.6.7 Plans and documents.

1.6.8 Damage to Insured Property occasioned during road use.

1.6.9 Authority co-insured status with attendant non vitiation, waiver of subrogation and notice of cancellation paragraph

1.6.10 Basis of Settlement for Military Specials, replacement value or agreed value (as appropriate) [REDACTED] to cover where the Authority requires such assets to be repaired.

1.7 Principal exclusions

1.7.1 War and related perils.

1.7.2 Nuclear/radioactive risks.

- 1.7.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
- 1.7.4 Wear, tear and gradual deterioration, latent defect, defective design, materials and workmanship but not excluding consequential damage resulting therefrom.
- 1.7.5 Consequential financial losses.

1.8 Maximum deductible threshold

Not to exceed [REDACTED] each and every claim.

2 Public and Products Liability Insurance

2.1 Insureds

Contractor

2.2 Interest

To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

- 2.2.1 death or bodily injury to or sickness, illness or disease contracted by any person
- 2.2.2 loss of or damage to property

happening during the Period of Insurance and arising out of or in connection with the Contract

2.3 Limit of indemnity

Not less than [REDACTED] in respect of any one occurrence, the number of occurrences being unlimited, but [REDACTED] any one occurrence and in the aggregate per annum in respect of products and pollution liability.

2.4 Period of insurance

From the date of this Contract for the duration of the Contract and renewable on an annual basis unless agreed otherwise

2.5 Cover features and extensions

- 2.5.1 Indemnity to principals paragraph (or equivalent)
- 2.5.2 Legal defence costs
- 2.5.3 Cross liability paragraph.
- 2.5.4 Contingent motor liability.
- 2.5.5 Where applicable, airside liability insurance in respect of relevant risks associated with the Contract.
- 2.5.6 Motor traders extension/service indemnity repair extension. Inner limit not less than [REDACTED] [REDACTED] in respect of each and every occurrence and in the annual aggregate.

2.6 Principal exclusions

- 2.6.1 War and related perils
- 2.6.2 Nuclear and radioactive risks
- 2.6.3 Liability for death, illness, disease or bodily injury sustained by employees of the insured during the course of their employment

- 2.6.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles
- 2.6.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured
- 2.6.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property
- 2.6.7 Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to premises and their contents belonging to the Authority.
- 2.6.8 Liability arising from the ownership, possession or use of any aircraft or marine vessel
- 2.6.9 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence

2.7 Maximum deductible

Not to exceed [REDACTED] in respect of each and every third party property damage claim (personal injury claims to be paid in full)

3 Goods in Transit Insurance (United Kingdom transits)

3.1 Insureds

Contractor

3.2 Insured property

All property and interest of every description for all transits by road or air within the United Kingdom including loading and unloading that are in the care, custody or control or are otherwise the responsibility of the Contractor in connection with the Contract.

3.3 Coverage

"All Risks" of physical loss or damage to the insured property from any cause not excluded.

3.4 Limit of indemnity

Not less than the replacement value in respect of any one transit / conveyance unless specified by the Authority.

3.5 Periods of insurance

As required by the Parties during the Contract Period, and in any event from the time the relevant risk commences until final acceptance at the final delivery site.

3.6 Cover features and extensions

Basis of settlement for military specials, replacement value or agreed value (as appropriate) plus [REDACTED] to cover where the Authority requires such assets to be repaired.

3.7 Maximum deductible threshold

Not to exceed [REDACTED] and every claim.

4 Cargo Insurance (for transits terminating or commencing outside of the United Kingdom)

4.1 Insureds

Contractor

4.2 Insured Property

Any property, equipment or other cargos including specie, cash and others that are in the care, custody or control or are otherwise the responsibility of the Contractor including loading and unloading in connection with the Contract.

4.3 Interest

"All Risks" of physical loss or damage to any such cargo including third party liabilities as a result thereof from any cause not excluded.

4.4 Coverage

London Institute Cargo Clauses (A) including Institute War and Strikes Clauses or their equivalent

4.5 Limit of Indemnity

Not less than the replacement value in respect of any one transit / conveyance unless specified by the Authority.

4.6 Territorial Limits

Worldwide subject to any applicable standard London Institute Trading Warranties or their equivalent.

4.7 Period of Insurance

As required by the Parties during the Contract Period, and in any event from the time the relevant risk commences until final acceptance at the final delivery site

4.8 Cover features and extensions

Basis of settlement for military specials, replacement value or agreed value (as appropriate) plus [REDACTED] to cover where the Authority requires such assets to be repaired.

4.9 Maximum deductible threshold

Not to exceed [REDACTED] each and every claim.

5 Motor Third Party Liability

5.1 Insured

Contractor

5.2 Interest

To indemnify the Insured in respect of all sums that they may become legally liable to pay consequent upon death or personal injury to persons and loss or damage to property arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.

5.3 Minimum limit of indemnity

5.3.1 In respect of third party bodily injury - unlimited.

5.3.2 In respect of third party property damage - not less than [REDACTED] for commercial vehicles any one occurrence.

5.4 Territorial limits

Worldwide

5.5 Period of insurance

As required by the Parties during the Transition Period, and in any event from the time the relevant risk commences or from ISC, whichever is the sooner, for the duration of the Contract and renewable on an annual basis unless agreed otherwise.

5.6 Cover features and extensions

- 5.6.1 Cross liability paragraph.
- 5.6.2 Unauthorised use.
- 5.6.3 Unlicensed drivers.
- 5.6.4 Unauthorised movement of third party vehicles.
- 5.6.5 Carriage of hazardous goods, subject to inner limit.

5.7 Principal Exclusions

- 5.7.1 War and related perils
- 5.7.2 Nuclear and radioactive risks
- 5.7.3 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 5.7.4 Liability arising from damage caused by any ships, vessels, craft or aircraft owned, used or operated by the Insured.
- 5.7.5 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

5.8 Maximum deductible threshold

Not to exceed [REDACTED] or series of claims arising out of one occurrence in respect of third party property damage only.

6 Third Party Airside Liability and Third Party Airside Motor Liability

6.1 Insured

Contractor

6.2 Interest

To indemnify the Insured in respect of all sums that they may become legally liable to pay consequent upon death or personal injury to persons and loss or damage to property due to presence of motor vehicles and personnel airside and arising from or in connection with the provision of the Services.

6.3 Limit of Indemnity

Not less than [REDACTED] in respect of any one occurrence, the number of occurrences being unlimited, but [REDACTED] any one occurrence and in the aggregate per annum in respect of pollution liability (where insured).

6.4 Territorial Limits

Worldwide.

6.5 Period of insurance

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

6.6 Cover features and extensions

- 6.6.1 Cross liability paragraph.

6.7 Principal exclusions

- 6.7.1 War and related perils
- 6.7.2 Nuclear and radioactive risks
- 6.7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured whilst in the course of their employment.
- 6.7.4 Liability arising out of the use of mechanically propelled vehicles licensed for road use whilst required to be compulsorily insured by legislation in respect of such vehicles.
- 6.7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 6.7.6 Liability arising from damage caused by any ships, vessels, craft or aircraft owned, used or operated by the Insured.

6.8 Maximum deductible threshold

Not to exceed [REDACTED] each claim or series of claims arising out of one occurrence in respect of third party property damage only.

7 Insurances required by law

- 7.1 The Contractor is required to meet its United Kingdom and all other statutory or insurances required by law worldwide in full. Insurances are required to comply with all statutory requirements including, but to limited to, United Kingdom employers' liability insurance.
- 7.2 The limit of indemnity for the employers' liability insurance shall be any one occurrence inclusive of costs, the number of occurrences being unlimited in any annual period of insurance.

Schedule 8 – Security Aspect Letter

Part A – Security Aspect Letter (SAL)



**Ministry
of Defence**

[Redacted]

Project Manager

Defence Equipment and Support
Land Concept & Assessment
Cedatr 1C, #4140
MOD Abbey Wood (South)
Bristol
BS34 8JH

Email [Redacted]



MOD COMMERCIAL

AmeyBriggs Services Limited

10 Furnival Street

London

United Kingdom

EC4A 1AB

For the attention of [Redacted]

Our Reference: OSP/0080

Date: 01 May 2020

Dear [Redacted],

SECURITY ASPECTS LETTER – PROJECT MITER – OSP/0080

1. On behalf of the Secretary of State for Defence I hereby give you notice that the following aspects of the work under the above Contract are marked:

OFFICIAL

OFFICIAL SENSITIVE – COMMERCIAL

- (i) Any communications with work in progress content between the Contractor and the Authority for the purpose of running the Contract.
- (ii) Any Authority information which is work in progress obtained/viewed/used by the Contractor in the performance of the Contract.

OFFICIAL SENSITIVE:

- (i) Any communications exchanging final version artefacts between the Contractor and the Authority made for the purpose of running the Contract.
 - (ii) Any Authority information of final version artefacts obtained/viewed/used by the Contractor in the performance of the Contract.
 - (iii) Any information relating to the force strength of the MITER capability i.e. current or future location, timing and quantity of equipment or platform.
 - (iv) Any information relating to the security of MITER Fleet Information System or its accreditation.
 - (v) Any information deemed commercially or financially sensitive.
2. Please confirm that the definitions are understood, and that the Contractor will adhere to the provisions of this letter and the enclosed Appendix 1.
 3. Information pertaining to this Contract must not, without the approval of the Authority, be published or communicated to anyone except where necessary for the execution of the Contract.
 4. Your attention is drawn to the provisions of the Official Secrets Acts 1911-1989 in general, to the provisions of Section 2 of the Official Secrets Act 1911 (as amended by the Act of 1989) in particular, that you should take all reasonable steps to make sure that all individuals employed on any work in connection with the Contract have notice that these statutory provisions apply to them and will continue so to apply after the completion or earlier determination of the Contract.
 5. Any access to information on MOD premises that may be needed will be in accordance with MOD security regulations under the direction of the MOD Project Officer.
 6. The enclosed Appendix 1 which outlines the principal measures required to safeguard **OFFICIAL** and **OFFICIAL SENSITIVE** information is provided to enable you to provide the required degree of protection.

Yours faithfully,

[Redacted signature block]

[Redacted signature block]

OFFICIAL SENSITIVE – SECURITY CONDITIONS UK

Definitions

1. The term "Authority" means a Ministry of Defence official acting on behalf of the Secretary of State for Defence.
2. The term "Contract" means the agreement concluded between the Authority and the Contractor – AmeyBriggs Services Limited.
3. The term "Contractor" means the Person who, by the Contract, undertakes to perform the Services and to supply the Assets.

Security Grading

4. The Authority shall issue an OFFICIAL SENSITIVE Aspects Letter which shall define the OFFICIAL SENSITIVE matter that is furnished, or which is to be developed, under this Contract. The Contractor shall mark all OFFICIAL SENSITIVE documents which he or she originates or copies during the Contract with the equivalent national grading.

Official Secrets Acts

5. The Contractor's attention is drawn to the provisions of the Official Secrets Acts 1911 to 1989 in general, and to the provisions of Section 2 of the Official Secrets Act 1911 (as amended by the Act of 1989) in particular. The Contractor shall take all reasonable steps to make sure that all individuals employed on any work in connection with the Contract have notice that these statutory provisions apply to them and shall continue so to apply after the completion or earlier termination of the Contract.

Protection of OFFICIAL and OFFICIAL SENSITIVE Information

6. OFFICIAL and OFFICIAL SENSITIVE information shall be protected in a manner to promote discretion in order to avoid unauthorised access. The Contractor shall take every effort to prevent the loss or compromise of the information or deliberate or opportunist attack.
7. Disclosure of OFFICIAL and OFFICIAL SENSITIVE information shall be strictly in accordance with the "need to know" principle. Except with the written consent of the Authority, the Contractor shall not disclose the Contract or any provision thereof to any person other than a person directly employed by the Contractor or sub-Contractor, or Service Provider.
8. Any samples, patterns, specifications, plans, drawings or any other documents issued by or on behalf of the Authority for the purposes of the Contract remain the property of the Authority and must be returned on completion of the Contract or, if directed by the Authority, destroyed in accordance with paragraph 22.
9. When not in use OFFICIAL SENSITIVE documents shall be stored under lock and key.

Access

10. Access shall be confined to those individuals who have a “need-to-know” and whose access is essential for the purpose of his or her duties.
11. The Contractor shall ensure that all individuals having access to OFFICIAL and OFFICIAL SENSITIVE information meet legal requirements in respect of immigration and the right to work in the UK and have undergone basic recruitment checks. Contractors shall apply the requirements of HMG Baseline Personnel Security Standard (BPSS) for all individuals having access to OFFICIAL and OFFICIAL SENSITIVE information.

Transmission of OFFICIAL and OFFICIAL SENSITIVE Information

12. OFFICIAL and OFFICIAL SENSITIVE documents shall be transmitted, both within and outside company premises in such a way as to make sure that no unauthorised person has access. They may be sent by ordinary post in a single envelope. The word OFFICIAL SENSITIVE must **NOT** appear on the envelope. The envelope should bear a company stamp that clearly indicates the full address of the office from which it was sent. Commercial Couriers may be used.
13. Advice on the transmission of OFFICIAL and OFFICIAL SENSITIVE documents abroad or any other general advice including the transmission of OFFICIAL and OFFICIAL SENSITIVE hardware shall be sought from the Authority.

Use of Communications and IT Systems

14. The detailed functions that must be provided by an IT system to satisfy the minimum requirements described below cannot be described here; it is for the implementers to identify possible means of attack and ensure that they are blocked.
15. Any communication path between an unauthorised user and the data can be used to carry out an attack on the system or be used to compromise or exfiltrate data.
16. The following describes the minimum Accreditation security requirements for processing and accessing OFFICIAL and OFFICIAL SENSITIVE information on IT systems:
 - a. Access Physical access to all hardware elements of the IT system is to be strictly controlled.
 - b. Identification and Authentication (ID&A) All systems shall have the following functionality:
 - (1) Up-to-date lists of authorised users.
 - (2) Positive identification of all users at the start of each processing session.
 - c. Passwords Passwords are part of most ID&A, Security Measures. Passwords shall be minimum of 6 characters long (9 is preferred) and shall include numeric and “special” characters (if permitted by the system) as well as alphabetic characters.
 - d. Internal Access Control All systems shall have internal Access Controls to prevent unauthorised users from accessing or modifying the data.
 - e. Data Transmission OFFICIAL SENSITIVE information shall be transmitted or accessed electronically (e.g. point to point computer links) via a public network like the Internet, using commercial encryption devices accepted by the UK MoD. Advice on encryption requirements for the transmission of OFFICIAL SENSITIVE information shall be sought from MoD CIO-InfoSy Pol via the Authority. However, in cases where there is a pressing business need, telephone conversations, video conferencing or facsimile transmissions containing OFFICIAL SENSITIVE information may be in clear text. In such cases where a pressing business need has been identified, both parties need to accept that there exists the potential for a risk of compromise. When taking a decision to communicate OFFICIAL SENSITIVE information in this way they should be aware of the impact of disclosure.
 - f. Security Accounting and Audit Security relevant events fall into two categories, namely legitimate events and violations.
 - (1) The following events shall always be recorded:
 - (a) All log on attempts whether successful or failed.

- (b) Log off (including time out where applicable).
- (c) The creation, deletion or alteration of access rights and privileges.
- (d) The creation, deletion or alteration of passwords.
- (2) For each of the events listed above, the following information is to be recorded:
 - (a) Type of event,
 - (b) User ID,
 - (c) Date & Time
 - (d) Device ID

The accounting records shall have a facility to provide the System Manager with a hard copy of all or selected activity. There shall also be a facility for the records to be printed in an easily readable form. All security records are to be inaccessible to users without a need to know. If the operating system is unable to provide this then the equipment shall be protected by physical means when not in use i.e. locked away or the hard drive removed and locked away.

- g. Integrity & Availability The following supporting measures shall be implemented:
 - (1) Provide general protection against normally foreseeable accidents/mishaps and known recurrent problems (e.g. viruses and power supply variations)
 - (2) Defined Business Contingency Plan
 - (3) Data backup with local storage
 - (4) Anti Virus Software (Implementation, with updates, of an acceptable industry standard Anti-virus software).
- h. Logon Banners Wherever possible, a “Logon Banner” shall be provided to summarise the requirements for access to a system which may be needed to institute legal action in case of any breach occurring.
 - (1) A suggested format for the text depending on national legal requirements could be:
 - (a) “Unauthorised access to this computer system may constitute a criminal offence”
- i. Unattended Terminals Users are to be automatically logged off the system if their terminals have been inactive for some predetermined period of time, or systems must activate a password protected screen saver after 15 minutes of inactivity, to prevent an attacker making use of an unattended terminal.
- j. Internet Connections Computer systems shall not be connected direct to the Internet unless protected by a firewall (a software based personal firewall is the minimum) which is acceptable to the Authority’s Principal Security Advisor.
- k. Disposal Before IT storage media (e.g. disks) are disposed of, an erasure product shall be used to overwrite the data. This is a more thorough process than deletion of files, which does not remove the data.

Laptops

- 17. Laptops holding any MoD supplied information are to have, as a minimum, a FIPS 140-2 approved full disk encryption solution installed.
- 18. Unencrypted laptops not on a secure site are to be recalled and only used or stored in an appropriately secure location until further notice or until approved full encryption is installed. Where the encryption policy cannot be met, a Risk Balance Case that fully explains why the policy cannot be complied with and the mitigation plan, which should explain any limitations on the use of the system, is to be submitted to the Authority for consideration. Unencrypted laptops and drives containing personal data are not to be taken outside of secure sites (defined as either Government premises or a secured office on the Contractor premises). For the avoidance of doubt the term “drives” includes all removable, recordable media (e.g. memory sticks, compact flash, recordable optical media (e.g. CDs and DVDs), floppy discs and external hard drives.

19. Any token, touch memory device or password(s) associated with the encryption package is to be kept separate from the machine whenever the machine is not in use, left unattended or in transit.
20. Portable CIS devices are not to be left unattended in any public location. They are not to be left unattended in any motor vehicles either in view or in the boot or luggage compartment at any time. When the vehicle is being driven the CIS is to be secured out of sight in the glove compartment, boot or luggage compartment as appropriate to deter opportunist theft.

Loss and Incident Reporting

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

JSyCC WARP Contact Details

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

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

Telephone: Working Hours: 030 677 021 187

Out of Hours/Duty Officer Phone: 07768 558863

Fax: 01225 846904

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

Sub-Contracts

23. The Contractor may Sub-contract any elements of this Contract to Sub-contractors within the United Kingdom notifying the Authority. When doing so these security conditions shall be incorporated within the Sub-Contract document. The prior approval of the Authority shall be obtained should the Contractor wish to Sub-Contract any elements of the Contract to a Sub-Contractor in another country.

Publicity Material

24. Contractors wishing to release any publicity material or display hardware that arises from this Contract, whether directly or indirectly, or from a Defence related Private Venture activity, must seek the prior approval of the Authority. Publicity material includes open publication in the Contractor's publicity literature or website or through the media; displays at exhibitions in any country; lectures or symposia; scientific or technical papers, or any other occasion where members of the general public may have access to the information even if organised or sponsored by the MoD, Services or any other government department.

Destruction

25. As soon as no longer required OFFICIAL and OFFICIAL SENSITIVE information/material shall be destroyed in such a way as to make reconstitution very difficult or impossible, for example, by burning, shredding or tearing into small pieces. Unwanted OFFICIAL and OFFICIAL SENSITIVE information/material which cannot be destroyed in such a way shall be returned to the Authority.

Interpretation/Guidance

26. Advice regarding the interpretation of the above requirements should be sought from the Authority.
27. Further requirements, advice and guidance for the protection of MOD information at the level of OFFICIAL SENSITIVE and below can be found in Industrial Security Notices (ISNs) at:

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

Audit

28. Where considered necessary by the Authority the Contractor shall permit the inspection of the Contractors processes and facilities to ensure compliance with these requirements.

Schedule 9 – Governance

1 MANAGEMENT OF THE SERVICES

- 1.1 The Contractor and the Authority have each appointed a Contract Manager for the purposes of this Contract through whom the Services shall be managed on a day-to-day basis.
- 1.2 The Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.

2 CONTRACT MANAGEMENT GROUP (CMG)

Establishment and structure of the Boards

- 2.1 The CMG shall be established by the Authority for the purposes of this Contract on which both the Contractor and the Authority shall be represented by the following personnel: -

The Authority:

- (a) Head of the CMG;
- (b) Service Provision Manager;
- (c) Requirements Manager;
- (d) Demand Manager;
- (e) Integration Manager;
- (f) Finance Manager; and
- (g) Commercial Manager,

and their respective staff. The Authority may amend the above list of CMG members at any time upon notification to the Contractor Representative.

The Contractor:

- (h) Managing Director;
- (i) Operations Director;
- (j) Optimisation Director; and
- (k) Business Infrastructure Manager;

and their respective staff. The Contractor may amend the above list of CMG members at any time upon notification to the Authority Representative.

- 2.2 The first meeting of the CMG shall take place no later than 7 days after the Commencement Date .
- 2.3 In the event that either Party wishes to replace any of its appointed CMG Members, that Party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Authority CMG Member has at all times a counterpart Contractor CMG Member of equivalent seniority and expertise.

3 CMG meetings

- 3.1 Each Party shall ensure that its CMG Members shall make all reasonable efforts to attend CMG meetings at which that CMG Member's attendance is required. If any CMG Member is not able to attend a GMG meeting, that person shall use all reasonable endeavours to ensure that:
 - (a) a delegate attends the relevant meeting in his/her place who (wherever possible) is properly briefed and prepared; and
 - (b) that he/she is debriefed by such delegate after the CMG Meeting.

- 3.2 A chairperson shall be appointed by the Authority for each meeting identified in Annex A. The chairperson shall be responsible for:
- (a) scheduling CMG meetings;
 - (b) setting the agenda for CMG meetings and circulating to all attendees in advance of such meeting;
 - (c) chairing the CMG meetings;
 - (d) monitoring the progress of any follow up tasks and activities agreed to be carried out following CMG meetings;
 - (e) ensuring that minutes for CMG meetings are recorded and disseminated electronically to the appropriate persons and to all CMG meeting participants within seven Business Days after the CMG meeting; and
 - (f) facilitating the process or procedure by which any decision agreed at any CMG meeting is given effect in the appropriate manner.
- 3.3 CMG meetings shall be quorate as long as at least two representatives from each Party are present.
- 3.4 The Parties shall ensure, as far as reasonably practicable, that the CMG shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that CMG Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.
- 3.5 In exceptional circumstances and if agreed by both Parties, meetings may be held by telephone provided all participants can hear and speak to each other at the same time;
- 3.6 Minutes of all meetings shall be taken by the Contractor and shall be circulated in draft to the Authority as soon as practicable and in any event within 10 Business Days after the relevant meeting unless a longer time is agreed by the Parties acting reasonably. The Authority shall provide in writing any comments or amendments on the draft minutes to the Contractor within 10 Business Days of receipt of the draft minutes. The final version of the minutes shall be approved by the CMG at the next meeting of the CMG to take place after expiry of the time allowed for the Authority to comment on the draft minutes;
- 3.7 No meeting of any Committee may take place unless one representative of each Party is present;
- 3.8 CMG meetings shall take place at least monthly.
- 3.8.1 each quarterly meeting shall include a review of performance in the preceding quarter;
 - 3.8.2 an annual meeting shall include a review of the preceding 12 month period.
- 3.9 Either Party may notify the other Party of the date, time and location of any of the meetings provided for in this Schedule, by giving not less than 15 Business Days' notice in writing (unless a shorter time frame is agreed) of the date, time and place of such meeting, which meeting shall be held on the date so notified.
- 3.10 The Authority and the Contractor shall each be entitled to substitute any of its representatives to the Committees with any other appropriately empowered person (including any person whose role differs from that of the representative being replaced) without giving notice to the other party.
- 4 COSTS**
- 4.1 Each Party shall bear all its own costs relating to the operation of the governance process described in this Schedule 9

- 4.2 The costs of any facilities (including use of buildings and infrastructure) provided for the purpose of the operation of the governance process described in this Schedule 9 shall be borne by the Party making the provision.

5 MATTERS REQUIRING AUTHORITY OR CONTRACTOR APPROVAL PURSUANT TO THIS CONTRACT

- 5.1 Where this Contract expressly provides a requirement for the agreement, consent or approval of or to any matter by the Contractor, the following individuals and/or post-holders are authorised to grant that agreement, consent or approval on behalf of the Contractor:
- (a) The Contractor's Contract Manager
 - (b) any other individual or post-holder notified from time to time in writing by the Contractor's Contract Manager to the Authority Contract Manager but only to the extent of that individual or post-holder's authorisation (as set out in such notice),
- and provided always that amendments to this Contract may only be authorised in accordance with the process set out in DEFCON 620 (Contract Change Control Procedure):
- 5.2 Where this Contract expressly provides a requirement for the agreement, consent or approval of or to any matter by the Authority, the following individuals and/or post-holders are authorised to grant that agreement, consent or approval on behalf of the Authority:
- (a) the Authority Contract Manager;
 - (b) any other individual or post-holder notified from time to time in writing by the Authority Contract Manager to the Contractors Contract Manager but only to the extent of that individual or post-holder's authorisation (as set out in such notice),
- and provided always that amendments to this Contract may only be authorised in accordance with the process set out within DEFCON 620 Contract Change Control Procedure
- 5.3 For the avoidance of doubt, other than as provided for in Paragraphs 4.1 and 4.2, the CMG is not a decision making body and does not have any authority to vary any of the provisions of this Contract except as in accordance with its terms and conditions.

6 ADDITIONAL GOVERNANCE BODIES

- 6.1 The Parties agree that from time to time additional governance bodies shall be created to manage specific areas of the contract. An example of such bodies is detailed at Table 35 in Annex B to this Schedule 9. The terms of reference of any such body shall be agreed by the CMG, noting that any change to the Contract maybe proposed, but shall not considered a change to the Contract until ratified by the CMG and in accordance with the process set out at DEFCON 620 (Contract Change Control Procedure).

7 REPORTS

- 7.1 The Contractor shall supply the Authority with reports on the progress of the Contract. Reports shall detail as a minimum:
- (a) Performance / Delivery of the Contractor Deliverables;
 - (b) Risks and opportunities
 - (c) Innovative Proposals;
 - (d) Any other information specified in the Contract;
 - (e) Any other information reasonably requested by the Authority.
- 7.2 Reports shall be provided to the addressees in boxes 1 and 2 of the DEFFORM 111 in the form and frequency agreed between the Parties.

- 7.3 The provision of these reports by the Contractor and receipt by the Authority shall be in accordance with DEFCON 525 (Acceptance). These reports shall not prejudice any rights or obligations of the Authority or the Contractor under the Contract.

Annex A to Schedule 9 (CMG Terms of Reference)

The CMG will:

- (a) provide senior level guidance, leadership and strategy for the overall delivery of the Services;
- (b) be the point of escalation for Change management;
- (c) Comprehensive oversight of the Services and for the senior management of the operational relationship between the Parties;
- (d) receive reports from the Contract Managers on matters such as issues relating to delivery of existing Services and performance against Performance Indicators, progress against the Implementation Plan (including the progress of Transferring WIP) and possible future developments;
- (e) review service management, co-ordination of individual projects and any integration issues;
- (f) consider and resolve Disputes (including Disputes as to the cause of a Delay or the performance of the Services) in the first instance and if necessary, escalate the Dispute
- (g) develop operational/Contractor relationship and develop and propose the relationship development strategy and ensure the implementation of the same.
- (h) analyse and record the impact of all Changes, specifically whether the proposed Change:
 - (i) has an impact on other areas or aspects of this Contract and/or other documentation relating to the Services;
 - (ii) has an impact on the ability of the Authority to meet its agreed business needs within agreed time-scales;
 - (iii) will raise any risks or issues relating to the proposed Change; and
 - (iv) will provide value for money in consideration of any changes to the Financial Model, future Charges and/or Performance Indicators and Target Performance Levels;
- (i) provide recommendations, seek guidance and authorisation from the Programme Board as required; and
- (j) approve or reject (close) all proposed Changes.

ANNUAL REVIEW

- 1 An annual review meeting shall be held throughout the Term on a date to be agreed between the Parties.
- 2 The meetings shall be attended by the [insert role] of the Contractor and the [insert role] of the Authority and any other persons considered by the Authority necessary for the review.

OFFICIAL SENSITIVE – COMMERCIAL

Annex B to Schedule 9 (Additional Governance Bodies)

Ser	Meeting	Outline Purpose	Frequency	Chair	Attendees	Remarks
1	Joint Steering Committee (JSC)	Provide strategic direction and resolve issues reported by the PMRC	6 mthly	Army HQ (AHQ)	Authority: AHQ (OF5 co-chair), MITER AH & CMC Reps Contractor (C): as required	Sits prior to the JSC
2	Performance Monitoring Review Committee (PMRC)	Monitor all aspects of Service planning & performance	Qtrly	Joint	Authority: MITER AH (co-chair), CMC Reps & FLC reps C: as required	Reports to the PMRC
3	Fleet Management Review Committee	Monitor the SP's Asset Refurb/Replacement Programme	Qtrly	Joint	Authority: CMC Reps & FLC reps (as required) C: as required	Reports to the PMRC
4	Project Safety Panel	Coordinate all safety aspects of the contract	6 mthly	Authority	Authority: CMC Reps, Safety Manager & FLC reps C: as required	Reports to the PMRC
5	Logistic Support Committee	Monitor & manage all logistics issues	6 monthly	Authority	Authority: ILSM, CMC Reps & FLC reps (as required) C: as required	
6	Sustainability Working Group	Manage the technical, support and sustainability of the MITER fleet	Bi-monthly/Qtrly	Joint	Authority: CMC Reps & FLC reps (as required) C: as required	Reports to the PMRC
7	Security Working Group	Address all security issues including JSP440 accreditation and personnel vetting	Monthly, then 6 monthly	Authority	Authority, DAIS Accreditor, C reps	

OFFICIAL SENSITIVE - COMMERCIAL

OFFICIAL SENSITIVE – COMMERCIAL

Ser	Meeting	Outline Purpose	Frequency	Chair	Attendees	Remarks
8	Commercial Working Group	Identify, monitor, negotiate, and escalate commercial issues	Monthly	Authority	Authority: Commercial Officer, CMC Reps C: as required	Reports to the PMRC
9	MFIS Working Group	To develop and innovate use of MITER	Qily then 6 mthly	Joint	Authority: CMC Reps & FLC reps (as required) C: as required	Reports to the PMRC
10	Service Delivery Working Group	Monitor all aspects of Service Delivery for the contract	Qily/as required	Joint	Authority: CMC Reps & FLC reps (as required) C: as required	Reports to the PMRC
11	Contract Management Group (CMG)	IAW annex A Schedule 9 CMG terms of reference Inc Demand review & Escalation	Monthly + Qily and Annual reviews	Appointed by the Authority. AB takes minutes	IAW 5.1.9 above + DM & FLC for Demand review	1st meeting within 7 days of Commencement Date
12	Transition Steering Group (TSG)	Review progress against key milestones. Address strategic Risks.	Bi Weekly to FSC	Snr Authority rep	C:- Transition Dir, C:- Transition Programme mgr, MITER pro team mgr	See project review group. Reports to CMG
13	Project Review Group (PRG)	Progress, Monitor- resolve local issues, report and escalate to TSG.	Bi weekly to FSC	AB Transition prog Mgr	Existing CMTs, Supply chain as req'd AB Trans Mgmt & IT reps	Reports to TSG
14	Demand Forecast Meeting	Future Demand Assumption planning 1, 3 & 6 month timeframes	Monthly	Alternate @ FLC and DM HQ's	C: Asset Managers FLC + DM Ops Mgr	Feeds RWG and CMG
15	Requirements Working Group (RWG)	Collaborative approach to capture requirements, changes, LFE and issues = Requirements sign off	Quarterly to ISC – V1 sign off – then 6 monthly + Annual Fleet / service	Authority Requirements Manager/Army HQ Sponsor	CMG reps, Tri Service reps, DM, FLC. Planned interviews & reviews	IAW Annex B – Key System Requirements, change and urgent requirements

OFFICIAL SENSITIVE - COMMERCIAL

OFFICIAL SENSITIVE – COMMERCIAL

Ser	Meeting	Outline Purpose	Frequency	Chair	Attendees	Remarks
16	Training Requirements Working Group	Review and approve Specific TNA for new Equipment + liaison Tri Service / DM annual plan+ updates to cover all Authority MITTER Training	Qlty to FSC – then 6 monthly	Joint	CMG – Tri + DM service reps AB – Training / WFA Mgr, ILS Mgr	
17	Defence Munitions ADO Working Group	Work placement schedule and fulfilment to maintain currency and competency. Key agenda focused on the very specific requirement of DM – Asset demands/ specifications and service.	6 Monthly	DM – Operations Support Mgr	ADO's all DM establishments. C: Op's and Asset Mgrs.	Location determined by Chair.
18	TLB's Working Group	A formal review of performance v demands by Service +DM Inc service specific KPI and Costs	6 Monthly	CMG	TLB's Tri Service, CMG, AB Op's Dir + Com/ Fin-Dir + Contract Mgr+SHEQ	Outputs to RWG and CMG ORIC recording
19	Overseas Visit / Audit plan meeting		Annual	Joint	CMG, TLB's as required. C: Op's & Asset Directors	Outputs report Qlty
20	Capability integration Working Group (or equivalent)	Authority Chaired committee to ensure that all Defence Line of Development (DLODs) are met for new Capability integration from the ArmeyBriggs Asset Replacement Programme (ARP). Resource Planning	As required depending on the phase of ARP which when running could be 1/4ly	Authority	Relevant Service (usually Army) Equipment Sponsor/s from Army HQ, CMG Staff responsible for ARP, relevant Authority Training establishment	Full CIP 0-7 Procurement process required for mandated for 'Green' Equipment lines requiring an Integrated

OFFICIAL SENSITIVE - COMMERCIAL

Ser	Meeting	Outline Purpose	Frequency	Chair	Attendees	Remarks
		<p>Dependencies Management (Training schools and Trials units etc) Verification, Validation and acceptance of the Asset Replacement Programme.</p>			<p>representative, AmeyBriggs Optimisation Director, Project Manager and DLoD SME's as required</p>	<p>Logistic Support (ILS) system For COTS Equipment the AmeyBriggs Site Survey Form will be used to assess Role Safety Case and DLoD impact (See Appendix 5C_MITER Site Survey & DLoD Assessment Form)</p>
21	Green Fleet Training Steering Committee	<p>Authority Chaired Meeting called to ensure the Training DLoD for new Equipment from the ARP have integrated training requirements signed off in accordance with the programme timelines Review all safety cases and manage the introduction of new safety cases Environmental impact management POSEMS and POEMS</p>	As required by ARP or at least 1/4ly when the ARP is running	Authority Training Sponsor/Army HQ Rep	Authority Requirements Manager, CMG representatives, relevant Authority Training school	
22	Equipment Safety Panel		6 Monthly	AmeyBriggs ILS Manager	Authority Users, SME and H&S representatives, Project Staff	Annual review

OFFICIAL SENSITIVE – COMMERCIAL

Ser	Meeting	Outline Purpose	Frequency	Chair	Attendees	Remarks
23	Whole Force Approach Working Group	Authority Chaired Meeting to review all aspects of the WFA	Every fortnight until Employment model agreed. Then Quarterly	Authority	Authority: CMC Reps & FLC reps AB – WFA Manager and WFA (Pers) Op & Trg Manager	

Table 35: Additional Governance Bodies

Schedule 10 – Personnel

Part A – TUPE

Transfer Arrangements - Part 1 – Employee Transfer Arrangements on Entry

1 DEFINITIONS

- 1.1 In this Schedule 10 Part 1, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) of the Contract.
- 1.2 Without prejudice to Schedule 1 (Definitions) of the Contract, in this Schedule 10 Part 1 unless the context otherwise requires:
- "Employing Subcontractor" means any subcontractor of the Contractor providing any part of the Services who is or is to be the employer of a Previous Contractor Employee or an Unexpected Employee;
- "New Provider" means any replacement service provider or providers engaged to provide the Services (or part thereof) or substantially similar services or the Authority itself where the Services or substantially similar services or part thereof continue to be provided by the Authority after partial termination, termination or expiry of this Contract;
- "Previous Contractors" means ALC, a joint venture between Amey PLC and Babcock for the Delivery of the C Vehicles Contract (EVP/7 and Briggs Defence for the Delivery of the DMHE Contract (SPTT/0015) and the Protected Plant Contract (OSVP/0011)
- "Previous Contractor Employee" means an employee of a Previous Contractor (including but not limited to Former Authority Employees) who immediately before the Relevant Transfer Date is assigned to carry out the services to be carried out by the Contractor or Subcontractor under this Contract and who has not been dismissed, resigned, been reassigned or objected to the Relevant Transfer; "Relevant Statutory Scheme" has the same meaning as in Regulation 8 of the Transfer Regulations;

2 PREVIOUS CONTRACTOR EMPLOYEES

2.1 Employee Information

- 2.1.1 No later than three months prior to the Relevant Transfer Date the Authority shall provide to the Contractor the information listed in Appendix 2 of this Schedule 10 Part A in respect of Previous Contractor Employees to the extent that such information has been provided to the Authority by the Previous Contractor.
- 2.1.2 The Authority shall provide the Contractor with any update to the information provided under paragraph 2.1.1 as soon as is reasonably practicable, to the extent that such information has been provided to the Authority by the Previous Contractor.
- 2.1.3 The Contractor shall provide any information provided to it by the Authority pursuant to paragraph 2.1.1 to an Employing Subcontractor within seven Business Days of receipt to the extent that such Previous Contractor Employees are to transfer to an Employing Subcontractor under a Relevant Transfer on the Relevant Transfer Date.
- 2.1.4 Paragraph 2.1.1 is subject to the Authority and any Previous Contractor's obligations in respect of the Data Protection Legislation and any data provided by the Authority in accordance with paragraph 2.1.1 shall be provided in anonymous form in order to enable its disclosure. To the extent anonymous data has been provided by the Authority

pursuant to its obligations under Paragraph 2.1.1 above, the Authority shall provide full data no later than 28 days prior to the Relevant Transfer.

- 2.1.5 The Authority does not warrant the accuracy of the information provided under paragraph 2.1.1.

2.2 Obligations in respect of Previous Contractor Employees

2.2.1 The Contractor and the Authority acknowledge (and the Contractor shall procure that the Employing Subcontractor acknowledges) that the provision of the Services under this Contract will constitute a Relevant Transfer.

2.2.2 The Contractor agrees (and will procure that the Employing Subcontractor agrees) that from the Relevant Transfer Date the contracts of employment of any Previous Contractor Employees together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme) will take effect as if originally made between the Contractor or an Employing Subcontractor and the Previous Contractor Employees (or the relevant trade union, as the case may be) subject to any variations to such contracts of employment made pursuant to Regulation 9 of the Transfer Regulations, where applicable.

2.2.3 Save for any liabilities in respect of Previous Contractor Employees under a Relevant Statutory Scheme or Schemes, the Contractor or Employing Subcontractor (as the case may be) shall have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken after the Relevant Transfer Date as appropriate, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to the Previous Contractor Employees with effect from and including the Relevant Transfer Date and shall indemnify the Authority and the Previous Contractor in respect of the same.

2.3 Indemnities

2.3.1 The Contractor shall indemnify and hold harmless the Authority and any Previous Contractor against all demands, claims, liabilities, losses and damages, costs and expenses (including all interest, penalties, legal and other costs and expenses) together with any applicable Value Added and similar taxes or liability for deduction of PAYE tax properly incurred by the Authority or any Previous Contractor arising out of or in connection with:

- 2.3.1.1 any breach by the Contractor and/or any Employing Subcontractor of their obligations under Regulation 13 of the Transfer Regulations;
- 2.3.1.2 any act or proposal by the Contractor or any Employing Subcontractor prior to or following the Relevant Transfer Date which amounts to a repudiatory breach of contract as referred to in Regulation 4(11) of the Transfer Regulations and/or to make a substantial change in working conditions of any Previous Contractor Employee to the material detriment of that employee. For the purposes of this subparagraph the expressions "repudiatory breach", "substantial change" and "material detriment" shall have the same meanings as for the purposes of Regulation 4(9) and 4(11) of the Transfer Regulations; and
- 2.3.1.3 any collective agreement or any arrangement with any trade union or staff association after the Previous Contractor Relevant Transfer Date.
- 2.3.1.4 any variations or proposed variations to any Previous Contractor Employee's terms and conditions of employment pursuant to regulations 4(5) and 4(5B) of the Transfer Regulations.

3 GENERAL PROVISIONS APPLICABLE TO PREVIOUS CONTRACTOR EMPLOYEES AND CONTRACTOR PERSONNEL

3.1 Contractor Indemnity

3.1.1 The Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with the employment or termination of employment by the Contractor or any Employing Subcontractor of any person (including the Previous Contractor Employees) engaged in connection with the provision of the Services during the term of this Contract.

3.2 Post Transfer Reporting

3.2.1 The Contractor shall upon request by the Authority provide (or shall procure that an Employing Subcontractor shall provide) the Authority with the following information in respect of the employees who are wholly or mainly employed, assigned or engaged in providing the Services:

- 3.2.1.1 any proposed, agreed or imposed changes to terms and conditions of service;
- 3.2.1.2 disputes relating to compliance with the Transfer Regulations which are regarded as unresolved by a recognised Trade Union;
- 3.2.1.3 any court action or tribunal proceedings relating to compliance with the Transfer Regulations;
- 3.2.1.4 completed court action or tribunal proceedings relating to compliance with the Transfer Regulations; and
- 3.2.1.5 out of court settlements relating to compliance with the Transfer Regulations if possible having regard to the wording of the settlement.

Appendix 1 to Part A– List of Former Authority Employees

Appendix 2 to Part A – Personnel Information to be Released Pursuant to this Contract

1 Pursuant to paragraph 2.1.1 of this Schedule 10 Part 1, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) will be provided to the extent it is not included within the written statement of employment particulars:

1.1 **Personal, Employment and Career**

- 1.1.1 Age;
- 1.1.2 Security Vetting Clearance;
- 1.1.3 Job title;
- 1.1.4 Work location;
- 1.1.5 Conditioned hours of work;
- 1.1.6 Employment Status;
- 1.1.7 Details of training and operating licensing required for Statutory and Health and Safety reasons;
- 1.1.8 Details of training or sponsorship commitments;
- 1.1.9 Standard Annual leave entitlement and current leave year entitlement and record;
- 1.1.10 Annual leave reckonable service date;
- 1.1.11 Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
- 1.1.12 Information of any legal proceedings between employees and their employer within the previous two years or any such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
- 1.1.13 Issue of Uniform/Protective Clothing;
- 1.1.14 Working Time Directive opt-out forms; and
- 1.1.15 Date from which the latest period of continuous employment began.

1.2 **Performance Appraisal**

- 1.2.1 The current year's Performance Appraisal;
- 1.2.2 Current year's training plan (if it exists); and
- 1.2.3 Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;

1.3 **Superannuation and Pay**

- 1.3.1 Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken within the last two years;
- 1.3.2 Annual salary and rates of pay band/grade;
- 1.3.3 Shifts, unsociable hours or other premium rates of pay;
- 1.3.4 Overtime history for the preceding twelve-month period;
- 1.3.5 Allowances and bonuses for the preceding twelve-month period;
- 1.3.6 Details of outstanding loan, advances on salary or debts;
- 1.3.7 Cumulative pay for tax and pension purposes;

OFFICIAL SENSITIVE – COMMERCIAL

- 1.3.8 Cumulative tax paid;
 - 1.3.9 National Insurance Number;
 - 1.3.10 National Insurance contribution rate;
 - 1.3.11 Other payments or deductions being made for statutory reasons;
 - 1.3.12 Any other voluntary deductions from pay;
 - 1.3.13 Civil Service Pension Scheme Membership (Opt-out of Civil Service Pension Scheme, Classic, Classic Plus, Premium, Defined Contribution) or, where relevant Contractor Scheme or other Contractor/Subcontractor pension scheme membership;
 - 1.3.14 For pension purposes, the notional reckonable service date;
 - 1.3.15 Pensionable pay history for three years to date of transfer;
 - 1.3.16 Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
 - 1.3.17 Percentage of pay currently contributed under any added years arrangements.
- 1.4 **Medical**
- 1.4.1 Sickness and absence records for the immediately preceding four-year period; and
 - 1.4.2 Details of any active restoring efficiency case for health purposes.
- 1.5 **Disciplinary**
- 1.5.1 Details of any active restoring efficiency case for reasons of performance; and
 - 1.5.2 Details of any active disciplinary cases where corrective action is ongoing.
- 1.6 **Further information**
- 1.6.1 Information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995 or the Equality Act 2010;
 - 1.6.2 Short term variations to attendance hours to accommodate a domestic situation;
 - 1.6.3 Individuals that are members of the Reserves, or staff may have been granted special leave as a School Governor; and
 - 1.6.4 Information about any maternity or other statutory leave or other absence from work.

Appendix 2 Part B – Personnel Information to be Released Pursuant to this Contract

Information to be provided 28 days prior to the Relevant Transfer Date:

- 1.1. Employee's full name;
- 1.2. Date of Birth
- 1.3. Home address;
- 1.4. Bank/building society account details for payroll purposes
- 1.5. Tax Code.

Transfer Regulations Part 2 – Staff Transfer Arrangements on Exit

1 DEFINITIONS

- 1.1 In this Schedule 10 Part 2, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) or Schedule 10 Part 1 of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) or Schedule 10 Part 1 of the Contract.
- 1.2 Without prejudice to Schedule 1 (Definitions) of the Contract or Schedule 10, Part 1, in this Schedule 10 Part 2 unless the context otherwise requires:
 - 1.2.1 "**Employee Liability Information**" has the same meaning as in Regulation 11(2) of the Transfer Regulations;
 - 1.2.2 "**Employing Subcontractor**" means any subcontractor of the Contractor providing all or any part of the Services who employs or engages any person in providing the Services;
 - 1.2.3 "**Subsequent Relevant Transfer**" means a transfer of the employment of Subsequent Transferring Employees from the Contractor or any Employing Subcontractor to a New Provider or the Authority under the Transfer Regulations;
 - 1.2.4 "**Subsequent Transfer Date**" means the date on which the transfer of a Subsequent Transferring Employee takes place under the Transfer Regulations;
 - 1.2.5 "**Subsequent Transferring Employee**" means an employee wholly or mainly employed or otherwise assigned to the Services (or in respect of partial termination, the relevant part of the Services) whose employment transfers under the Transfer Regulations from the Contractor or any Employing Subcontractor to a New Provider;

2 EMPLOYMENT

2.1 Information on Re-tender, Partial Termination, Termination or Expiry

- 2.1.1 No earlier than three years preceding the termination, partial termination or Expiry of this Contract or a potential Subsequent Transfer Date or at any time after the service of a notice to terminate this Contract or the provision of any of the Services (whether in whole or part) or on receipt of a written request by the Authority, the Contractor shall (and shall procure that any Employing Subcontractor shall):
 - 2.1.1.1 supply to the Authority such information as the Authority may reasonably require in order to consider the application of the Transfer Regulations on the termination, partial termination or expiry of this Contract;
 - 2.1.1.2 supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Appendix 1 to this Schedule 10 Part 2 relating to the employees who are wholly or mainly employed, assigned or engaged in providing the Services or part of the Services under this Contract who may be subject to a Subsequent Relevant Transfer, separately identifying those former employees of the Authority whose employment previously transferred to the Contractor and/or Employing Subcontractor and who continue to be eligible under New Fair Deal (as defined and set out in Part 3 (Pension Matters) of this Schedule);
 - 2.1.1.3 provide the information promptly and in any event not later than three months from the date when a request for such information is made and at no cost to the Authority;
 - 2.1.1.4 acknowledge that the Authority will use the information for informing any prospective New Provider for any services which are substantially the same as the Services or part of the Services provided pursuant to this Contract;
 - 2.1.1.5 inform the Authority of any changes to the information provided under paragraph 2.1.1.1 or 2.1.1.2 up to the Subsequent Transfer Date as soon as reasonably practicable.

- 2.1.2 Three months preceding the termination, partial termination or expiry of this Contract or on receipt of a written request from the Authority the Contractor shall:
- 2.1.2.1 ensure that Employee Liability Information and such information listed in Part A of Appendix 2 of Part 2 of this Schedule 10 (Personnel Information) relating to the Subsequent Transferring Employees is provided to the Authority and/or any New Provider;
 - 2.1.2.2 inform the Authority and/or any New Provider of any changes to the information provided under this Paragraph 2.1.2 up to any Subsequent Transfer Date as soon as reasonably practicable;
 - 2.1.2.3 enable and assist the Authority and/or any New Provider or any subcontractor of a New Provider to communicate with and meet those employees and their trade union or other employee representatives.
- 2.1.3 No later than 28 days prior to the Subsequent Transfer Date the Contractor shall provide the Authority and/or any New Provider with a final list of the Subsequent Transferring Employees together with the information listed in Part B of Appendix 2 of Part 2 of this Schedule 10 (Personnel Information) relating to the Subsequent Transferring Employees. The Contractor shall inform the Authority and/or New Provider of any changes to this list or information up to the Subsequent Transfer Date.
- 2.1.4 Paragraphs 2.1.1 and 2.1.2 of this Appendix are subject to the Contractor's obligations in respect of the Data Protection Legislation and the Contractor shall use its best endeavours to obtain the consent of its employees (and shall procure that its Subcontractors use their best endeavours to obtain the consent of their employees) to the extent necessary under the Data Protection Legislation or provide the data in an anonymous form in order to enable disclosure of the information required under paragraphs 2.1.1 and 2.1.2. To the extent anonymous data has been provided by the Contractor pursuant to its obligations under Paragraph 2.1.1 and 2.1.2 above, the Contractor shall provide full data to the Authority no later than 28 days prior to the Subsequent Transfer Date.
- 2.1.5 On notification to the Contractor by the Authority of a New Provider or within the period of six months prior to the Termination Date or after service of a notice to terminate this Contract (whether in whole or in part), whichever is earlier and in any event on receipt of a written request by the Authority, the Contractor shall not and shall procure that an Employing Subcontractor shall not:
- 2.1.5.1 materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the Services under this Contract; or
 - 2.1.5.2 replace or re-deploy from the Services any person wholly or mainly employed or engaged in providing the Services, or materially increase or decrease the number of persons performing the Services under this Contract or the working time spent on the Services (or any part thereof); or
 - 2.1.5.3 reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services (or any part thereof) any duties unconnected with the Services (or any part thereof) under this Contract; or
 - 2.1.5.4 terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the Services (or any part thereof) under this Contract other than in the case of serious misconduct or for poor performance,

save in the ordinary course of business and with the prior written consent of the Authority (not to be unreasonably withheld or delayed) and the Contractor shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of paragraphs 2.1.1, , 2.1.2, 2.1.3 or 2.1.5 of this Schedule 10 Part 2.

- 2.1.6 The Authority may at any time prior to the period set out in paragraph 2.1.5 of this Schedule 10 Part 2 request from the Contractor any of the information in sections 1(a) to (d) of Appendix 1 and the Contractor shall and shall procure any Subcontractor will provide the information requested within 28 days of receipt of that request.

2.2 Obligations in Respect of Subsequent Transferring Employees

- 2.2.1 To the extent that the Transfer Regulations apply on expiry, termination or partial termination of this contract, the Contractor shall and shall procure any Employing Subcontractor shall and the Authority shall and shall procure that a New Provider shall in such circumstances:

- 2.2.1.1 before and in relation to the Subsequent Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Subsequent Transferring Employees to the Authority and/or a New Provider; and
- 2.2.1.2 comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13 of the Transfer Regulations.

2.3 Unexpected Subsequent Transferring Employees

- 2.3.1 If a claim or allegation is made by an employee or former employee of the Contractor or any Employing Subcontractor who is not named on the list of Subsequent Transferring Employees provided under paragraph 2.1.3 (an "**Unexpected Subsequent Transferring Employee**") that he has or should have transferred to the Authority and/or New Provider by virtue of the Transfer Regulations, the Party receiving the claim or allegation shall notify the other Party (or the Contractor shall notify the Authority on the Subcontractor's behalf and the Authority shall notify the Contractor on the New Provider's behalf) in writing as soon as reasonably practicable and no later than ten Business Days after receiving notification of the Unexpected Subsequent Transferring Employee's claim or allegation, whereupon:

- 2.3.1.1 the Contractor shall (or shall procure that the Employing Subcontractor shall), as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Subsequent Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
- 2.3.1.2 if the Unexpected Subsequent Transferring Employee's claim or allegation is not withdrawn or resolved the Contractor shall notify the Authority (who will notify any New Provider who is a party to such claim or allegation), and the Authority (insofar as it is permitted) and/or New Provider (as appropriate) shall employ the Unexpected Subsequent Transferring Employee or as soon as reasonably practicable, (subject to compliance with its obligations at paragraph 2.3.1.3.3), serve notice to terminate the Unexpected Subsequent Transferring Employee's employment in accordance with his contract of employment; and
- 2.3.1.3 the Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any of the following liabilities incurred by the Authority or New Provider in dealing with or disposing of the Unexpected Subsequent Transferring Employee's claim or allegation:

- 2.3.1.3.1 any additional costs of employing the Unexpected Subsequent Transferring Employee up to the date of dismissal where the Unexpected Subsequent Transferring Employee has been dismissed in accordance with paragraph 2.3.1.2;
 - 2.3.1.3.2 any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Subsequent Transferring Employee;
 - 2.3.1.3.3 any liabilities relating to the termination of the Unexpected Subsequent Transferring Employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:
 - 2.3.1.3.3.1 to a failure by the Authority or a New Provider to act reasonably to mitigate the costs of dismissing such person);
 - 2.3.1.3.3.2 directly or indirectly to the procedure followed by the Authority or a New Provider in dismissing the Unexpected Transferee; or
 - 2.3.1.3.3.3 to the acts/omissions of the Authority or a New Provider not wholly connected to the dismissal of that person;
 - 2.3.1.3.4 any liabilities incurred under a settlement of the Unexpected Subsequent Transferring Employee's claim which was reached with the express permission of the Contractor (not to be unreasonably withheld or delayed);
 - 2.3.1.3.5 reasonable administrative costs incurred by the Authority or New Provider in dealing with the Unexpected Subsequent Transferring Employee's claim or allegation, subject to a cap per Unexpected Subsequent Transferring Employee of [REDACTED] and
 - 2.3.1.3.6 legal and other professional costs reasonably incurred;
- 2.3.2 the Authority shall be deemed to have waived its right to an indemnity under paragraph 2.3.1.3 if it fails without reasonable cause to take, or fails to procure any New Provider takes, any action in accordance with any of the timescales referred to in this paragraph 2.3.

2.4 **Indemnities on Subsequent transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of the Contract**

- 2.4.1 If on the expiry, termination or partial termination of the Contract there is a Subsequent Relevant Transfer, the Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Contractor or any Subcontractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee of the Contractor or any Subcontractor affected by the Subsequent Relevant Transfer (as defined by Regulation 13 of the Transfer Regulations), save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Authority or the New Provider.
- 2.4.2 If there is a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of, or in connection with:

2.4.2.1 any claim or claims by a Subsequent Transferring Employee at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the Authority or a New Provider or a subcontractor of a New Provider during the period from and including the Subsequent Transfer Date;

2.4.2.2 subject to paragraph 2.4.1 any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Authority or a New Provider or a subcontractor of a New Provider to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the New Provider or any other employee of the Authority or any New Provider affected by the Subsequent Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations),

save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Contractor or any Employing Subcontractor.

2.4.3 In the event of a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change by the Authority [or a New Provider or any subcontractor of a New Provider] on or after the Subsequent Transfer Date to the working conditions of any Subsequent Transferring Employee to the material detriment of any such Subsequent Transferring Employee. For the purposes of this paragraph 2.4.3, the expressions "substantial change" and "material detriment" shall have the meanings as are ascribed to them for the purposes of Regulation 4(9) of the Transfer Regulations.

2.5 Redundancy Liability on Partial Termination, Termination or Expiry

2.5.1 On expiry, partial termination or termination (other than any redundancy costs allowed under DEFCON 656b Termination for Convenience) of this Contract, any redundancy costs shall be the responsibility of the Contractor.

2.6 Contracts (Rights of Third Parties) Act 1999

2.6.1 Pursuant to the terms of DEFCON 537 (Rights of Third Parties), a New Provider may enforce the terms of paragraph 2.3 and 2.4 against the Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.

2.6.2 The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.

2.6.3 Nothing in this paragraph 2.6 shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Contract.

2.7 General

2.7.1 The Contractor shall not recover any Costs and/or other losses under this Schedule 10 where such Costs and/or losses are recoverable by the Contractor elsewhere in this Contract and/or are recoverable under the Transfer Regulations or otherwise.

Appendix 1 to Part 2. Contractor Personnel Related Information to be Released upon Re-tendering Where the Transfer Regulations Apply

- 1 Pursuant to paragraph 2.1.1.2 of Part 2 of this Schedule 10, the following information will be provided:
 - 1.1 The total number of individual employees (including any employees of Subcontractors) that are currently engaged, assigned or employed in providing the Services and who may therefore be transferred. Alternatively the Contractor should provide information why any of their employees or those of their Subcontractors will not transfer;
 - 1.2 The total number of posts or proportion of posts expressed as a full-time equivalent value that currently undertakes the work that is to transfer;
 - 1.3 The preceding 12 months total pay costs – (Pay, benefits employee/employer ERNIC and Overtime);
 - 1.4 Total redundancy liability including any enhanced contractual payments;
- 2 In respect of those employees included in the total at 1.1, the following information:
 - 2.1 Age (not date of Birth);
 - 2.2 Employment Status (i.e. Fixed Term, Casual, Permanent);
 - 2.3 Length of current period of continuous employment (in years, months) and notice entitlement;
 - 2.4 Weekly conditioned hours of attendance (gross);
 - 2.5 Standard Annual Holiday Entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years);
 - 2.6 Pension Scheme Membership (including for Former Authority Employees or other former Civil Servants who are current members of the Civil Service Pension Schemes (PCSPS/alpha));
 - 2.7 Pension and redundancy liability information;
 - 2.8 Annual Salary;
 - 2.9 Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);
 - 2.10 Details of attendance patterns that attract enhanced rates of pay or allowances;
 - 2.11 Regular/recurring allowances;
 - 2.12 Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants);
- 3 The information to be provided under this Appendix 1 should not identify an individual employee by name or other unique personal identifier unless such information is being provided 28 days prior to the Subsequent Transfer Date.
- 4 The Contractor will provide (and will procure that the Subcontractors provide) the Authority/tenderers with access to the Contractor's and Subcontractor's general employment terms and conditions applicable to those employees identified at paragraph 1.1 of this Appendix 1

Appendix 2 to Part 2. Personnel Information to be released Pursuant to this Contract

Part A

1 Pursuant to paragraph 2.1.2 of this Schedule 10, Part 2, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) which will be provided to the extent it is not included within the written statement of employment particulars:

1.1 Personal, Employment and Career

- 1.1.1 Age;
- 1.1.2 Security Vetting Clearance;
- 1.1.3 Job title;
- 1.1.4 Work location;
- 1.1.5 Conditioned hours of work;
- 1.1.6 Employment Status;
- 1.1.7 Details of training and operating licensing required for Statutory and Health and Safety reasons;
- 1.1.8 Details of training or sponsorship commitments;
- 1.1.9 Standard Annual leave entitlement and current leave year entitlement and record;
- 1.1.10 Annual leave reckonable service date;
- 1.1.11 Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
- 1.1.12 Information of any legal proceedings between employees and their employer within the previous two years or such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
- 1.1.13 Issue of Uniform/Protective Clothing;
- 1.1.14 Working Time Directive opt-out forms; and
- 1.1.15 Date from which the latest period of continuous employment began.

1.2 Performance Appraisal

- 1.2.1 The current year's Performance Appraisal;
- 1.2.2 Current year's training plan (if it exists); and
- 1.2.3 Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements.

1.3 Superannuation and Pay

- 1.3.1 Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken during the last two years;
- 1.3.2 Annual salary and rates of pay band/grade;
- 1.3.3 Shifts, unsociable hours or other premium rates of pay;
- 1.3.4 Overtime history for the preceding twelve-month period;
- 1.3.5 Allowances and bonuses for the preceding twelve-month period;
- 1.3.6 Details of outstanding loan, advances on salary or debts;
- 1.3.7 Cumulative pay for tax and pension purposes;

- 1.3.8 Cumulative tax paid;
 - 1.3.9 National Insurance Number;
 - 1.3.10 National Insurance contribution rate;
 - 1.3.11 Other payments or deductions being made for statutory reasons;
 - 1.3.12 Any other voluntary deductions from pay;
 - 1.3.13 Civil Service Pension Scheme Membership (Opt-out of Civil Service Pension Scheme, Classic, Classic Plus, Premium, Defined Contribution) or, where relevant Contractor Scheme or other Contractor/Subcontractor pension scheme membership;
 - 1.3.14 For pension purposes, the notional reckonable service date;
 - 1.3.15 Pensionable pay history for three years to date of transfer;
 - 1.3.16 Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
 - 1.3.17 Percentage of pay currently contributed under any added years arrangements.
- 1.4 **Medical**
- 1.4.1 Sickness and absence records for the immediately preceding four-year period; and
 - 1.4.2 Details of any active restoring efficiency case for health purposes.
- 1.5 **Disciplinary**
- 1.5.1 Details of any active restoring efficiency case for reasons of performance; and
 - 1.5.2 Details of any active disciplinary cases where corrective action is ongoing.
- 1.6 **Further information**
- 1.6.1 Information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995 or the Equality Act 2010;
 - 1.6.2 Short term variations to attendance hours to accommodate a domestic situation;
 - 1.6.3 Individuals that are members of the Reserves, or staff that may have been granted special leave as a School Governor; and
 - 1.6.4 Information about any maternity or other statutory leave or other absence from work.

Part B

- 1.7 Information to be provided 28 days prior to the Subsequent Transfer Date:
- 1.7.1 Employee's full name;
 - 1.7.2 Date of Birth
 - 1.7.3 Home address;
 - 1.7.4 Bank/building society account details for payroll purposes Tax Code.

Transfer Regulations Part 3 – Pension Matters

1 In this Schedule 10 Part 3, save where otherwise provided, words and terms defined in Schedule 1 (Definitions), Schedule 10 Part 1 or Schedule 10 Part 2 of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions), Schedule 10 Part 1 or Schedule 10 Part 2 of the Contract.

2 Without prejudice to Schedule 1 (Definitions) of the Contract, Schedule 10 Part 1, or Schedule 10, Part 2, in this Schedule 10 Part 3 unless the context otherwise requires:

- "Active Member"** means an individual who has been admitted to and remains in active membership of any of the Schemes.
- "alpha"** means the public service pension scheme for civil servants established under the Public Service Pensions Act 2013 introduced with effect on and from 1 April 2015 (and includes, unless the context otherwise requires, any successor scheme).
- "Employer Contributions"** means the sums which are payable to the Pension Schemes in accordance with paragraph 7.1.5, 7.1.7 and 7.2 of the Admission Agreement in respect of the Former Authority Employees, whether by the Contractor, Subcontractor or Sub-subcontractor. For the avoidance of doubt, the employee redundancy compensation payment amount which is taken into account under paragraph 7.2 of the Admission Agreement is not included as part of the pass-through under paragraph 3.1.4.
- "New Fair Deal"** means the revised Fair Deal policy set out in HM Treasury's guidance "Fair Deal for staff pensions: staff transfers from central government" issued in October 2013.
- "PCSPS"** means the Principal Civil Service Pension Scheme established under The Superannuation Act 1972.
- "Pension Schemes"** means alpha and/or the PCSPS whichever is or are relevant in the context (and includes, unless the context otherwise requires, the respective managers from time to time of such scheme or schemes).
- "Relevant Benefits"** means any benefit payable on retirement, on death, on reaching a particular age, on the onset of serious ill-health or incapacity or in similar circumstances (including the provision of medical, dental or similar benefits).
- "Schemes"** means the PCSPS, the Partnership Pension Account and its (i) Ill-health Benefits Scheme and (ii) Death Benefits Scheme, the Civil Service Additional Voluntary Contribution Scheme, and alpha each as amended or replaced from time to time, or such one of them as is or are relevant in context. Any reference to the Schemes includes, unless the context otherwise requires, a reference to the respective managers from time to time of the Schemes.

3 Pensions

3.1 The Contractor shall:

- 3.1.1 comply with the Admission Agreement to which it is a party and shall not terminate the Admission Agreement while the Contractor is providing any of the Services;
- 3.1.2 ensure that on each occasion (including, but without limitation, on the termination of a contract between the Contractor and a Subcontractor) any Former Authority Employee becomes an employee of the Contractor pursuant to the Transfer Regulations (and the

date upon which he becomes such an employee is called the "Employment Date") the Former Authority Employee if not already an Active Member of the Pension Schemes becomes such an Active Member with effect as on and from the Employment Date provided that this is permitted under the terms of the Pension Schemes and the Admission Agreement as applicable; and

- 3.1.3 ensure that in relation to each Former Authority Employee who immediately prior to the Employment Date is an Active Member or who becomes an Active Member with effect from that date and for so long as the Former Authority Employee is employed by the Contractor and is assigned to or otherwise engaged at least to the minimum extent specified in the Admission Agreement in the provision of the Services or any of them:
 - 3.1.3.1 it is an express term of the contract of employment of the Former Authority Employee with the Contractor that the Contractor shall ensure that (subject to the terms from time to time of the Schemes and the Admission Agreement) the Former Authority Employee may be and may continue to be an Active Member; and
 - 3.1.3.2 each such Former Authority Employee is able to be and remain such an Active Member;
- 3.1.4 The Contractor agrees that the Employer Contributions shall be priced in accordance with Paragraph 12 (TUPE Costs) Part 1 of Schedule 3, Price and Payment
- 3.1.5 if it is in arrears in respect of any contributions due to the Schemes in respect of any Former Authority Employee, agree (which agreement the Contractor hereby irrevocably gives) that the Authority may deduct an amount equal to that which is overdue from any monies due to the Contractor and pay that amount to the relevant Scheme.
- 3.2 The Contractor shall ensure that no Subcontractor by whom any of the Former Authority Employees become employed pursuant to the Transfer Regulations is appointed unless the contract under which the Subcontractor is to provide any of the Services (the "Contract") contains terms which provide for the following:
 - 3.2.1 a condition precedent (which may not be waived) to such contract becoming effective is that there is in force an Admission Agreement between (1) The Minister for the Cabinet Office (2) the Subcontractor, and (3) the Authority;
 - 3.2.2 the Subcontractor must at all material times comply with the Admission Agreement and will not terminate the Admission Agreement while the Subcontractor is providing any of the Services;
 - 3.2.3 a breach of the Admission Agreement which is not capable of remedy or which if it is capable of remedy is not remedied within [10] Business Days of the Subcontractor being given notice of such breach by the Schemes, the Minister for the Cabinet Office (in respect of the Admission Agreement) or the Authority is an event of default by the Subcontractor enabling the other party to the Contract to terminate the Contract or the Contractor to terminate the Subcontract (which the Contractor undertakes to the authority to do if directed to do so by the Authority) immediately on the giving of notice and no notice to waive the event of default or which states that termination is not immediate and reserves a future right to terminate may be given without the consent in writing of the Authority;
 - 3.2.4 on each occasion (including, but without limitation, the termination of any contract pursuant to which the Subcontractor sub-subcontracts the provisions of any of the Services) any Former Authority Employee becomes an employee of the Subcontractor pursuant to the Transfer Regulations the Former Authority Employee shall if he is not already an Active Member of the Pension Schemes become such an Active Member with effect as on and from the date upon which he becomes such an employee provided that this is permitted under the terms of the Pension Schemes and the Admission Agreement;
 - 3.2.5 on each such occasion the Subcontractor must make it a term of the contract of employment of each Former Authority Employee employed by the Subcontractor that the

Subcontractor must ensure that the Former Authority Employee may be an Active Member at all times he is assigned to or otherwise engaged at least to the minimum extent specified in the Admission Agreement in the provision of any of the Services (subject to the terms of the Schemes from time to time and the Admission Agreement);

- 3.2.6 any contract pursuant to which the Subcontractor Subcontracts to another person (the "Sub-subcontractor") and which results in any Former Authority Employer becoming an employee of the Sub-subcontractor pursuant to the Transfer Regulations must contain the same terms as must be included in the Subcontractor's contract in accordance with this Paragraph 3.2 and such contract shall not take effect unless and until there is in force an Admission Agreement to which the Sub-subcontractor is a party; and
- 3.2.7 the Subcontractor must use its best endeavours to enforce the terms of his contract with the Sub-subcontractor which must be included in that contract in accordance with this paragraph 3.2.
- 3.3 The Contractor shall indemnify the Authority and at all times keep the Authority indemnified in respect of any Claim in connection with any failure or alleged failure by the Contractor, the Subcontractor or Sub-subcontractor as the case may be, to comply with the Schemes or the Admission Agreement to which the Contractor, the Subcontractor or the Sub-subcontractor as the case may be, is a party or to comply with (in the case of the Contractor) the provisions of this paragraph 3 or (in the case of a Subcontractor or Sub-subcontractor) the provisions to be included in the Contract pursuant to paragraph 3.2.
- 3.4 If the Subcontractor or Sub-subcontractor fails to pay by the due date any amount payable to any of the Schemes the Authority may deduct an amount equal to that which has not been paid from any money otherwise payable by the Authority to the Contractor and pay that amount to the Schemes.
- 3.5 Save with the approval of the Authority the Contractor shall not and shall procure any Subcontractor and/or Sub-sub contractor as applicable shall not on or after the earliest of:
 - 3.5.1 the date which is eighteen (18) months before the Expiry Date;
 - 3.5.2 the Authority giving the Contractor a Termination Notice terminating the whole of this Agreement or any part of the Services;
 - 3.5.3 on notification to the Contractor by the Authority of a replacement contractor; and
 - 3.5.4 on receipt by the Contractor of a written request by the Authority,allow (other than as required by law or an amendment to the Schemes) the grant or variation of any new or existing Relevant Benefits for or in respect of any employee of the Contractor to be made, announced or proposed.
- 3.6 The Contractor shall not and shall procure that the Subcontractor and/or Sub-sub contractor shall not issue any announcements to Former Authority Employees prior to the Relevant Transfer Date concerning the matters in this paragraph 3 without the consent in writing of the Authority (such consent not to be unreasonably withheld or delayed) and the Authority shall not issue any such announcement without the consent of the Contractor (such consent not to be unreasonably withheld or delayed).
- 3.7 The Contractor shall procure and shall ensure that any Subcontractor or Sub-subcontractor shall procure, that any information to be provided to the Authority pursuant to the Admission Agreement is sent to the Commercial Officer identified in the DEFFORM 111 at Schedule 19.
- 3.8 The Contractor shall not recover any costs and/or other payments in relation to New Fair Deal where such costs and/or payments are recoverable or have already been recovered by the Contractor elsewhere in this Contract or otherwise. If the Contractor does recover costs and/or other payments as set out in this paragraph 3.8 the Authority may deduct an amount equal to the amount of such costs and/or other payments from any money otherwise payable by the Authority to the Contractor.

- 3.9 The Contractor shall provide and shall procure each Subcontractor or Sub-subcontractor as appropriate provides all such co-operation and assistance as the Schemes and a Replacement contractor or subcontractor of a replacement contractor and/or the Authority may reasonably require to enable the replacement contractor or subcontractor of a replacement contractor to participate in the Schemes in respect of any Former Authority Employee and to give effect to any transfer of accrued rights required as part of the participation under New Fair Deal.
- 3.10 The Contractor undertakes to the Authority to indemnify and keep indemnified the Authority on demand against any liability out of or attributable to or in any way connected with the transmission of information supplied to it by the Contractor, Subcontractor or Sub-subcontractor as in connection with a re-tendering or proposed re-tendering of all or any of the Services.

Annex A to Part 3, Admission Agreement

Schedule 10 Part B – Whole Force Approach Personnel

1 Definitions

- 1.1 In addition to the defined terms set out in Schedule 1 (Definitions), the following capitalised terms shall have the following meanings where used in this Part C of this Schedule 10.

“Annual Training Liability” (ATL) – As defined in para 9.1.1.

“Additional Training Requirement” (ATR) – As defined in para 9.1.2.

“Armed Forces Act” means the Armed Forces Act 2006

“Business Rules” shall mean the business rules relating to the operation of Whole Force Approach Personnel as set out in JSP 818, as agreed between the Parties from time to time.

“Call-out” means call-out for Permanent Service under Reserve Forces Act 1996 (RFA96) section 43.

“CONDO” shall have the meaning set out within DEFCON 697 who shall be deployed to Deployed Benign (Restricted Travel) locations and shall be subject to Call-out in accordance with the requirements as set out in DEFCON 697.

“Contractor Support to Operations Policy” shall mean JSP 567 (Contractor Support to Operations) policy document published by the Defence Council (6th Edition, 2012) and any documents, policies or regulations referred to therein.

“Deployed Benign” shall mean Deployed Benign (Restricted Travel) and Deployed Benign (Unrestricted Travel).

“Deployed Benign (Restricted Travel)” or **“DB (RT)”** shall mean overseas locations for the deployment of SR or CONDO and involve a low threat level for the relevant CONDO or SR in accordance with DEFCON 697 (in relation to CONDOS) and JSP 567 (in relation to SRs) but shall not include locations which appear on the Foreign and Commonwealth Office advice states are safe for civilian travel.

“Deployed Benign (Unrestricted Travel)” or **“DB (UT)”** shall mean overseas locations for the deployment of WFA Contractors and shall include only locations which the Foreign and Commonwealth Office advice states are safe for civilian travel.

“Deployed Tactical” or **“DT”** shall mean overseas locations to which SR only may be deployed and involve the higher threat levels than Deployed Benign CONDO/SR, Deployed Benign WFA Contractor and Firm Base locations.

“Duty” or **“Period of Duty”** refers to periods in which a Sponsored Reserve (SR) is acting as a member of the Armed Forces and as such is fully subject to the Armed Forces Act.

“Employee Agreement” has the meaning given to it in RFA96 section 38(2) and refers to the written agreement between the Secretary of State for Defence and the employee in which the employee agrees to become a SR.

“Employer's Consent” refers to the written consent of an employer required by an employee under RFA96 section 39(2) before he or she enters into an Employee Agreement, in the form set out at Annex B to this Schedule 10 Part C.

“Firm Base” or **“FB”** shall mean enduring UK forces locations and, for the avoidance of doubt, shall not be Deployed Tactical, Deployed Benign CONDO/ SR or Deployed Benign WFA Contractor locations.

“Foreseeable Overall Average Usage” is the percentage amount of time that the Authority will utilise Whole Force Approach Personnel during a Contract Year, based on 47 working weeks, and shall include all military training, support in the Firm Base and deployments in accordance with this Schedule 10 Part B.

"Maximum Training Liability" shall mean the maximum number of days in any Contract Year that a Whole Force Approach Personnel shall be required for Training, as agreed between the Parties in the Business Rules

"Permanent Service" when used in the context of SRs means service in one of the Reserve Forces of the Crown during the period between acceptance into such service following Call-out and release from that service.

"Ready To Train (RTT)" the level of training completed to meet the Authority's requirement to begin military training to be set out in the Business Rules.

"Recruitment Milestone Date" means the dates by which the required Whole Force Approach Personnel shall be recruited by the Contractor, as set out in Table 36.

"Reserve Service" or **"SR Service"** refers to periods of time in which an individual is a member of the Reserve Forces as a SR.

"Reserve Force" means one of the following; the Royal Fleet Reserve, the Royal Naval Reserve, the Royal Marines Reserve, the Army Reserve, the Territorial Army, the Royal Air Force Reserve or the Royal Auxiliary Air Force.

"Service Regulations" means any order, enactment, regulation, rule, term or condition applicable to a Sponsored Reservist by virtue of his being a Sponsored Reservist.

"Sponsored Reservist" or **"SR"** means a person who is subject to the liabilities described in the Reserve Forces Act 1996 (RFA96) section 40 applicable to Sponsored Reservists including legislation and regulations governing the Armed Forces.

"Training Liability" means a SR's liability for training established in either Service regulations, the Business Rules or in the SR's Employee Agreement in accordance with RFA96 section 40(1)(b).

"Training" means training as a member of one of the Reserve Forces.

"Whole Force Approach Personnel" shall mean the personnel recruited by the Contractor to provide the requirement under this Schedule 10 Part B, including Sponsored Reserves, CONDO and WFA Contractors.

"WFA Contractor" works under the control of the Authority and contributes towards the overall attribution of each role, who will be required to be deployed to either a Firm Base or a Deployed Benign (Unrestricted Travel) location. WFA Contractor requirements shall be set out within the Business Rules, as agreed between the Parties.

2 Recruiting and Maintaining Sponsored Reserves

2.1 The Contractor will:

2.1.1 maintain in his workforce the number of Sponsored Reservists described by rank and skill/trade at Annex C to this Part B of Schedule 10 all of whom are to be available for Call-out, fully trained up to requirements and standards as set out in the Business Rules and be available to deploy overseas if necessary following Call-out within the number of days set out within the Business Rules of the Authority notifying the Contractor of a possible requirement to do so; and,

2.1.2 recruit, in sufficient numbers to meet and maintain the obligation in 2.1.1 above, the Whole Force Approach Personnel who are employees of the Contractor/Subcontractor(s) or self-employed but under contract to the Contractor as set out in Annex C to this Part B of this Schedule 10, and who meet the age, medical, nationality and residential criteria for entry into Reserve Service as set out in the Business Rules.

2.2 For the purposes of fulfilling 2.1.2 above, an individual will be deemed to have been 'recruited' when:

- 2.2.1 the Contractor informs the Authority that the employee / self-employed person has agreed to the terms and conditions of employment or conditions of his contract referred to in 11.1 below;
 - 2.2.2 the employee has been given his Employer's Consent to becoming a SR (see *Employer's Consent Form at Annex B to this Schedule*) and the employer has informed the Authority of the name and address of such persons in conjunction with 2.2.1 above;
 - 2.2.3 the employee / self-employed person enters into an Employee Agreement with the Secretary of State for Defence and,
 - 2.2.4 the employee / self-employed person has become an officer of or been enlisted by the Authority into the Army as a SR. In this respect, the Authority will have the absolute right to reject as unsuitable any person volunteering for SR service.
- 2.3 The Authority undertakes to brief a designated representative(s) of employers on the Employee Agreement and relevant terms relating to SR recruitment and operation and to provide employers with written information designed to assist them with recruiting. This assistance will in no way reduce the Authority's responsibility for ensuring that employees understand the essentials of their terms and conditions of Sponsored Reserve service on enlistment into or on becoming an officer of a Reserve Force.
- 2.4 Once the Contractor has complied with 2.2.1 and 2.2.2 above, it will be the Authority's obligation, with the assistance of the Contractor, to process the signing of the Employee Agreement and the enlistment of the individual into Reserve Service (or acceptance of the individual as an officer of a Reserve Force as the case may be).
- 2.5 If individuals fail / refuse to sign their Employee Agreements, fail to be enlisted (or become an officer of the Reserve Force) or are discharged by the Authority from SR Service, the Authority will inform the Contractor as soon as is reasonably practical so that further recruiting action may be taken without delay.
- 2.6 To facilitate the discharge of the Contractor's SR obligations, the Authority will undertake to inform the Contractor and the employer of the SR, if not the Contractor, whenever during Training or at other times a warning has to be given to an individual concerning their suitability to continue in SR Service.

3 Security Vetting

- 3.1 The Parties agree to expedite the process of security vetting without undue delay, as set out in the Business Rules. When the employee is given their Employer's Consent to become a SR, the Contractor will ensure that the employee completes the security documentation and that it is forwarded to the Authority without delay. For this purpose, the Authority undertakes to supply the Contractor with a supply of the relevant blank forms.

4 Service Discipline - Fines, Stoppages and Forfeitures of Pay

- 4.1 The Contractor will:
 - 4.1.1 ensure that for each SR employed in fulfilment of the obligations under this Schedule 10, part B, there shall be in their contract of employment a term stating that they will continue to be paid by their employer for any periods of Training, Duty and / or Permanent Service as a SR. Contracts for the provision of SR Services by self-employed persons are to state that fees payable for services also recompense the person for any Duty or period of Training or Permanent Service as a SR;
 - 4.1.2 ensure that for each SR employed in fulfilment of the obligations under this Schedule 10, Part B, there shall be in their contract of employment a term, complying with Section 13 of the Employment Rights Act 1996, which authorises their employer to make deductions at the request of the Authority from their pay / salary and /or allowances of:
 - 4.1.2.1 sums equal to any fines, forfeitures or stoppages that may be imposed for offences, and

- 4.1.2.2 sums equal to those ordered to be paid as or towards compensation for loss or damage to public or Service property,

under the Armed Forces Act whether or not the employee is a SR at the time that the deduction is made;

- 4.1.3 ensure that, in the case of self-employed SR used in support of the contract, provisions similar to 4.1.2 above are incorporated in contracts for services to permit deductions to be made from fees paid;
- 4.1.4 ensure that any deductions referred to in 4.1.2 and 4.1.3 above will be made if requested by the Authority and that the sums involved, with the exception of sums for pay forfeited for non-attendance by an individual at their place of Duty, will then be paid over to the Authority;
- 4.1.5 ensure that for each SR employed in fulfilment of the obligations under this Schedule 10, Part B, there shall be in their contract of employment a term stating that when undertaking any Duty or period of Training or Permanent Service the employee will be treated as continuing in the employment of their employer
- 4.1.6 ensure that, in the case of self-employed SR used in fulfilment of the obligations under this Schedule 10, Part B, a provision in the contract for services makes it clear that SR Duty, Training or Permanent Service is also part of the contracted service for which the fees are being paid; and,
- 4.1.7 without prejudice to the Contractors' responsibilities under paragraphs 4.1.1 to 4.1.6 above, submit to the Authority for consideration before their first use and again if amended, the conditions or terms referred to in 4.1.1, 4.1.2, 4.1.3, 4.1.5 and 4.1.6 above to be used in contracts of employment or for contracts for services.

5 Pay

- 5.1 Continuing civilian employment and pay whilst undertaking SR service is based on the concept of an employee being on loan to a third party, in line with the Contractor Support to Operations Policy.
- 5.2 The SR will be entitled to a financial payment subject to successfully meeting his or her annual military training commitment, and the conditions of the Employee Agreement – the Operational Training Supplement (OTS) also known as the Training Milestone Payment (TMP). The payment mechanism for this shall be detailed in the Business Rules.

6 Service and Employee Agreements

- 6.1 The Parties acknowledge, subject to any variation recorded in the section reserved for such variations in the Employee Agreement, that the SR will be subject to the Armed Forces Act, any other relevant Service Regulations and/ or the Contractor Support to Operations Policy shall apply to SR whilst undertaking any period of Duty Training or whilst on Permanent Service.

7 Employee Agreements

- 7.1 The form of Employee Agreement to be used for SR employed in support of this contract is at Annex A. The Parties agree that this form may be amended before first use and subsequently for new signings provided that the Contractor has been informed by the Authority of the intended amendments and, in the case of any proposed changes to the variations recorded in Annex A, Part A, paragraph 10 of the Employee Agreement, the Contractor has agreed to them.

8 Training

- 8.1 The Parties agree that SR training has 2 categories:
- 8.1.1 Annual Training Liability (ATL) – The Reservist training required to meet the Certificate of Efficiency.
- 8.1.2 Additional Training Requirement (ATR) – SR roles specific training in addition to the ATL, requested by the Authority as part of the Overall Average Foreseeable Usage.

- 8.2 The Contractor will:
- 8.2.1 release for Service Training on days or at times specified by the Authority, any SR employed by them, or under contract to them as a self-employed person, provided that;
 - 8.2.1.1 the Training is required for the SR to meet their legal Training Liability; and,
 - 8.2.1.2 the Authority gives 60 days' notice to the Contractor of the requirement:
 - 8.2.2 make every effort to ensure that SR employed or contracted in fulfilment of the obligations under this Schedule 10, Part B fulfil their Training liabilities; and,
 - 8.2.3 grants that where the Contractor is required to provide support for military exercises and subject to notice of the requirement being given as set out within the Business Rules, the Authority has the right to require the simulation of Call-out and exercise of SR support as if it were Permanent Service provided the period of Training given falls within the Training Liability of those SR concerned.
- 8.3 The Parties agree that the maximum Training Liability for SRs to be recorded in Employee Agreements will be:
- 8.3.1 in the first year of service up to 120 days, of which 30 days may be continuous, and will include initial basic Training if required;
 - 8.3.2 in subsequent years up to 40 days ATL and 80 days ATR days per annum of which 60 days may be continuous.
- 8.4 The Parties acknowledge that Training actually required or given in any one Contract Year may be less than that shown above as the Annual Training Liability. In this respect, the Authority undertakes to take account of any former relevant Training or SR Service that an employee might have had in determining their actual Training needs.
- 8.5 The Contractor will recompense the Authority for costs incurred by the Authority MOD for training of newly recruited SRs where the need for that Training is due to an excessive turnover of SR employees. For the avoidance of doubt, the turnover will be deemed excessive where new recruits in any one Contract Year exceeds 15%, of the total number of SR in the Schedule referred to in Condition 2.1.1, excluding any dismissed by the Authority on unreasonable grounds.

9 Call-Out

- 9.1 The Authority undertakes to liaise closely with the Contractor on matters relating to Call-Out and in particular give the Contractor as much notice as possible, within security constraints, of any possible requirement for Call-Out. The Call-Out rules shall form part of the Business Rules

10 Miscellaneous

- 10.1 The Contractor;
- 10.1.1 agrees that periods of Training or Permanent Service will not relieve the Contractor from fulfilling any contractual obligations to the employee, save where the Contractor can demonstrate that any failure to fulfil any contractual obligation is a direct consequence of the control and management of the SR exercised by the Authority.
 - 10.1.2 will take all such steps as may be necessary to permit or facilitate compliance by their SR employees or self-employed SR with the Service Regulations, and not to include in contracts of employment applicable to SR or in contracts for services which require a self-employed person to be a SR, any term or condition which is inconsistent with the Service Regulations.
 - 10.1.3 will, provided it does not contravene the legal rights of an individual, not terminate or agree to the termination of a SR's contract of employment or, in the case of a self-employed SR, contract for services without the written consent of the Authority whilst the SR is in Permanent Service or during the period between his being given notice of Call-Out and his acceptance into Permanent Service. The availability of a suitable relief and

when relief can be effected will be of primary consideration to the Authority in giving such consent. A SR in Permanent Service remains a SR until they are discharged from that service even if their civilian employment ceases whilst they are Called-Out

- 10.1.4 agrees that if, for any reason, the contract of employment for a SR ceases whilst that person is in Permanent Service, the Authority will pay the SR for the subsequent period they are in Permanent Service at Service rates for pay and allowances and the Contractor will reimburse the Authority for any such expenditure incurred.
- 10.1.5 will record in SR contracts of employment and, in the case of the self-employed in SR contracts for services, a notice period that must be given by the employee / self-employed person of not less than three calendar months for the termination of either the contract of employment or contract for services.
- 10.1.6 will comply with the liaison procedure as detailed in Schedule 9 (Governance) regarding matters of mutual interest relating to SR service.
- 10.1.7 will produce guidance for SR employed in fulfilment of the obligations under this Schedule 10, Part B that will not conflict with the provisions of RFA96, Service Law and Regulations applicable to civilians and SR.
- 10.1.8 will use the form of Employer's Consent shown at Annex B to this Schedule 10 Part B. The Parties agree that this form may be amended by agreement between the Contractor, or the relevant employer if not the Contractor, and the Authority.

11 Whole Force Approach Personnel

- 11.1 The operation of the CONDO requirement under this Agreement shall be set out within DEFCON 697 (including Appendix to DEFCON 697) with the requirements set out within the Business Rules.
- 11.2 The operation of the WFA Contractor requirement shall be set out within the Business Rules.
- 11.3 DEFCON 697 and JSP 567 shall apply to the Whole Force Approach Personnel under this Schedule 10 Part B and shall be incorporated into this Agreement.

Annex A to Schedule 10 Part B – Employee Agreement

This is an Employee Agreement as described in the Reserve Forces Act 1996 (RFA96) section 38(2). It is made in pursuance of an arrangement the Secretary of State for Defence has with.....
(name of the employer), (Contract Number OSP/0080), provided for under RFA96 section 39.

PART A. TO BE SIGNED BY THE EMPLOYEE

I..... (full name of employee) understand and agree to the following provisions:

1 I will, no later than...../...../..... (date) enlist in the Army Reserve as a special member of that force (termed hereafter a Sponsored Reservist).*

[Or, where the employee is already a member of the Army Reserve:]

2 On making this agreement I will become a special member of the *Army Reserve* (termed hereafter a Sponsored Reservist).*

[Or, where the employee is a member of a reserve force other than the Army Reserve:]

3 I will, no later than...../...../..... (date) transfer to the Army Reserve as a special member (termed hereafter a Sponsored Reservist).*

* Delete if not applicable.

4 On becoming a Sponsored Reservist I will be liable to:

4.1 be Called-Out for Permanent Service under Part V of RFA 96;

4.2 serve in accordance with the terms and conditions applicable to Sponsored Reservists as laid down in Reserve Land Forces Regulations 2016 taking account of the variations listed in paragraph 10 below.

4.3 undertake up to 120 days Sponsored Reserve Training in my first year of service, which will include initial basic Training, and thereafter up to 40 days of Annual Training Liability and up to 80 days of Additional Training Requirement for SR role specific continuation Training and/or exercises. Included in these annual totals, up to 90 days may be continuous.

5 I understand that I will be fully subject to Army law as a serviceman or woman while I am carrying out Permanent Service, Training or Duty.

6 If I wish to end these liabilities I must:

6.1 give notice in writing to the Commanding Officer [insert unit]; and

6.2 inform my employer of the action I wish to take.

7 The notice will end my liabilities three 3 calendar months after the day on which I gave it subject to the actions described in paragraph 9.

8 I understand that I may not give notice while:

8.1 I am in Permanent Service; or

8.2 an order of the Secretary of State made under RFA96 Section 41(6) is in force suspending my right to give notice.

9 I also understand that if I give notice, but either the Secretary of State makes an order under RFA96, Section 41(6) or I am accepted into Permanent Service before the date when my liabilities would have ended, my notice will no longer have any effect.

10 I agree that the following variations to the liabilities referred to in paragraph 4 above and to Army Reserve Sponsored Reserve terms and conditions of service will apply to me:

10.1 I will continue to be paid by my employer during any periods of Training, Duty and Permanent Service as a Sponsored Reservist that I undertake and I will not receive any pay or allowances from the Army Reserve during these periods. I understand, however, that I will be entitled to in-

Service death or injury benefits, in accordance with current regulations. Notwithstanding the above, I also agree that should my contract of employment cease for any reason whilst I am in Permanent Service, then I will be paid until released from that service by the Army Reserve at Army rates of pay and allowances applicable to me.

- 10.2 I understand that my employer may make deductions at the request of MOD from my salary and / or allowances of:
 - 10.3 sums equal to any fines, forfeitures or stoppages that may be imposed for offences; and (ii) sums equal to those ordered to be paid as or towards compensation for loss or damage to public or service property, under the [NDA], whether or not I am a Sponsored Reservist at the time that the deduction is made.
 - 10.4 etc. (record here further variations, if any, to standard liabilities or terms and conditions of service laid down in legislation/regulations - see Annex A Condition 11)
- 11** I have voluntarily entered into this Agreement and understand the liabilities for Training, Call Out and service applicable to Sponsored Reservists that are described in RFA96 Part V. I have also had explained to me and understand the principal terms and conditions of Sponsored Reserve service that will apply to me.
- 12** This agreement will terminate when:
- 12.1 I make a new employee agreement; or
 - 12.2 I cease to be a Sponsored Reservist of the Army Reserve.

Signed:

Date:

Address:

Being an employee of..... (name of employer)

PART B. TO BE SIGNED BY A PERSON AUTHORISED UNDER (relevant single Service regulation)

- 1 The above agreement was signed in my presence having been satisfied that:
 - 1.1 the signatory understands what their liabilities and terms and conditions of service as a Sponsored Reservist will be,
 - 1.2 variations to their terms and conditions of service contained in the arrangement between Secretary of State for Defence and AmeyBriggs Services Limited are recorded in Part A paragraph 10 above, and
 - 1.3 employer consent to this agreement has been given in accordance with the RFA96 Section 39(2).
- 2 I have seen the document(s) as required by Reserve Land Forces Regulations and believe the signatory to be eligible to become a member of the Sponsored Reserve List of the Army Reserve.

Signed:

Name:

Rank/Position:

Being a person authorised under..... (relevant single Service regulation)

Note:

This agreement is to be made in duplicate. One original copy is to be retained by the employee and the other original copy retained in their Service Records. A photocopy of the agreement is to be forwarded to the signatory's employer as soon as reasonably possible.

Annex B to Schedule 10 Part B – Employer's Consent Certificate

Reference: Contract Number OSP/0080 between and the Secretary of State for Defence.

- 1 In compliance with the Reserve Forces Act 1996 Section 39, employer consent is given for those named in the attached Schedule to enter into Employee Agreements for the purpose of becoming 'special members of a Reserve force', termed hereafter as 'Sponsored Reservists'.
- 2 It is understood that the terms and conditions of Reserve Service that will apply to those listed in the Schedule will be those prescribed for Sponsored Reservists in the Army Reserve.
- 3 It is further understood that these terms and conditions of service will be varied in accordance with the content of the Employee Agreement Part A paragraph 10.

Consents and Agreements

- 4 In accordance with Schedule 10 to OSP/0080, Part B, Para 2.2 the following Consents and Agreements have been met:
 - 4.1 Terms & Conditions of Employment. The above named AmeyBriggs Employee has signed an AmeyBriggs Statement of Employment Contract thus agreeing to the Terms & Conditions of Employment.
 - 4.2 AmeyBriggs Written Consent. This letter provides AmeyBriggs' written consent to the above named employee becoming an SR in accordance with the Reserve Forces Act 1996.
 - 4.3 Employee Agreement with the Secretary of State for Defence. A signed Employee Agreement is enclosed with this Letter.

Signed: Date:

Full Name:

Position in (employees' company or organisation)

It is requested that any future correspondence or notifications sent to the above company concerning those named in the attached Schedule be marked for the attention of, and addressed to:

.....
.....
.....
.....

Fax: Email:

Notes:

- 5 If this certificate is not on company headed paper, the above signature is normally to be supported by a company stamp.
- 6 The Schedule of Names attached to this certificate must record against each employee their full home address and must be signed immediately below the last name listed by the company representative who signed the covering certificate.
- 7 A copy of this certificate should be retained by each employee to whom it applies and be produced as evidence of employer consent when they sign their Employee Agreement.

- 8 When issuing this certificate and Schedule, the employer should keep the original and send a copy / copies to [as required by single Service/Project Manager]

Annex C to Schedule 10 Part B – Whole Force Approach Personnel numbers by Contract Year

1. Whole Force Approach Personnel

- 1.1. Table 36 provides the numbers of Whole Force Approach Personnel required by the Authority by role. The Contractor is to provide Whole Force Approach Personnel in a Ready To Train state six months prior to the Recruitment Milestone Dates below at Table 36.
- 1.2. The required Whole Force Approach Personnel as set out in table 36 below shall allow for agreed turnover rate of █%.
- 1.3. Subject to the Contractor recruiting the required numbers in the table below, in the event of turnover of Whole Force Approach Personnel the Contractor shall employ at any time a minimum of █% of the required numbers as set out at Table 36 for each role at each Recruitment Milestone Date, subject to the Contractor demonstrating active recruitment up to the required number.

Role	Recruitment Milestone Dates								
	FSC (30 th September 2022)	30 th June 2023	30 th June 2024	30 th June 2025	30 th June 2026	30 th June 2027	30 th June 2028	30 th June 2029	30 th June 2030
Force Support Plant Operator Mechanic (Constant Delivery)	█	█	█	█	█	█	█	█	█
Force Support Plant Operator Mechanic (Operational Delivery)	█	█	█	█	█	█	█	█	█
Close Support Plant Operator Mechanic (Operational Delivery)	█	█	█	█	█	█	█	█	█
Army Crane + C-Vehicle Truck Operator (Constant Delivery)	█	█	█	█	█	█	█	█	█
Army Basic MHE Operator (Constant Delivery)	█	█	█	█	█	█	█	█	█
Army Basic MHE Operator (Constant Delivery)	█	█	█	█	█	█	█	█	█
Army Construction Vehicle Maintainer (Constant Delivery)	█	█	█	█	█	█	█	█	█
Army MHE Maintainer (Constant Delivery)	█	█	█	█	█	█	█	█	█
Total	█	█	█	█	█	█	█	█	█

Table 36: Whole Force Personnel by Role / Year

Annex D to Schedule 10 Part B – Whole Force Approach Personnel Readiness

1. Whole Force Approach Personnel

1.1. Tables 37 to 44 provides the readiness status of Whole Force Personnel by Role

Force Support Plant Operator Maintainer Role (Constant Delivery)

Title	Force Support Plant Operator Maintainer (Constant Delivery)									
Likely unit in support of	39 Engr Regt & 36 Engr Regt									
Potential environment for each employed role	WFA Contractor	CONDO			SR					
	FB or DB (UT)	FB, DB (UT) or DB (RT)			FB, DB (UT), DB (RT) or DT					
Readiness and notice requirements	As set out in the Business Rules for each of the WFA Personnel employment conditions as set out in JSP 567.									
Deployments every two years	1 x 6 month in DT environment as SR 1 x 2 month in DB (RT) environment as CONDO 1 x 2 month in DB (RT) environment as SR									
Description	Supplier provided plant operator with a skill set optimised for Force Support tasks in support of the Royal Engineers.									
Qualification	50% equivalent to ME POM Class 1 50% equivalent to ME POM Class 2 + Quarrying Specific qualifications required shall be agreed in the Business Rules									
Skills & Experience	Experience – Past military experience preferable. Experience – Should be an experienced construction plant operator. Skills – Close support (tactical) plant operating skills not necessary. Skills – Competent to undertake level 1 maint tasks.									
Comment	Capability predominantly used as a near constant delivery model.									
Demand (max number of supplier personnel)										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Upper	█	█	█	█	█	█	█	█	█	█
Foreseeable Overall Average Usage (days / year) averaged over 2 Year period										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Likely	-	█	█	█	█	█	█	█	█	█
Army liability redistributed										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Pte	█	█	█	█	█	█	█	█	█	█
LCpl	█	█	█	█	█	█	█	█	█	█
Cpl	█	█	█	█	█	█	█	█	█	█
Total	█	█	█	█	█	█	█	█	█	█

Table 37: Force Support Plant Operator Maintainer Role (Constant Delivery)

Force Support Plant Operator Maintainer (POM) Role (Operational Delivery)

Title	Force Support Plant Operator Maintainer (Operational delivery)									
Likely unit in support of	71 Engr Regt, 75 Engr Regt & RMons									
Potential environment for each employed role	WFA Contractor	CONDO			SR					
	FB or DB (UT)	FB, DB (UT) or DB (RT)			FB, DB (UT), DB (RT) or DT					
Readiness and notice requirements	As set out in the Business Rules for each of the WFA Personnel employment conditions as set out in JSP 567.									
Deployments every two years	1 x 6 month in DT environment as SR									
Description	Supplier provided Plant Operator with a skill set optimised for Force Support tasks in support of the Royal Engineers.									
Qualification	50% equivalent to ME POM Class 1 50% equivalent to ME POM Class 2 Specific qualifications required shall be agreed in the Business Rules									
Skills & Experience	Experience – Past military experience preferable. Experience – Should be an experienced construction plant operator. Skills – Close support (tactical) plant operating skills not necessary. Skills – Competent to undertake level 1 maint tasks.									
Comment	Capability predominantly used as a near operational delivery model.									
Demand (max number of supplier personnel)										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Upper	█	█	█	█	█	█	█	█	█	█
Foreseeable Overall Average Usage (days / year) averaged over 2 Year period										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Likely	█	█	█	█	█	█	█	█	█	█
Army liability redistributed										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Pte	█	█	█	█	█	█	█	█	█	█
LCpl	█	█	█	█	█	█	█	█	█	█
Cpl	█	█	█	█	█	█	█	█	█	█
Total	█	█	█	█	█	█	█	█	█	█

Table 38: Force Support Plant Operator Maintainer (Operational delivery)

Close Support Plant Operator Maintainer Role

Title	Close Support Plant Operator Maintainer (Constant delivery)									
Likely unit in support of	21 Engr Regt, 32 Engr Regt, 22 Engr Regt, 26 Engr Regt									
Potential environment for each employed role	WFA Contractor	CONDO			SR					
	FB or DB (UT)	FB, DB (UT) or DB (RT)			FB, DB (UT), DB (RT) or DT					
Readiness and notice requirements	As set out in the Business Rules for each of the WFA Personnel employment conditions as set out in JSP 567.									
Deployments every two years	1 x 6 month in DT environment as SR									
Description	Supplier provided Plant Operator with a skill set optimised for Close Support tasks in support of the Royal Engineers.									
Qualification	50% equivalent to ME POM Class 1 50% equivalent to ME POM Class 2 Specific qualifications required shall be agreed in the Business Rules									
Skills & Experience	Experience – Past military experience highly preferable. Experience – Should be an experienced plant operator. Skills – Close support (tactical) plant operating skills essential. Skills – Competent to undertake level 1 maint tasks.									
Comment	Capability predominantly used as a near operational delivery model.									
Demand (max number of supplier personnel)										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Upper	█	█	█	█	█	█	█	█	█	█
Foreseeable Overall Average Usage (days / year) averaged over 2 Year period										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Likely	-	█	█	█	█	█	█	█	█	█
Army liability redistributed										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Pte	█	█	█	█	█	█	█	█	█	█
LCpt	█	█	█	█	█	█	█	█	█	█
Cpl	█	█	█	█	█	█	█	█	█	█
Total	█	█	█	█	█	█	█	█	█	█

Table 39: Close Support Plant Operator Maintainer (Operational delivery)

Army Crane + C-Veh Truck Operator Role

Title	Army Crane + C-Veh Truck Operator									
Likely unit in support of	Royal Engineer and Royal Logistic Corps Units									
Potential environment for each employed role	WFA Contractor	CONDO			SR					
	FB or DB (UT)	FB, DB (UT) or DB (RT)			FB, DB (UT), DB (RT) or DT					
Readiness and notice requirements	As set out in the Business Rules for each of the WFA Personnel employment conditions as set out in JSP 567.									
Deployments every two years	1 x 6 month in DT env as SR									
	1 x 2 month in DB (RT) environment as CONDO									
	1 x 2 month in DB (RT) environment as SR									
Description	Supplier provided Crane Operator, C-Veh Truck Operator and SV Truck Operator									
Qualification	Medium Crane + Heavy Crane + Truck Mounted Loader + SLDT + SLDT (P) + SV Specific qualifications required shall be agreed in the Business Rules									
Skills & Experience	Experience – Past military experience preferable. Experience – Must be an experienced crane operator. Skills – Must be competent to operate in all environments to support any task. Skills – Appointed Person Lifting Officer qualification highly desirable. Skills – Competent to undertake level 1 maint tasks.									
Comment	Crane Operating capability utilised in the UK as a constant delivery service when required. Operationally the Army Crane Operator needs to have other operating roles, to maintain flexibility and effectiveness of units. C-Veh Truck operation, plus SV operation would enable this.									
Demand (max number of supplier personnel)										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Upper	█	█	█	█	█	█	█	█	█	█
Foreseeable Overall Average Usage (days / year) averaged over 2 Year period										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Likely	█	█	█	█	█	█	█	█	█	█
Army liability redistributed										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Pte	█	█	█	█	█	█	█	█	█	█
LCpl	█	█	█	█	█	█	█	█	█	█
Cpl	█	█	█	█	█	█	█	█	█	█
Total	█	█	█	█	█	█	█	█	█	█

Table 40: Army Crane + C-Veh Truck Operator

Army Basic MHE Operator Role

Title	Army Basic MHE operator									
Likely unit in support of	Predominantly Royal Engineer and Royal Logistic Corps Units									
Potential environment for each employed role	WFA Contractor	CONDO			SR					
	FB or DB (UT)	FB, DB (UT) or DB (RT)			FB, DB (UT), DB (RT) or DT					
Readiness and notice requirements	As set out in the Business Rules for each of the WFA Personnel employment conditions as set out in JSP 567.									
Deployments every two years	1 x 6 month in DT environment as SR									
	1 x 2 month in DB (RT) environment as CONDO									
	1 x 2 month in DB (RT) environment as SR									
Description	Fully deployable Basic MHE operator with requisite Trade Specialist Training and at least one additional non C-Veh qualification to maximise employability on operations.									
Qualification	Should be able to operate all MITER available (Green + Yellow) rough terrain forklifts or telehandlers.									
	Should have at least one other non C-Veh license.									
	Specific qualifications required shall be agreed in the Business Rules									
Skills & Experience	Experience – Past military experience highly preferable.									
	Experience – Should be an experienced MHE operator.									
	Skills – Must have Trade Specialist Training for role.									
	Skills – Competent to undertake level 1 maint tasks.									
Comment	Operators should be deployable as formed sections within FLRs, CSLRs, Strike CRRS and Engr Log nodes.									
	Operators must be deployable as individual augmentees to any Army Regular or Reserve unit.									
Demand (max number of supplier personnel)										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Upper	█	█	█	█	█	█	█	█	█	█
Foreseeable Overall Average Usage (days / year) averaged over 2 Year period										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Likely	█	█	█	█	█	█	█	█	█	█
Army liability redistributed										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Pte	█	█	█	█	█	█	█	█	█	█
LCpl	█	█	█	█	█	█	█	█	█	█
Cpl	█	█	█	█	█	█	█	█	█	█
Total	█	█	█	█	█	█	█	█	█	█

Table 41: Army Basic MHE operator

Army Advanced MHE operator

Title	Army Advanced MHE operator									
Readiness	100% at 30 days NTE									
Likely unit in support of	Predominantly Royal Engineer and Royal Logistic Corps Units									
Potential environment for each employed role	WFA Contractor	CONDO			SR					
	FB or DB (UT)	FB, DB (UT) or DB (RT)			FB, DB (UT), DB (RT) or DT					
Readiness and notice requirements	As set out in the Business Rules for each of the WFA Personnel employment conditions as set out in JSP 567.									
Deployments every two years	1 x 6 month in DT environment as SR									
	1 x 2 month in DB (RT) environment as SR									
Description	Fully deployable Advanced MHE operator with requisite Trade Specialist Training and at least one additional non C-Veh qualification to maximise employability.									
Qualification	Should be able to operate appropriate MITER available Advanced MHE assets (green & yellow). This would likely include RTCH, RTFL, JCB 436 + RTFL.									
	Specific qualifications required shall be agreed in the Business Rules									
Skills & Experience	Experience – Past military experience preferable.									
	Experience – Should be a highly experienced MHE operator									
	Skills – Must have Trade Specialist Training for role.									
	Skills – Competent to undertake level 1 maint tasks.									
Comment	Operators must be deployable as individual augmentees to any Army Regular or Reserve unit.									
	RTCH fleet of 19 recommended for MITER.									
	High readiness essential for theatre enablement.									
Demand (max number of supplier personnel)										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Upper	█	█	█	█	█	█	█	█	█	█
Foreseeable Overall Average Usage (days / year) averaged over 2 Year period										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Likely	█	█	█	█	█	█	█	█	█	█
Army liability redistributed										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Pte	█	█	█	█	█	█	█	█	█	█
LCpl	█	█	█	█	█	█	█	█	█	█
Cpl	█	█	█	█	█	█	█	█	█	█
Total	█	█	█	█	█	█	█	█	█	█

Table 42: Army Advanced MHE operator

Army Construction Vehicle Maintainer Role

Title	Army Construction Vehicle Maintainer									
Likely unit in support of	Support to RE units with MITER fleet									
Potential environment for each employed role	WFA Contractor	CONDO			SR					
	FB or DB (UT)	FB, DB (UT) or DB (RT)			FB, DB (UT), DB (RT) or DT					
Readiness and notice requirements	As set out in the Business Rules for each of the WFA Personnel employment conditions as set out in JSP 567.									
Deployments every two years	1 x 6 month in DT environment as SR									
	1 x 2 month in DB (RT) environment as CONDO									
	1 x 2 month in DB (RT) environment as SR									
Description	Able to support any Equipment deployed with an RE unit.									
Qualification	MITER Construction Vehicle Maintainer Specific qualifications required shall be agreed in the Business Rules									
Skills & Experience	Experience – Past military experience preferable. Experience – Should be an experienced maintainer. Skills – Must be able to maintain yellow and green Equipment.									
Comment	Regular Force Support = 1 per Light Aid Detachment (LAD)									
	Reserve Force Support = 1 per unit									
	Close Support = 1 per LAD									
Demand (max number of supplier personnel)										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Upper	█	█	█	█	█	█	█	█	█	█
Foreseeable Overall Average Usage (days / year) averaged over 2 Year period										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Likely	█	█	█	█	█	█	█	█	█	█
Army liability redistributed										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Pte	█	█	█	█	█	█	█	█	█	█
LCpl	█	█	█	█	█	█	█	█	█	█
Cpl	█	█	█	█	█	█	█	█	█	█
Total	█	█	█	█	█	█	█	█	█	█

Table 43: Army Construction Vehicle Maintainer

Army MHE Maintainer Role

Title	Army MHE Maintainer									
Likely unit in support of	Support to predominantly RE & RLC units with MITER fleet									
Potential environment for each employed role	WFA Contractor	CONDO			SR					
	FB or DB (UT)	FB, DB (UT) or DB (RT)			FB, DB (UT), DB (RT) or DT					
Readiness and notice requirements	As set out in the Business Rules for each of the WFA Personnel employment conditions as set out in JSP 567.									
Deployments every two years	1 x 6 month in DT environment as SR									
	1 x 2 month in DB (RT) environment as CONDO									
	1 x 2 month in DB (RT) environment as SR									
Description	Able to support any MHE Equipment deployed + at least one non-MITER variant.									
Qualification	MITER MHE Maintainer Specific qualifications required shall be agreed in the Business Rules									
Skills & Experience	Experience – Past military experience preferable. Experience – Should be an experienced maintainer. Skills – Must be able to maintain yellow and green Equipment.									
Comment	Assume 6 major MHE heavy units with MITER Equipment requiring 2 maintainers per unit + 8 minor units with one MHE maintainer. Defence currently responsible for 40% of maintenance on C-Veh fleet.									
Demand (max number of supplier personnel)										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Upper	█	█	█	█	█	█	█	█	█	█
Foreseeable Overall Average Usage (days / year) averaged over 2 yr period										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Likely	█	█	█	█	█	█	█	█	█	█
Army liability redistributed										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Pte	█	█	█	█	█	█	█	█	█	█
LCpl	█	█	█	█	█	█	█	█	█	█
Cpl	█	█	█	█	█	█	█	█	█	█
Total	█	█	█	█	█	█	█	█	█	█

Table 44: Army MHE Maintainer

Schedule 11 – Leases and Licenses

- 1 The licence to occupy shown at Serial 17 (DIO Licence to Occupy) to Schedule 19 (Reference Documents) shall apply to;
 - 1.1 the facilities and areas listed at Table 45 (List of Authority Licenced Facilities and Areas by Requirement) to this Schedule 11 (Leases and Licences); and
 - 1.2 the areas listed Table 47 (List of Authority Licenced Areas by Facility Type and Period) to this Schedule 11 (Leases and Licences);
- 2 The Parties note that [REDACTED] is Third Party owned and cannot be licenced under this contract. The Parties will agree how licencing for [REDACTED] shall be achieved during the Transition In Phase.

ID	Site/Country	Site	Servicing Bay Access	Secure Exclusive Material storage	Access to Shared Welfare	Access to Workshop Facilities	Access to Wash down Area	Number of People on site *Subject to TUPE consultation	No of Car Parking Spaces	Secure Storage for CES (m2)	Non-secure Storage for CES (m2)	Workshop / Covered storage m2	Hardstanding Requirement m2
ID014	[REDACTED]	1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
ID015	[REDACTED]	1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
ID016	[REDACTED]	1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
ID017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
ID018	[REDACTED]	1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
ID019	[REDACTED]	1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
ID020	[REDACTED]	1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
ID021	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
ID022	[REDACTED]	1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
ID023	[REDACTED]	1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Table 45: List of Authority Licenced Facilities and Areas by Requirement

OFFICIAL - SENSITIVE - COMMERCIAL

List of Authority Licenced Facilities and Areas by Period

ID	Site/Country	Site	Yr 1 (month 12) 01/06/21 - 30/06/21	Yr 2 01/07/21 - 30/06/22	Yr 3.1 01/07/22 - 31/09/22	Yr 3.2 01/10/22 - 30/06/23	Yr 4 01/07/23 - 30/06/24	Yr 5 01/07/24 - 30/06/25	Yr 6 01/07/25 - 30/06/26	Yr 7 01/07/26 - 30/06/27	Yr 8 01/07/27 - 30/06/28	Yr 9 01/07/28 - 30/06/29	Yr 10 (11 months) 01/07/29 - 31/05/30
ID001	██████████	██████████	■	■	■								
ID002	██████████	██████████	■	■	■	■	■	■	■	■	■	■	■
ID003	██████████	██████████	■	■	■	■	■	■	■	■	■	■	■
ID004	██████████	██████████	■	■	■	■	■	■	■	■	■	■	■
ID005	██████████	██████████	■	■	■	■	■	■	■	■	■	■	■
ID006	██████████	██████████	■	■	■	■	■	■	■	■	■	■	■
ID007	██████████	██████████	■	■	■	■	■	■	■	■	■	■	■
ID008	██████████	██████████	■	■	■	■	■	■	■	■	■	■	■
ID009	██████████	██████████	■	■	■	■	■	■	■	■	■	■	■
ID010	██████████	██████████	■	■	■	■	■	■	■	■	■	■	■
ID011	██████████	██████████	■	■	■	■	■	■	■	■	■	■	■
ID012	██████████	██████████	■	■	■	■	■	■	■	■	■	■	■
ID013	██████████	██████████	■	■	■	■	■	■	■	■	■	■	■
ID014	██████████	██████████	■	■	■	■	■	■	■	■	■	■	■
ID015	██████████	██████████	■	■	■	■	■	■	■	■	■	■	■
ID016	██████████	██████████	■	■	■	■	■	■	■	■	■	■	■
ID017	██████████	██████████	■	■	■	■	■	■	■	■	■	■	■

List of Authority Licenced Areas by Facility Type and Period

1. General

1.1. A safe and secure working area is needed at all sites where AB and any associated subcontractors are required to provide maintenance support to MITER Equipment.

“Safe Working Area - Permanent (WA)”

A secure area that is permanently set aside and made safe (through coning and barriers) for an engineer. Is covered and with access to electricity and local WC facilities

Safe Working Area - Occasional (OWA)

A secure area that can be set aside and made safe (through coning and barriers) by an engineer. Preferably covered and with access to electricity and local WC facilities. This approach will limit the need for permanent use of Authority property as work areas will only need to be utilised temporarily and can be vacated once scheduled/reactive maintenance activities are complete.

Workshop (WS)

Licensed workshop area as detailed within Licence agreement

ID	Site/Country	Site	Facility Type	Yr 1 (month 12) 01/06/21 - 30/06/21	Yr 2 01/07/21 - 30/06/22	Yr 3-1 01/07/22	Yr 3-2 01/10/22	Yr 4 01/07/23 - 30/06/24	Yr 5 01/07/24 - 30/06/25	Yr 6 01/07/25 - 30/06/26	Yr 7 01/07/26 - 30/06/27	Yr 8 01/07/27 - 30/06/28	Yr 9 01/07/28 - 30/06/29	Yr 10 (11 months) 01/07/29 - 31/05/30
ID027														
ID028														
ID029														
ID033														
ID034														
ID035														
ID036														
ID037														
ID038														

ID	Site/Country	Site	Facility Type	Yr 1 (month 12) 01/06/21 30/06/21	Yr 2 01/07/21 30/06/22	Yr 3-1 01/07/22 31/09/22	Yr 3-2 01/10/22 30/06/23	Yr 4 01/07/23 30/06/24	Yr 5 01/07/24 30/06/25	Yr 6 01/07/25 30/06/26	Yr 7 01/07/26 30/06/27	Yr 8 01/07/27 30/06/28	Yr 9 01/07/28 30/06/29	Yr 10 (11 months) 01/07/29 31/05/30
ID065														
ID066														
ID067														
ID068														
ID069														
ID070														
ID071														
ID072														
ID073														
ID074														
ID075														
ID076														
ID077														
ID078														
ID079														
ID080														
ID081														

Table 47: List of Authority Licenced Areas by Facility Type and Period

Schedule 12 – Opportunities & Innovation

1 Introduction

- 1.1 The Contractor shall be obliged to reduce the cost of this contract by developing, implementing and managing innovative proposals during the life of this contract.
- 1.2 The tables detailed below shall be reviewed on a Monthly basis in accordance with the governance detailed in Schedule 9 (Governance).
- 1.3 In the event that innovative proposals are not implemented during the contract period, then the Authority may require the service, either in parts or in whole to be Benchmarked in accordance with the provisions of Clause 16 (Benchmarking) and Schedule 16 (Benchmarking).
- 1.4 The Contractor will be incentivised to implement innovative proposals in accordance with the provisions of Schedule 3 (Pricing and Payment)

2 Innovative Proposals

- 2.1 The following innovative proposals are those in tables 48, 49 & 50 that do not form part of the contract at the commencement date but are within the scope of the Service. The Authority, acting reasonably shall not have an obligation to accept or implement proposals at Table 49 or Table 50 during the Contract Period, if circumstances or business needs change that removes or reduces the benefit of any proposal.
- 2.2 Innovative Proposals are categorised into the following three areas and are detailed in Annex A to this Schedule 12 – Opportunities and Innovation;
 - 2.2.1 Part 1: Innovative Proposals that can be undertaken by the Contractor Independently from the Authority and will be subject to the mechanisms in Schedule 3 (Pricing and Payment)
 - 2.2.2 Part 2: Innovative Proposals that are a Joint activity between the Parties. The benefits from these proposals shall be subject to DEFCON 620 (Contract Change Control Procedure). An agreed split of benefits shall be agreed prior to accepting these into the Contract
 - 2.2.3 Part 3: Innovative Proposals that can be undertaken by the Authority Independently from the Contractor. The Authority shall, acting reasonably, have no obligation to implement these proposals during the life of the contract. These proposals shall not be subject to gainshare.
- 2.3 Innovative Proposals shall only be incorporated into this contract as a Contract Change under DEFCON 620 (Contract Change Control Procedure).
- 2.4 The Parties shall agree a programme by no later than 30 Business days from Commencement Date for the incorporation of the following Innovative Proposals.

Annex A to Schedule 12 – Opportunities and Innovation

Innovative Proposals

3 Tables 48, 49 and 50 below list those innovative proposals agreed at Contract Award that shall be delivered during the Contract Period.

Table 48: Innovative Proposals that can be undertaken by the Contractor Independently from the Authority

Serial	Proposal	Business/SOR Area	Benefit Type	Start Date		End Date	Delivery Risk	Comments
1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
5	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
6	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
7	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Table 48: Innovative Proposals that can be undertaken by the Contractor

Table 49: Innovative Proposals that that are a Joint activity between the Parties

Serial	Proposal	Business/SOR Area	Benefit Type	Start Date	End Date	Delivery Risk	Comments
1	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
5	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
6	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
7	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
8	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
9	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
10	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
11	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
12	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
13	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
14	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Serial	Proposal	Business/SOR Area	Benefit Type	Start Date	End Date	Delivery Risk	Comments
1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Table 49: Joint Innovative Proposals

Table 50: Innovative Proposals that can be undertaken by the Authority Independently from the Contractor.

Serial	Proposal	Business/SOR Area	Benefit Type	Start Date	End Date	Delivery Risk	Comments
1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Table 50: Innovative Proposals that can be undertaken by the Authority

Schedule 13 – MDAL and List of Authority Dependencies

Part A – Risk Register

The Risk Register is a referenced document detailed at Serial 11 of Schedule 19 (Referenced Documents) and will be managed by the Parties on a monthly basis outside of the Contract Change Process. As a starting point for the Risk Register, the AmeyBriggs register (ref: AmeyBriggs BAFO response 1.6 Service Provision - Risk, Issues and Opportunities Register) shall be used.

Part B - AmeyBriggs Authority Dependencies

Dependency ID	AmeyBriggs Owner	Authority Owner	Question reference	Sub area	Name of dependency	Description
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Dependency ID	AmeyBriggs Owner	Authority Owner	Question reference	Sub area	Name of dependency	Description
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Dependency ID	Amey/Briggs Owner	Authority Owner	Question reference	Sub area	Name of dependency	Description
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Dependency ID	AmeyBriggs Owner	Authority Owner	Question reference	Sub area	Name of dependency	Description
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Table 51: AmeyBriggs Authority Dependencies

Part C - AmeyBriggs Bid Assumptions

Assumption IN no.	AmeyBriggs Owner	Authority Owner	Question reference	Workstream Name	Assumption Name	Description
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Assumption IN no.	AmeyBriggs Owner	Authority Owner	Question reference	Workstream Name	Assumption Name	Description
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Assumption IN no.	AmeyBriggs Owner	Authority Owner	Question reference	Workstream Name	Assumption Name	Description
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Assumption IN no.	AmeyBriggs Owner	Authority Owner	Question reference	Workstream Name	Assumption Name	Description
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Assumption IN no.	AmeyBriggs Owner	Authority Owner	Question reference	Workstream Name	Assumption Name	Description
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Table 52: AmeyBriggs Bid Assumptions

OFFICIAL SENSITIVE - COMMERCIAL

OFFICIAL SENSITIVE - COMMERCIAL

Schedule 14 – Fleet Asset Transfer & Management

1 Introduction

- 1.1 The purpose of this Schedule is to detail how the Contractor will provide a cost-effective solution to the ongoing provision of Equipment to meet the MITER Service contained within Schedule 2 (Statement of Requirements) during the Contract Period.

2 Asset Management

- 2.1 From Commencement Date, the Contractor shall be responsible for the planning and managing of the timely replacement and/or procurement of Equipment to deliver the Service from Initial Service Commencement (ISC) in accordance with Schedule 2 (Statement of Requirements).
- 2.2 The initial provision of Equipment will be a combination of the following equipment groups:
 - 2.2.1 Protected Engineering Equipment – To be issued by the Authority as GFA
 - 2.2.2 Construction Equipment – Provided as Fleet Assets by the Contractor
 - 2.2.3 Mechanical Handling Equipment (MHE) – Provided as Fleet Assets by the Contractor

[REDACTED]

[REDACTED]

- 2.5 Any replacement of Fleet Assets is dependent on the Contractor replacing Fleet Assets on a like for like specification as defined in Schedule 19 (Referenced Documents) Serial 12 (Like for Like Specifications). Any derogation from this approach shall only be allowed if agreed by the Parties and implemented in accordance with DEFCON 620 (Contract Change Control Procedure).

3 Asset Management Plan (AMP)

- 3.1 In the delivery of the Service, the Contractor shall provide an Asset Management Plan (AMP). The AMP shall provide the Authority with sufficient detail as to when and how Equipment will be replaced by the Contractor in order to:
 - 3.1.1 Meet the requirements of Schedule 2 (Schedule of Requirements) including Annex B – (Demand Data)
 - 3.1.2 Aid the Authority in its planning and reporting by;
 - 3.1.2.1 Providing details on how it will procure replacement Equipment
 - 3.1.2.2 Detailing any training associated with the provision of new Equipment
 - 3.1.2.3 Reporting any benefits associated with the replacement of Equipment (e.g. reduced maintenance, reduction in overall numbers)
- 3.2 The initial AMP is detailed at Serial 20 of Schedule 19 (Referenced Documents). The AMP shall, as a minimum, be updated and presented to the Authority on an Annual Basis, no later than 10 days after the commencement of each Contract Year.
- 3.3 The Authority, acting reasonably, can request an up to date copy of the AMP at any time during the Contract Period. If the Authority requests such a copy of the AMP, then the Contractor shall have ten (10) Business Days to issue to the Authority.
- 3.4 The AMP should include as a minimum;

- 3.4.1 The high-level plan to replace or dispose of GFA or Fleet Assets during the Contract Period.
- 3.4.2 The detailed plan for the replacement or disposal of GFA or Fleet Assets over the next 24 (twenty-four) months from the date of issue of the AMP.
- 3.4.3 The detail of the Equipment to be procured.
- 3.4.4 The procurement methodology in the way the Fleet Assets will be procured or replaced. (e.g. Purchase, Lease, Spot Hire).
- 3.4.5 The contracting strategy in the way the GFA or Fleet Assets will be procured (e.g. competition).
- 3.4.6 The name of any Subcontractor that the GFA or Fleet Assets will be procured with.
- 3.4.7 An indication of the reduction in servicing, maintenance and breakdown cost of Equipment.
- 3.4.8 An indication of any other benefits that will be realised through the replacement or disposal of such Equipment.
- 3.5 The Contractor shall be incentivised to deliver Asset Management in such a way as to reduce costs contained in the SPF. The Contractor may consider, but is not limited to the following illustrative examples of reducing the SPF by:
 - 3.5.1 replacing the Equipment to reduce service and maintenance costs;
 - 3.5.2 the move from a Military Off The Shelf (MOTS) fleet to a Commercial Off The Shelf (COTS) fleet.
 - 3.5.3 the way it is procured (e.g. purchase, long-term lease or spot hire of Equipment to deliver the Service more efficiently;
 - 3.5.4 the way in which the Authority pays for the Equipment (e.g. a move to a usage fee or a mechanism where the Authority pays for the Equipment either by the hour used or by the miles driven).
- 3.6 Each Equipment Replacement project will be subject to Authority Approvals to ensure that the following considerations are considered.
 - 3.6.1 Safety and environmental considerations
 - 3.6.2 Supportability
 - 3.6.3 User Training
 - 3.6.4 Value for Money
 - 3.6.5 Calculation of Benefits
 - 3.6.6 Any derogations from a like for like replacement have been agreed
- 3.7 In the procurement of replacement Fleet Assets, if the Contractor procures Fleet Assets through a lease agreement or any other medium to long term agreement, then the Contractor shall include provisions within that lease agreement or any other agreement that allows the subject lease or agreement to be transferred to either the Authority or the Authority's Contractor in the following events
 - 3.7.1 Clause 2 (Contract Duration)
 - 3.7.2 Clause 25 (Exit)
 - 3.7.3 Clause 19 (Termination for Contractor Default)
 - 3.7.4 DEFCON 656B Termination for Convenience
 - 3.7.5 Clause 24 (Step In/Step Out)

4 Payment

- 4.1 The Asset Management Programme is included within the Service Provision Fee as detailed at paragraph 43 (Service Provision Fee) of Part 1 (Pricing Provisions) of Schedule 3 (Pricing and Payment).
- 4.2 Pricing for GFA that will vest with the Authority shall be subject to paragraph 4 of Part 1 (Pricing Provisions) of Schedule 3 (Pricing and Payment).

5 Contract Exit

- 5.1 Upon exit of this Contract, all GFA shall be returned to the Authority or transferred to the Authority's new service provider in a fit for purpose state and shall have 4 years life remaining. It is the Contractor's responsibility to make good any equipment that is not fit for purpose.
- 5.2 In the event that the Authority terminates this Contract under DEFCON 656B (Termination for Convenience), then the requirement for 4 years' life remaining shall be limited to the extent to the delivery against the AMP.
- 5.3 In the event that the Authority terminates this Contract under Clause 19 (Termination for Contractor Default), then the Contractor shall be obliged to complete all ongoing procurement activities against the AMP and warrant that at the point of termination, all equipment complies with the requirements of Paragraph 5.1.
- 5.4 If the Contractor has supplied their own Fleet Assets during the Contract Period, which has been used solely in the delivery of the Services, then the Authority shall have the right to purchase these Fleet Assets, along with all associated spares, tools and ancillary equipment as either a whole lot or on an individual basis at the prevailing market value. This market value shall be determined in the following way;
 - 5.4.1 Against the fair market value criteria detailed at paragraph 5.7
 - 5.4.2 The Contractor shall provide to the Authority at least 3 equipment valuation experts within the following timescales;
 - 5.4.2.1 No later than 12 (twelve) months prior to expiry of this Contract
 - 5.4.2.2 In line with any Exit or Transition Management Plan agreed between the Parties.
 - 5.4.3 The Authority shall select a single equipment valuation expert from the Contractors proposed by the contractor and notify the Contractor within 20 Business Days.
 - 5.4.4 If the Authority disagrees with the Contractors choice of equipment valuation experts, then the Authority shall inform the Contractor within 5 Business Days stating the reasons for rejection. The Authority has the right object to the nominations provided by the Contractor no more than 2 (two) occasions.
 - 5.4.5 Once an equipment valuation expert has been agreed, the Parties shall agree the methodology of the valuation. This shall be as close to the current market value of the equipment as reasonably possible.
 - 5.4.6 The value of the Fleet Assets under this process shall be binding on both Parties.
- 5.5 The Authority will notify the Contractor in writing if it intends to purchase the Fleet Assets no later than 6 (six) months prior to expiry of this Contract.
- 5.6 The Contractor shall also return or pass back to the Authority all documentation relating to the Fleet Assets purchased in accordance with paragraph 5.4 of this Schedule 14.
- 5.7 Fair market value will be determined against the following criteria;
 - 5.7.1 The assets are to be valued as individual items based on age, condition and usage.
 - 5.7.2 Individual items are to be valued for individual sale at a commercial market value.
 - 5.7.3 No discount shall be available for bulk purchasing.
 - 5.7.4 No transportation, storage or vendors fees shall be included within the valuation.

5.7.5 Any attachments identified are to be included within the individual price

Schedule 15 – International Traffic Arms Regulations (ITAR)

1 Internal Traffic Arms Regulations (ITAR)

- 1.1 The Contractor shall ensure compliance with ITAR. The Contractor is responsible for identifying and resolving all issues relating to ITAR. The Contractor shall manage ITAR in such a way so that delays in accessing material subject to ITAR do not occur.
- 1.2 The Contractor is responsible for ensuring that the necessary approvals or licences are in place prior to receiving or issuing any ITAR controlled Articles. This may include providing Articles to Subcontractors and the re-import of items to the US even on a temporary basis for repair. The Authority will support requests to import or export equipment under this Contract but cannot guarantee approval from the US government.

Schedule 16 – Benchmarking

1 Definitions

In this Schedule, the following definitions shall apply:

"Benchmarked Service"	a Service that the Authority elects to include in a Benchmark Review under Paragraph 2.3;
"Benchmarker"	the independent third party appointed under Paragraph 3.1;
"Benchmark Report"	the report produced by the Benchmarker following the Benchmark Review as further described in Paragraph 5;
"Benchmark Review"	a review of one or more of the Services carried out in accordance with Paragraph 4 to determine whether those Services represent Good Value;
"Comparable Service"	in relation to a Benchmarked Service, a service that is identical or materially similar to the Benchmarked Service (including in terms of scope, specification, volume and quality of performance);
"Comparison Group"	in relation to a Comparable Service, a sample group of organisations providing the Comparable Service identified by the Benchmarker under Paragraph 4.8 which consists of organisations which are either of similar size to the Contractor or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarker's professional opinion) fair comparators with the Contractor or which, in the professional opinion of the Benchmarker, are best practice organisations and, where there are a reasonable number of such organisations, referencing only those organisations that are carrying on at least a significant part of their business within the United Kingdom;
"Equivalent Services Data"	in relation to a Comparable Service, data derived from an analysis of the Comparable Service provided by the Comparison Group as adjusted in accordance with Paragraphs 4.8.1 and 4.9 provided that the Benchmarker shall not use any such data that relates to a period which ended more than 36 months prior to the date of the appointment of the Benchmarker;
"Good Value"	in relation to a Benchmarked Service, that: <ul style="list-style-type: none"> a) having taken into account the Key Performance Indicators and the value for money of the Charges attributable to that Benchmarked Service is at least as good as the value for money of the Upper Quartile; and b) any Performance Indicators and Target Performance Levels applicable to that Benchmarked Service are, having taken into account the Charges, equal to or better than the median service levels for the Comparable Service using Equivalent Services Data; and

"Upper Quartile" the [REDACTED] of instances of provision of a Comparable Service by members of the Comparison Group ranked by best value for money to the recipients of that Comparable Service.

2 Frequency, purpose and scope of benchmark review

- 2.1 The Authority may, by written notice to the Contractor, conduct a Benchmark Review of the Services and shall give the Contractor 60 Business days' notice of any such review, in order to establish whether the Service is good value.
- 2.2 The Authority shall be entitled to carry out one Benchmark Review of the Services for the purposes of informing its decision as to whether to invoke the Option Years.
- 2.3 The Services that are to be the Benchmarked Services shall be identified by the Authority in the notice given under Paragraph 2.1.

3 Appointment of Benchmarker

- 3.1 The Authority shall appoint a Benchmarker to carry out the Benchmark Review and inform the Contractor of the Benchmarker.
- 3.2 The Authority shall, at the written request of the Contractor, require the Benchmarker to enter into a confidentiality agreement with the Contractor in, or substantially in, the form set out in Annex A to this Schedule.
- 3.3 The costs and expenses of the Benchmarker and the Benchmark Review shall be shared equally between both Parties provided that each Party shall bear its own internal costs of the Benchmark Review. The Benchmarker shall not be compensated on a contingency fee or incentive basis.
- 3.4 The Authority shall be entitled to pay the Benchmarker's costs and expenses in full and to recover the Contractor's share from the Contractor.

4 Benchmark review

- 4.1 The Authority shall require the Benchmarker to produce, and to send to Authority for approval and the Contractor for information, a draft plan for the Benchmark Review within 10 Business Days after the date of the appointment of the Benchmarker, or such longer period as the Benchmarker shall reasonably request in all the circumstances.
 - 4.1.1 a proposed timetable for the Benchmark Review;
 - 4.1.2 a description of the information that the Benchmarker requires each Party to provide;
 - 4.1.3 a description of the benchmarking methodology to be used;
 - 4.1.4 a description that clearly illustrates that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives under Paragraph 2.1;
 - 4.1.5 an estimate of the resources required from each Party to underpin the delivery of the plan;
 - 4.1.6 a description of how the Benchmarker will scope and identify the Comparison Group;
 - 4.1.7 details of any entities which the Benchmarker proposes to include within the Comparison Group; and
 - 4.1.8 if in the Benchmarker's professional opinion there are no Comparable Services or the number of entities carrying out Comparable Services is insufficient to create a Comparison Group, a detailed approach for meeting the relevant benchmarking objective(s) under Paragraph 2.1 using a proxy for the Comparison Services and/or Comparison Group as applicable.
- 4.2 The Parties acknowledge that the selection and or use of proxies for the Comparison Group (both in terms of number and identity of entities) and Comparable Services shall be a matter for the Benchmarker's professional judgment.

- 4.3 Each Party shall give notice in writing to the Benchmarker and to the other Party within 10 Business Days after receiving the draft plan either approving the draft plan or suggesting amendments to that plan which must be reasonable. Where a Party suggests amendments to the draft plan pursuant to this Paragraph 4.3, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 4.1 and this Paragraph 4.3 shall apply to any amended draft plan.
- 4.4 Failure by a Party to give notice under Paragraph 4.3 shall be treated as approval of the draft plan by that Party. If the Parties fail to approve the draft plan within 30 Business Days of its first being sent to them pursuant to Paragraph 4.1 then the Benchmarker shall prescribe the plan.
- 4.5 Once the plan is approved by both Parties or prescribed by the Benchmarker, the Benchmarker shall carry out the Benchmark Review in accordance with the plan. Each Party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay. If the Contractor fails to provide any information requested from it by the Benchmarker and described in the plan, such failure shall constitute a Material Breach as described within DEFCON 514 (Material Breach)
- 4.6 Each Party shall co-operate fully with the Benchmarker, including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker, provided that the Benchmarker shall be instructed to minimise any disruption to the Services.
- 4.7 Either Party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
- 4.8 Once it has received the information it requires, the Benchmarker shall:
- 4.8.1 finalise the sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The final selection of the Comparison Group (both in terms of number and identity of entities) and of the Comparable Services shall be a matter for the Benchmarker's professional judgment;
 - 4.8.2 derive the Equivalent Services Data by applying the adjustment factors listed in Paragraph 4.9 and from an analysis of the Comparable Services;
 - 4.8.3 derive the relative value for money of the charges payable for the Comparable Services using the Equivalent Services Data and from that derive the Upper Quartile;
 - 4.8.4 derive the median service levels relating to the Comparable Services using the Equivalent Services Data;
 - 4.8.5 compare the value for money of the Charges attributable to the Benchmarked Services (having regard in particular to the applicable Performance Indicators and Target Performance Level) to the value for money of the Upper Quartile;
 - 4.8.6 compare the Performance Indicators and Target Performance Level attributable to the Benchmarked Services (having regard to the Charges and Service Credits) with the median service levels using the Equivalent Services Data; and
 - 4.8.7 determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.
- 4.9 The Benchmarker shall have regard to the following matters when performing a comparative assessment of a Benchmarked Service and a Comparable Service in order to derive Equivalent Services Data:
- 4.9.1 the contractual and business environment under which the Services are being provided (including the scope, scale, complexity and geographical spread of the Services);
 - 4.9.2 any front-end investment and development costs of the Contractor;
 - 4.9.3 the Contractor's risk profile including the financial, performance or liability risks associated with the provision of the Services as a whole;

- 4.9.4 the extent of the Contractor's management and contract governance responsibilities;
- 4.9.5 any other reasonable factors demonstrated by the Contractor, which, if not taken into consideration, could unfairly cause the Contractor's pricing to appear non-competitive (such as erroneous costing, non-sustainable behaviour including excessive consumption of energy or over-aggressive pricing).

5 Benchmark report

- 5.1 The Benchmarker shall be required to prepare a Benchmark Report and deliver it simultaneously to both Parties, at the time specified in the plan approved under Paragraph 4, setting out its findings. The Benchmark Report shall:
 - 5.1.1 include a finding as to whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;
 - 5.1.2 include other findings (if any) regarding the quality and competitiveness or otherwise of those Services;
 - 5.1.3 if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Charges, Performance Indicators and/or Target Performance Levels, that would be required to make that Benchmarked Service or those Benchmarked Services as a whole Good Value; and
 - 5.1.4 illustrate the method used for any normalisation of the Equivalent Services Data
- 5.2 The Benchmarker shall act as an expert and not as an arbitrator.
- 5.3 If the Benchmark Report states that any Benchmarked Service is not Good Value or that the Benchmarked Services as a whole are not Good Value, then the Contractor shall (subject to Paragraphs 5.5 and 5.6) implement the changes set out in the Benchmark Report as soon as practicable within timescales agreed with the Authority but in any event within no more than 3 months. Any associated changes to the Charges shall take effect only from the same date and shall not be retrospective.
- 5.4 The Contractor acknowledges and agrees that Benchmark Reviews shall not result in any increase to the charges, disapplication of the Key Performance Indicators or any reduction in the performance levels.
- 5.5 The Contractor shall be entitled to reject any Benchmark Report if the Contractor reasonably considers that the Benchmarker has not followed the procedure for the related Benchmark Review as set out in this Schedule in any material respect.
- 5.6 The Contractor shall not be obliged to implement any Benchmark Report to the extent this would cause the Contractor to provide the Services at a reduced profit level (excluding the impact of any Reward Fee or Incentive Fee payments on the profit level), or to the extent the Contractor cannot technically implement the recommended changes.
- 5.7 In the event of any Dispute arising over whether the Benchmarker has followed the procedure for the related Benchmark Review under Paragraph 5.5 and/or any matter referred to in Paragraph 5.6, the Dispute shall be rectified in accordance with DEFCON 530 Dispute Resolution).

Annex A to Schedule 16- BENCHMARKING CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [date]

BETWEEN:

- (1) [insert name] of [insert address] (the "**Contractor**"); and
- (2) [insert name] of [insert address] (the "**Benchmarker**" and together with the Contractor, the "**Parties**").

WHEREAS:

- (A) The Authority and the Contractor are party to a contract dated [insert date] (the "**Contract**") for the provision by the Contractor of [insert brief description of services] to the Authority.
- (B) The Benchmarker is to receive Confidential Information from the Contractor for the purpose of carrying out a benchmarking review for the Authority of one or more of such services pursuant to the terms of the Contract (the "**Permitted Purpose**").

IT IS AGREED as follows:

1 Interpretation

1.1 In this Agreement, unless the context otherwise requires:

"Confidential Information"

means:

Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Contractor to the Benchmarker pursuant to this Agreement that relates to:

the Contractor; or

the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Contractor;

other Information provided by the Contractor pursuant to this Agreement to the Benchmarker that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Benchmarker's attention or into the Benchmarker's possession in connection with the Permitted Purpose;

discussions, negotiations, and correspondence between the Contractor or any of its directors, officers, employees, consultants or professional advisers and the Benchmarker or any of its directors, officers, employees, consultants and professional advisers in connection with the Permitted Purpose and all matters arising therefrom; and

a) Information derived from any of the above,

but not including any Information that:

(i) was in the possession of the Benchmarker without obligation of confidentiality prior to its disclosure by the Contractor;

(ii) the Benchmarker obtained on a non-confidential basis from a third party who is not, to the Benchmarker's knowledge or belief, bound by a confidentiality agreement with the Contractor or otherwise prohibited from disclosing the information to the Benchmarker;

(iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or

- (iv) was independently developed without access to the Confidential Information;

"Information" means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and

"Permitted Purpose" has the meaning given to that expression in recital (B) to this Agreement.

1.2 In this Agreement:

- 1.2.1 a reference to any gender includes a reference to other genders;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 the words "include" and cognate expressions shall be construed as if they were immediately followed by the words "without limitation";
- 1.2.4 references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;
- 1.2.5 headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- 1.2.6 references to Paragraphs are to paragraphs of this Agreement.

2 Confidentiality Obligations

2.1 In consideration of the Contractor providing Confidential Information to the Benchmark, the Benchmark shall:

- 2.1.1 treat all Confidential Information as secret and confidential;
- 2.1.2 have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
- 2.1.3 not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Contractor or, if relevant, other owner or except as expressly set out in this Agreement;
- 2.1.4 not transfer any of the Confidential Information outside the United Kingdom;
- 2.1.5 not use or exploit any of the Confidential Information for any purpose whatsoever other than the Permitted Purpose;
- 2.1.6 immediately notify the Contractor in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- 2.1.7 once the Permitted Purpose has been fulfilled:
 - 2.1.7.1 destroy or return to the Contractor all documents and other tangible materials that contain any of the Confidential Information;
 - 2.1.7.2 ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Benchmark) from any computer, word processor, voicemail system or any other device; and
 - 2.1.7.3 make no further use of any Confidential Information.

3 Permitted Disclosures

3.1 The Benchmark may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:

- 3.1.1 reasonably need to receive the Confidential Information in connection with the Permitted Purpose; and
 - 3.1.2 have been informed by the Benchmarker of the confidential nature of the Confidential Information; and
 - 3.1.3 have agreed to terms similar to those in this Agreement.
- 3.2 The Benchmarker shall be entitled to disclose Confidential Information to the Authority for the Permitted Purpose and to any Expert appointed in relation to a Dispute as referred to in Paragraph 5.7 of Schedule 16 (Benchmarking) to the Contract.
- 3.3 The Benchmarker shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Benchmarker.
- 3.4 Before making a disclosure pursuant to Paragraph 3.3, the Benchmarker shall, if the circumstances permit:
- 3.4.1 notify the Contractor in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
 - 3.4.2 ask the court or other public body to treat the Confidential Information as confidential.

4 General

- 4.1 The Benchmarker acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Contractor shall remain with and be vested in the Contractor.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
- 4.2.1 to grant the Benchmarker any licence or rights other than as may be expressly stated in this Agreement;
 - 4.2.2 to require the Contractor to disclose, continue disclosing or update any Confidential Information; or
 - 4.2.3 as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of this Agreement.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Contractor may have, the Benchmarker acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Benchmarker of any of the provisions of this Agreement. Accordingly, the Benchmarker acknowledges that the Contractor shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Benchmarker to the Contractor for any breach of this Agreement shall be limited to [REDACTED]
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.

- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

5 Notices

- 5.1 Any notice to be given under this Agreement (each a "Notice") shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Paragraph 5.2.

- 5.2 Any Notice:

- 5.2.1 if to be given to the Contractor shall be sent to:

[Address]

Attention: [*Contact name and/or position, e.g. "The Finance Director"*]

- 5.2.2 if to be given to the Benchmarking shall be sent to:

[Name of Organisation]

[Address]

Attention: []

6 Governing law

- 6.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.
- 6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

IN WITNESS of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

For and on behalf of [*name of Contractor*]

Signature:

Date:

Name:

Position:

For and on behalf of [*name of Benchmark*]

Signature:

Date:

Name:

Position:

Schedule 17 – Contractor’s Compliance Matrix

1. The Contractor has provided a compliance matrix at Schedule 19 to detail how they shall deliver the contract in accordance with Schedule 2 (Statement of Requirement), its Annexes and Appendices. It is included in Schedule 19, but has the hierarchy as agreed in Clause 4 (Contract Documentation and Precedence).

[REDACTED]

Explanation of Sensitivity:

The above sections contain technical methods and practices, which support our commercial and pricing strategies and, in the circumstances relating to the information, justify the acceptance by the Authority of confidentiality obligations in relation to it; and/or

The sections contain confidential pricing information and the nature and circumstances relating to the information justify the acceptance by the Authority in relation to it; and/or

The information contains personal data subject to the Data Protection Act 2018 or otherwise relates to the private life of an individual and is therefore appropriate for protection

Details of potential harm resulting from disclosure:

The disclosure of the information would prejudice AmeyBriggs and/or Amey's or Briggs' commercial interests.

The disclosure of the information would represent a breach of the Data Protection Act 2018

Period of Confidence (if applicable): 3 years after expiry of any Contract awarded following the tender process (whether or not awarded to AmeyBriggs) and 3 years after expiry of this Agreement.

Contact Details for Transparency / Freedom of Information matters:

Name: [REDACTED]

Position: Managing Director

Address: AmeyBriggs Services Limited, 10 Furnival Street, London, United Kingdom. EC4A 1AB

Telephone Number: [REDACTED]

Email Address: [REDACTED]

Table 53: Contractors Commercially Sensitive Information

Schedule 19 – Referenced Documents

1. The following tables list the Referenced Documents to this Contract. Any change to the list of documents shall be in accordance with DEFCON 620 (Contract Change Control Procedure).

Serial	Referenced Document	File Reference	Description
1	[REDACTED]	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]	[REDACTED]
4	[REDACTED]	[REDACTED]	[REDACTED]
5	[REDACTED]	[REDACTED]	[REDACTED]
6	[REDACTED]	[REDACTED]	[REDACTED]
7	[REDACTED]	[REDACTED]	[REDACTED]

Serial	Referenced Document	File Reference	Description
	[Redacted]		
8	[Redacted]	[Redacted]	[Redacted]
9	[Redacted]	[Redacted]	[Redacted]
10	[Redacted]	[Redacted]	[Redacted]
11	[Redacted]	[Redacted]	[Redacted]
12	[Redacted]	[Redacted]	[Redacted]
13	[Redacted]	[Redacted]	[Redacted]
14	[Redacted]	[Redacted]	[Redacted]
15	[Redacted]	[Redacted]	[Redacted]
16	[Redacted]	[Redacted]	[Redacted]
17	[Redacted]	[Redacted]	[Redacted]
18	[Redacted]	[Redacted]	[Redacted]
19	[Redacted]	[Redacted]	[Redacted]

Serial	Referenced Document	File Reference	Description
20	[REDACTED]	[REDACTED]	[REDACTED]

Table 54: List of Referenced Documents

Additional Documents included

Schedule 2

Serial	Document	Description
1	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]

Table 55: List of Additional Documents

Schedule 20 – Parent Company Guarantees

1. In accordance with Clause 15 (Parent Company Guarantees), the following guarantees at Annex A (Amey Community Ltd) and Annex B (Briggs Equipment UK Ltd) shall apply for the duration of this Contract.





