

DATED

2022

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

and

LOCKHEED MARTIN UK LIMITED (2)

**TIQUILA PROGRAMME
MINI-UNCREWED AIR SYSTEMS
(MUAS) CONTRACT**

UAS/00106



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THIS CONTRACT is made on

2022

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR DEFENCE** (the “**Authority**”); and
- (2) **LOCKHEED MARTIN UK LIMITED** registered in England (**number 02372738**), whose registered office is at Building 7000, Langstone Technology Park, Langstone Road, Havant, PO9 1SW (the “**System Integrator**”).

BACKGROUND:

- (A) On 18 September 2020 the Authority advertised in the Official Journal of the European Union (reference OJEU 440958-2020) inviting prospective providers to submit proposals to manage the development, procurement and delivery of MUAS capability to provide intelligence, surveillance, target acquisition and reconnaissance roles in packable and portable loads in support of field operations as required by the TIQUILA Programme.
- (B) On the basis of the System Integrator’s response to the advertisement and a subsequent tender process, the Authority selected the System Integrator as its preferred provider.
- (C) The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

PART 1 - DEFINITIONS AND INTERPRETATION

1 Definitions and Interpretation

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

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

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- 1.1.7 unless stated to the contrary, any reference to this Contract or to any other document shall include any variation, amendment or supplement to such document;
- 1.1.8 references to any enactment, order, regulation, or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, supplemented, replaced or consolidated by any subsequent enactment, order, regulation or instrument;
- 1.1.9 the heading to any provision in this Contract shall not affect the interpretation of that provision;
- 1.1.10 any decision, act, or thing which the Authority is required or authorised to take or do under this Contract may be taken or done only by any person authorised, either generally or specifically, by the Authority to take or do that decision, act, or thing on behalf of the Authority;
- 1.1.11 unless excluded within the terms of this Contract or where otherwise required by law:
- (i) references to submission of documents in writing shall include electronic submission;
 - (ii) any requirement for a document to be signed or references to signatures shall be construed to include electronic signature, provided that a formal method of authentication as previously agreed between the Parties is employed and such agreed method is recorded in this Contract;
 - (iii) a reference in this Contract to any Clause, part, paragraph, Schedule, Appendix or Annex is, except where expressly stated to the contrary, a reference to such Clause, part, paragraph or Schedule of or Appendix or Annex to this Contract; and
 - (iv) a reference in this Contract to any Clause or paragraph is a reference to the whole of that Clause or paragraph unless stated otherwise;
- 1.1.12 a reference to a “day” or “days” are references to calendar day(s) unless specified as being Working Day(s);
- 1.1.13 references to a “month” or “months” are references to calendar month(s) unless specified as being Contract Month(s);
- 1.1.14 “loss” includes damage or destruction; and
- 1.1.15 The Schedules, Appendices and the Annexes are incorporated in, and shall form part of, this Contract and the Parties shall comply with such Schedules, Appendices and the Annexes.

2 Precedence

- 2.1 If there is any inconsistency between the provisions of the main body of this Contract and the Schedules, the Appendices and/or the Annexes, or between any of the Schedules, the Appendices and/or the Annexes, the conflict shall be resolved according to the following descending order of priority:
- 2.1.1 the main body of this Contract;
 - 2.1.2 Schedule 1 (*Definitions, Acronyms and Initialisms*);
 - 2.1.3 Schedule 7 (*Pricing and Payment*);
 - 2.1.4 Schedule 8 (*Ad Hoc Task Order Approval Process*);
 - 2.1.5 Schedule 9 (*Change Procedure*);
 - 2.1.6 Part 5 (*Third Party Intellectual Property*) of Schedule 11 (*IPR*) and its respective Appendices and Annexes;
 - 2.1.7 Part 2 (*Intellectual Property Rights in Software*) of Schedule 11 (*IPR*) and its respective Appendices and Annexes;
 - 2.1.8 Part 1 (*Intellectual Property Rights*), Part 3 (*Intellectual Property Rights Vesting in the Authority*), Part 4 (*Inventions and Designs*) and Part 6 (*International Collaboration*) of Schedule 11 (*IPR*) and their respective Appendices and Annexes;
 - 2.1.9 Part 3 (*Capability Requirements*) of Schedule 2 (*Obligations of the System Integrator*);
 - 2.1.10 Part 2 (*VVRM*) of Schedule 3 (*System Integrator Proposals*);
 - 2.1.11 Parts 1 (*General*), 2 (*Supplier Enabling Arrangement*), 4 (*In-Service Support*), 5 (*Capability Integration Cycle*) and 6 (*Safety and Airworthiness*) of Schedule 2 (*Obligations of the System Integrator*) and their respective Appendices and Annexes; and
 - 2.1.12 the remaining Schedules and their respective Appendices and Annexes.
- 2.2 If there is any conflict or inconsistency between the provisions of this Contract and the provisions of any document referred to in this Contract (including any other document referred to in that or any subsequent document), then the provisions of this Contract shall prevail.
- 2.3 If a Party becomes aware of any conflict or inconsistency within or between the documents referred to in Clauses 2.1 and/or 2.2 (*Precedence*), such Party's Representative shall notify the other Party's Representative immediately. If the Authority decides a Change is required to resolve the conflict or inconsistency it shall issue an Authority Notice of Change in accordance with Schedule 9 (*Change Procedure*) and the provisions of Schedule 9 (*Change Procedure*) shall apply save that such Change shall not result in an increase to the Contract Price or the Pricing Information.

PART 2 - CORE OBLIGATIONS

3 The System Integrator's Obligations

3.1 The System Integrator shall:

3.1.1 comply with its obligations in Schedule 2 (*Obligations of the System Integrator*);

3.1.2 deliver the System Integrator Deliverables and/or shall ensure that the System Integrator Deliverables are delivered in accordance with and, in each case, having due regard to:

- (i) Good Industry Practice;
- (ii) all Necessary Consents;
- (iii) Legislation;
- (iv) this Contract including Schedule 2 (*Obligations of the System Integrator*); and
- (v) Approved Task Orders;

3.1.3 deliver the System Integrator Deliverables using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money; and

3.1.4 continue to perform all of its obligations under this Contract and shall not suspend the performance of the System Integrator Deliverables, notwithstanding:

- (i) any withholding by the Authority in accordance with this Contract and/or the application of any Retentions pursuant to Schedule 4 (*System Integrator Performance Mechanism*);
- (ii) the existence of an unresolved Dispute; and/or
- (iii) any failure by the Authority to pay any sums due.

3.2 To avoid doubt, the obligations in Clause 3.1 (*The System Integrator's Obligations*) are independent obligations. In particular:

3.2.1 the fact that the System Integrator has complied with the System Integrator's Proposals shall not be a defence to an allegation that the System Integrator has not satisfied Schedule 2 (*Obligations of the System Integrator*); and

3.2.2 the fact that the System Integrator has satisfied Schedule 2 (*Obligations of the System Integrator*) shall not be a defence to an allegation that the System Integrator has failed to comply with the System Integrator's Proposals.

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- 3.3 Without prejudice to Clause 3.2 (*The System Integrator's Obligations*), if it shall be found that the System Integrator's Proposals do not fulfil the obligations in Schedule 2 (*Obligations of the System Integrator*), the System Integrator shall (at its own expense) amend the System Integrator's Proposals and rectify the System Integrator Deliverables to ensure that they meet the obligations in Schedule 2 (*Obligations of the System Integrator*).
- 3.4 Notwithstanding any other provisions of this Contract, nothing in Schedule 3 (*System Integrator's Proposals*) shall in any way limit or reduce any of the System Integrator's obligations under this Contract nor shall the provisions of Schedule 3 (*System Integrator's Proposals*):
- 3.4.1 impose upon the Authority any obligation or any other requirement which is greater than the obligations and/or requirements contained in the remaining provisions of this Contract;
 - 3.4.2 limit or reduce the Authority's rights and remedies contained in the remaining provisions of this Contract; and/or
 - 3.4.3 otherwise have an adverse impact on the Authority.
- 3.5 The System Integrator acknowledges that Schedule 2 (*Obligations of the System Integrator*) requires a number of outputs and that the tasks and activities that are required to be carried out by the System Integrator to achieve the outputs are minimum requirements and that the relevant tasks and activities are non-exclusive and that other related and/or additional tasks and activities are likely to be required to be carried out in order to achieve completion of the required obligations and/or the full required output of Schedule 2 (*Obligations of the System Integrator*).
- 3.6 The System Integrator further acknowledges that during the Contract Period the Authority is relying on the System Integrator's expertise, experience and skill in identifying any such related and/or additional tasks and activities (as referred to in Clause 3.5 in order that the System Integrator is able to carry out the relevant required tasks and activities and achieve the full required outputs of Schedule 2 (*Obligations of the System Integrator*)).
- 3.7 In recognition of the System Integrator's acknowledgements in Clauses 3.5 and 3.6 above (*The System Integrator's Obligations*) during the Contract Period the System Integrator shall, having due regard to the provisions of Clauses 3.1 to 3.6 (inclusive) (*The System Integrator's Obligations*), use its expertise, experience and skill to identify and carry out and perform any such related and/or additional tasks and activities to achieve the successful and timely completion of all of the obligations and tasks and other matters referred to in Schedule 2 (*Obligations of the System Integrator*) and elsewhere in this Contract and the System Integrator hereby acknowledges and confirms that it shall not be entitled to any increase in the Contract Price and/or any Monthly Payment in connection with the carrying out of such related and/or additional tasks and activities.

4 **Pricing and Payment**

Pricing and Payment

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4.1 The Monthly Payment in respect of each Contract Month is calculated in accordance with Schedule 7 (*Pricing and Payment*).

4.2 Notwithstanding:

4.2.1 any provisions in this Contract; and/or

4.2.2 any information provided to the System Integrator before or after the Effective Date,

save for when expressly identified as a pricing assumption either in this Contract or in a Task Order, no limitation on liability, exclusion, assumption or similar provision set out in this Contract or otherwise shall give the System Integrator the right to increase the Firm Price.

Ad Hoc Task Order Approval Process

4.3 The Parties shall give effect to Schedule 8 (*Ad Hoc Task Order Approval Process*).

5 Exclusivity

5.1 The System Integrator accepts that the Authority may invite competitive quotations from the System Integrator and/or others and, as appropriate, place orders elsewhere, appointing Third Parties or carrying out work itself in respect of any or all of the System Integrator Deliverables during the Contract Period if:

5.1.1 the System Integrator is in breach of any of its obligations under this Contract;

5.1.2 the System Integrator, either through itself or a Sub-Contractor, is unable to provide the whole or any part of any proposed System Integrator Deliverables;

5.1.3 the Authority and the System Integrator fail to agree that a System Integrator Deliverable meets the Authority's requirement to ensure value for money and/or affordability;

5.1.4 the Authority requires articles and/or services that are not System Integrator Deliverables;

5.1.5 a Customer of the Authority does not participate in the TIQUILA Programme;

5.1.6 the System Integrator confirms that it does not intend to submit:

(i) an Ad Hoc Task Order Proposal in response to a request by the Authority for an Ad Hoc Task Order or the System Integrator fails to submit an Ad Hoc Task Order Proposal following such request within the time period specified in and in accordance with the

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provisions of Schedule 8 (*Ad Hoc Task Order Approval Process*); and/or

- (ii) an Innovation Proposal and/or CIC Task Order in response to a request by the Authority for an Innovation Proposal and/or CIC Task Order or the System Integrator fails to submit an Innovation Proposal and/or CIC Task Order following such request within the time period specified in and in accordance with the provisions of paragraph 5 of Part 5 (*Capability Integration Cycle*) of Schedule 2 (*Obligations of the System Integrator*); and/or

5.1.7 the System Integrator is deemed to be in material breach of this Contract pursuant to paragraphs 4.7, 5.3, 5.5, 8.5 or 8.9.4 of Schedule 4 (*System Integrator Performance Mechanism*).

5.2 The Authority accepts that the System Integrator may, and the Authority may require the System Integrator to, request that the System Integrator invite competitive quotations from a Third Party who is not an Enabling Contractor and, as appropriate, place orders elsewhere, appoint such Third Parties or carry out work itself in respect of any or all of the System Integrator Deliverables during the Contract Period if:

5.2.1 no Enabling Contractor is able to provide the whole or any part of any proposed System Integrator Deliverables; or

5.2.2 no Enabling Contractor is able to meet the Authority's requirement including to ensure value for money.

5.3 Without prejudice to the provisions of Schedule 8 (*Ad Hoc Task Order Approval Process*) and paragraph 5 of Part 5 (*Capability Integration Cycle*) of Schedule 2 (*Obligations of the System Integrator*), the System Integrator shall not be entitled to any payment, compensation, damages, costs, losses and/or expenses arising out of or in connection with the circumstances set out in this Clause 5 (*Exclusivity*).

Consequences of appointing a Third Party

5.4 Where the Authority exercises its rights pursuant to this Clause 5 (*Exclusivity*):

5.4.1 the System Integrator shall, at its own cost, comply with the provisions of this Clause 5.4 (*Consequences of appointing a Third Party*) (insofar as such Clause is relevant); and

5.4.2 where the reason for the Authority exercising such rights is due to a breach by the System Integrator of its obligations under this Contract, the System Integrator shall indemnify the Authority against all of the Authority's Losses arising out of or in connection with the exercise of such rights (including all internal costs and all additional costs, liabilities, losses and/or expenses over and above those which the Authority would reasonably have incurred under this Contract had the System Integrator complied with its obligations under this Contract).

6 Contract Period

6.1 Subject to Clauses 6.2 to 6.3 (inclusive), this Contract and the rights and obligations of the Parties shall take effect on the Effective Date and, except as set out in Clause 81 (*Continuing Obligations*), shall terminate on the earlier of the:

6.1.1 Expiry Date, as the same may be extended pursuant to Clause 6.2 (*Exercise of Optional Extension*); and

6.1.2 Termination Date.

Exercise of Optional Extension

6.2 In consideration of the Authority agreeing to enter into this Contract, the System Integrator hereby grants to the Authority the right to (in its absolute discretion) extend the term of this Contract by:

6.2.1 a single further period or multiple further periods of at least six (6) months ("**Optional Extension**"); and

6.2.2 giving the System Integrator at least three (3) months' advance notice, provided the total period of the Optional Extension does not exceed twenty-four (24) months.

6.3 Following the exercise of the Optional Extension pursuant to this Clause 6 (*Contract Period*):

6.3.1 any rights and obligations of the Parties existing under this Contract prior to the exercise of such Optional Extension shall continue to apply; and

6.3.2 the Contract Price shall be calculated in accordance with the relevant part of the Price List.

7 System Integrator Warranties and Undertakings

System Integrator warranties

7.1 The System Integrator warrants and represents to the Authority that:

7.1.1 it has the power to enter into and to exercise its rights and perform its obligations under this Contract and any Sub-Contracts and all action necessary on the part of the System Integrator to authorise the execution of and the performance of its obligations under this Contract has been taken;

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

7.1.3 this Contract is executed by its duly authorised representative;

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

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- 7.1.5 at the date of this Contract the entire share capital in the System Integrator is legally and beneficially owned by Lockheed Martin UK Holdings Limited, a company incorporated in England and Wales (with Registered Number 3184898) whose registered office is situated at 7000 Langstone Technology Park, Langstone, Langstone, England, PO9 1SW and that no arrangements are in place or are contemplated that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the System Integrator;
- 7.1.6 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunals pending or to its knowledge, threatened against it or any of its System Integrator Related Parties that might affect its ability to perform its obligations under this Contract;
- 7.1.7 its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Legislation, other law (in any jurisdiction), or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- 7.1.8 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar law affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- 7.1.9 all written statements and representations in any written submissions made by the System Integrator as part of the procurement process, its tender and any other documents submitted, remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the System Integrator has otherwise disclosed to the Authority in writing prior to the date of this Contract;
- 7.1.10 it is not subject to any contractual or other obligation, compliance with which shall or is likely to have a material adverse effect on the ability of the System Integrator to perform its obligations under this Contract;
- 7.1.11 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the System Integrator or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the System Integrator's assets or revenue and as at Contract Award no Insolvency Event has occurred;
- 7.1.12 it shall not commit, and in entering into this Contract it has not committed, any Prohibited Act and for this purpose only the words "or without" in the introduction of the definition of Prohibited Act shall be deleted;

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- 7.1.13 it, nor to the best of its knowledge any System Integrator Related Party nor any of the System Integrator's employees, consultants, Sub-Contractors or agents, have at any time prior to the Effective Date:
- (i) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - (ii) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act;
- 7.1.14 it shall:
- (i) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
 - (ii) keep appropriate records of its compliance with its obligations under Clause 7.1.14(i) (*System Integrator warranties*) and make such records available to the Authority on request;
- 7.1.15 it shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 7.1.13 (*System Integrator warranties*), or has reason to believe that it has or any of the System Integrator Related Party or any of the System Integrator's employees, consultants, Sub-Contractors or agents have:
- (i) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - (ii) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - (iii) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act;
- 7.1.16 so far as it is aware, there is not, nor has there been, any infringement or alleged infringement of any Third Party's IPR in connection with this Contract;
- 7.1.17 it has all necessary rights in and to the System Integrator Background IPR, the Vesting IPR, the System Integrator Foreground IPR, the Third Party Licensed Software and any other materials (including the Third Party IPR

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made available by the System Integrator (and/or any Sub-Contractor)) to the Authority which are necessary for the performance of the System Integrator's obligations under this Contract and/or the receipt of the System Integrator Deliverables by the Authority;

- 7.1.18 it has used and will continue to use the degree of skill, care, diligence, best up-to-date practice and foresight in the performance of each of the System Integrator Deliverables that would reasonably be expected of a fully qualified and competent professional system integrator experienced in carrying out activities of a similar nature, scope, size, timescale and complexity to those comprised in the System Integrator Deliverables;
- 7.1.19 in relation to any defects and/or other faults in the System Integrator Deliverables which arise at any time during the Contract Period or within two (2) years after the end of the Contract Period due to any failure of the System Integrator to comply with its obligations under this Contract (provided that, for the avoidance of doubt, this Clause does not apply to damage to, or faults in, Articles occurring after the expiry of their warranty period), it shall:
- (i) remedy any such defects and/or other faults in the System Integrator Deliverables as soon as reasonably practicable; and/or
 - (ii) indemnify the Authority for all costs incurred in carrying out any remedial work necessary to remedy such defects and/or other faults in the System Integrator Deliverables; and
 - (iii) inform the Authority immediately if the System Integrator becomes aware of any such defects and/or other faults in the System Integrator Deliverables that may have an impact on the Authority; and
- 7.1.20 where the System Integrator and/or any System Integrator Related Party receives any benefit or other advantage (whether financial or otherwise) of any kind (for example receiving a discount in price or other benefit or advance), directly or indirectly, from any supplier of goods and/or equipment and/or in relation to any other deliverable provided by the System Integrator Deliverables, the System Integrator shall ensure that the benefit or other advantage is passed to the Authority in full and any consequential changes to the Contract Price shall be made as soon as practicable following receipt by the System Integrator of the relevant benefit or advantage,

and the Authority relies upon each of the individual warranties and individual representations in this Clause 7 (*System Integrator Warranties and Undertakings*).

System Integrator undertakings

- 7.2 The System Integrator undertakes that for so long as this Contract remains in full force the System Integrator shall:
- 7.2.1 give the Authority:

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- (i) notice of any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator, administrator or adjudicator or mediator or Relevant Authority ("**Dispute Forum**") against itself or a Sub-Contractor which would adversely affect, to an extent which is material in the context of this Contract, the System Integrator's ability to perform its obligations under this Contract, unless such notice is precluded by the rules of the Dispute Forum, provided that notice shall be given within twenty (20) Working Days of the System Integrator becoming aware such proceedings may be threatened or pending, and immediately after the commencement thereof; and
 - (ii) immediate notice if an Insolvency Event occurs or is threatened;
- 7.2.2 save as expressly permitted under this Contract, not undertake the performance of its obligations under this Contract otherwise than through itself or a Sub-Contractor;
- 7.2.3 at all times allocate sufficient resources with the appropriate technical expertise to supply the System Integrator Deliverables in accordance with this Contract;
- 7.2.4 save to the extent that obtaining and maintaining the same are Authority responsibilities and subject to Clause 83 (*Change*), obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the System Integrator Deliverables;
- 7.2.5 ensure that:
 - (i) it shall continue to have all necessary rights in and to the System Integrator Background IPR, the Vesting IPR, the System Integrator Foreground IPR, the Third Party Licensed Software and any other materials (including the Third Party IPR, Deliverable Information and Interfaces) made available by the System Integrator (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the System Integrator's obligations under this Contract and/or the receipt of the System Integrator Deliverables by the Authority;
 - (ii) any products or services recommended or otherwise specified by the System Integrator for use by the Authority in conjunction with the System Integrator Deliverables shall enable the System Integrator Deliverables to meet the requirements of the Authority; and
 - (iii) without prejudice to Clause 3.1.2(i) (*The System Integrator's Obligations*), any documentation and training provided by the System Integrator to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;

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- 7.2.6 co-operate with the Authority and (where applicable) any Third Party designated by the Authority and provide such information, licences, data, documents and/or physical items and any advice and/or assistance in connection with the System Integrator Deliverables, in each case, as may be reasonably required by the Authority, enabling:
- (i) the Authority and/or any such Third Party to create and maintain technical or organisational interfaces with any of the System Integrator Deliverables and, on the expiry or termination of this Contract for any reason, to enable the timely transition of the System Integrator Deliverables to the Authority and/or to any Follow-On System Integrator;
 - (ii) the Authority or any Third Party to ensure that the deliverables to be provided by the Authority or such Third Party interface and/or integrate and/or are compatible with the System Integrator Deliverables (to the extent that the full and proper performance of such deliverables by the Authority or any such Third Party is dependent upon such deliverables being interfaced and/or integrated with and/or being compatible with the System Integrator Deliverables);
 - (iii) where applicable, the Authority or any such Third Party to assemble, build, integrate (including Integrate), operate, maintain, update, release to fielding, develop, evolve and/or de-commission the relevant Articles and/or the MUAS; and
 - (iv) where applicable as part of the System Integrator Deliverables, the System Integrator to assemble, build, integrate (including Integrate), operate, maintain, update, release to fielding, develop, evolve and/or de-commission the relevant Articles and/or the MUAS;
- 7.2.7 to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by Third Parties or any Sub-Contractor in respect of any System Integrator Deliverables and/or the MUAS and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the System Integrator;
- 7.2.8 unless it is unable to do so, assign to the Authority on the Authority's Representative's written request and at the cost of the System Integrator any such warranties and/or indemnities as are referred to in Clause 7.2.7 (*System Integrator undertakings*);
- 7.2.9 provide the Authority with such assistance as the Authority may reasonably require during the Contract Period in respect of the supply of the System Integrator Deliverables;
- 7.2.10 gather, collate and provide such information and co-operation as the Authority's Representative may reasonably request for the purposes of

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ascertaining the System Integrator's compliance with its obligations under this Contract; and

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

Status of System Integrator warranties and undertakings

- 7.3 All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the System Integrator in this Contract are cumulative and none shall be given a limited construction by reference to any other.

8 Co-operation

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

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

8.2.1 value for money for the Authority; and

8.2.2 the quality and standard of service to the Authority,

in relation to this Contract.

9 Value for money

- 9.1 The System Integrator shall support the Authority in demonstrating that any proposed Changes in accordance with Clause 83 (*Change*) or as a result of the approval of a CIC Task Order in accordance with Part 5 (*Capability Integration Cycle*) of Schedule 2 (*Obligations of the System Integrator*), the appointment (or proposed appointment) of a Sub-Contractor, the purchase of new Articles, the provision of Ad Hoc Task Orders in accordance with Schedule 8 (*Ad Hoc Task Order Approval Process*) and/or the cost of Field Testing pursuant to paragraph 6.3 (*Costs*) of Part 5 (*Capability Integration Cycle*) of Schedule 2 (*Obligations of the System Integrator*) will provide value for money and shall, in demonstrating to the Authority such value for money, provide evidence including:

9.1.1 competition (and where competition is not feasible, activities that would provide value for money in those circumstances);

9.1.2 batch pricing;

9.1.3 reduction of costs;

9.1.4 reduction of risks;

9.1.5 improvement in performance and efficiency;

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- 9.1.6 the appropriateness of the activities in Clause 9.1 (*Value for money*) to the value and complexity of this Contract and their impact on the efficiency and performance of the Service;
- 9.1.7 efficient and effective use of resources;
- 9.1.8 consideration of a variety of options in choosing Solutions for an Innovation Proposal;
- 9.1.9 completion of cost benefit analyses;
- 9.1.10 benchmarking; and/or
- 9.1.11 any other reasonable information in support of demonstrating value for money as requested by the Authority in relation to any Change and/or the appointment (or proposed appointment) of a Sub-Contractor.

10 Necessary Consents

- 10.1 The System Integrator shall, without prejudice to its obligations under Clause 14 (*Import and Export Licences*):
 - 10.1.1 obtain, maintain, renew and amend (in each case, as required) all Necessary Consents which may be required for the provision of the System Integrator Deliverables under this Contract, including the entering into of any legally binding agreements necessary for the grant of the Necessary Consents;
 - 10.1.2 use all reasonable endeavours to assist the Authority to obtain all Necessary Consents that as a matter of law, only the Authority is eligible to obtain;
 - 10.1.3 be responsible for implementing each Necessary Consent (save to the extent that only the Authority is, as a matter of law, able to implement the whole or the relevant part of such Necessary Consent) within the period of its validity in accordance with its terms and relevant law;
 - 10.1.4 provide to the Authority, when required, a copy of:
 - (i) any application for a Necessary Consent or any variation, relaxation or waiver (with a copy of all accompanying drawings and other documents);
 - (ii) any Necessary Consent; and
 - (iii) any legally binding agreement entered in to for the purposes of obtaining a Necessary Consent,where such agreement permits such disclosure;
 - 10.1.5 comply with the conditions attached to any Necessary Consents and the terms of any associated legally binding agreement and procure that no such

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Necessary Consent or associated legally binding agreement is breached by it or any System Integrator Related Party; and

- 10.1.6 use all reasonable endeavours to preserve the Necessary Consents, and procure, where it is able to do so, that such Necessary Consents are not revoked or quashed and that all Necessary Consents continue in full force and effect for such time as is necessary for the System Integrator to provide the System Integrator Deliverables to the Authority.
- 10.2 The Authority shall, subject to the System Integrator's compliance with Clause 10.1.2 (*Necessary Consents*), use all reasonable endeavours to obtain all Necessary Consents that as a matter of law, only the Authority is eligible to obtain.
- 10.3 The System Integrator shall indemnify and keep indemnified the Authority against all Losses, claims, damages, liabilities, costs and expenses (including reasonable legal costs) incurred by the Authority in respect of any breach of Clause 10.1 (*Necessary Consents*).

11 **System Integrator Related Parties**

Responsibility for System Integrator Related Parties

- 11.1 The System Integrator shall be responsible and liable for the acts and omissions of the System Integrator Related Parties as if they were the acts and omissions of the System Integrator.
- 11.2 The System Integrator shall ensure and/or procure that all System Integrator Related Parties employed and/or engaged in connection with this Contract are appropriately qualified, trained and experienced.

Key Personnel

- 11.3 The System Integrator shall ensure that the System Integrator Key Personnel fulfil the System Integrator Key Roles during the Contract Period.
- 11.4 Table 2 of Part 2 of Schedule 6 (*Governance and Reporting*) lists the System Integrator Key Roles and the names of the persons who the System Integrator shall appoint to undertake those System Integrator Key Roles as at the Effective Date.
- 11.5 The Authority may identify any further roles as being System Integrator Key Roles and the relevant person selected to undertake those System Integrator Key Roles shall be included on the list of System Integrator Key Personnel in table 2 of Part 2 of Schedule 6 (*Governance and Reporting*) or the relevant Task Order.
- 11.6 The System Integrator shall not remove or replace any System Integrator Key Personnel unless:
 - 11.6.1 requested to do so by the Authority's Representative; or
 - 11.6.2 the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave or long-term sick leave; or

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11.6.3 the person's employment or contractual arrangement with the System Integrator or a Sub-Contractor is terminated for material breach of contract by the employee; and

11.6.4 (in any case) the System Integrator has obtained the prior written consent of the Authority's Representative (which it shall be entitled to withhold in its absolute discretion) in respect of any proposed replacement,

and where the System Integrator fails to comply with the provisions of this Clause 11.6 (*Key Personnel*) then, without prejudice to the provisions of Clause 44.10 (*Personnel Security*), the Authority's Representative shall be entitled:

- (i) to refuse any proposed replacement System Integrator Key Personnel admission to any Authority Site and the provisions of Clauses 44.11 and 44.12.1 (*Personnel Security*) shall apply; and/or
- (ii) to issue a notice to the System Integrator requiring compliance with the provisions of Clauses 11.3 to 11.7 (inclusive) (including, in particular, Clause 11.6.4) (*Key Personnel*) in respect of the removal and/or any proposed replacement of such System Integrator Key Personnel and where the System Integrator fails to comply with the provisions of Clauses 11.3 to 11.7 (inclusive) (*Key Personnel*) following receipt of such notice from the Authority's Representative, such continued breach shall be deemed to be a Persistent Breach in respect of which (and notwithstanding limb (c) of the definition of Persistent Breach) the Authority's Representative shall be entitled to issue further and additional Warning Notices in respect of each subsequent twenty (20) Working Day period (commencing on the date of the issue of the initial notice) during which such continued non-compliance persists.

11.7 The System Integrator shall:

11.7.1 notify the Authority promptly of the absence of any System Integrator Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the System Integrator shall ensure appropriate temporary cover for that System Integrator Key Role);

11.7.2 ensure that any System Integrator Key Role is not vacant for any longer than ten (10) Working Days;

11.7.3 without prejudice to Clauses 11.6 and 11.7.5 (*Key Personnel*), give as much notice as is reasonably practicable of:

- (i) the need to replace any member of System Integrator Key Personnel; and
- (ii) the identity of the proposed replacement of such member of System Integrator Key Personnel, together with details of the qualifications and experience of the proposed replacement of such member of System Integrator Key Personnel,

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and, except in the cases of death, unexpected ill health or a material breach of the System Integrator Key Personnel's employment contract, this will mean at least sixty (60) Working Days' notice;

- 11.7.4 ensure that all arrangements for planned changes in System Integrator Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the System Integrator Deliverables; and
- 11.7.5 ensure that any proposed replacement System Integrator Key Personnel for a System Integrator Key Role:
 - (i) has a level of qualifications and experience appropriate to the relevant System Integrator Key Role; and
 - (ii) is fully competent to carry out the tasks assigned to the System Integrator Key Personnel whom he or she has replaced.

12 Approval by the Authority

- 12.1 Except for a confirmation of a Change pursuant to Clause 83 (*Change*) which expressly changes the System Integrator's obligations or liabilities or the Authority's rights under this Contract and/or save as expressly stated in this Contract, no review, comment or approval by the Authority (whether orally or in writing) shall operate to exclude, diminish or limit the System Integrator's obligations or liabilities or the Authority's rights under this Contract.

PART 3 - SUB-CONTRACTORS

13 Sub-Contractors

- 13.1 Sub-Contracting any part of this Contract to a Sub-Contractor shall not relieve the System Integrator of any obligation or duty of the System Integrator under this Contract. If the System Integrator enters into any Sub-Contract in connection with this Contract it shall remain responsible for the performance of its obligations under this Contract notwithstanding the appointment of any Sub-Contractor and shall be responsible for the acts and omissions of its Sub-Contractors.
- 13.2 The System Integrator shall select and appoint Enabling Contractors in accordance with Part 2 (*Supplier Enabling Arrangement*) of Schedule 2 (*Obligations of the System Integrator*) and shall use best endeavours to ensure that any Sub-Contractor becomes an Enabling Contractor as soon as reasonably possible.
- 13.3 The System Integrator shall exercise due skill and care in the selection and appointment of any Sub-Contractor to ensure that the System Integrator is able to:
 - 13.3.1 manage any Sub-Contractor in accordance with Good Industry Practice;
 - 13.3.2 diligently enforce the terms of the Sub-Contracts;
 - 13.3.3 comply with its obligations under this Contract in the delivery of the System Integrator Deliverables; and

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

Advertising the Sub-Contracts

- 13.4 Without prejudice to Part 2 (*Supplier Enabling Arrangement*) of Schedule 2 (*Obligations of the System Integrator*), Clauses 13.5 and 13.6 (*Advertising the Sub-Contracts*) shall not apply:
- 13.4.1 where pursuant to Regulation 37(3) the Authority obliges the System Integrator to apply the provisions set out in Part 7 of the Regulations to all sub-contracts which the System Integrator intends to award to Third Parties in connection with this Contract after the Effective Date; or
- 13.4.2 in relation to any Sub-Contract which the System Integrator intends to award to any Third Party or Third Parties after the Effective Date, where pursuant to Regulation 37(3) the Authority obliges the System Integrator to apply the provisions set out in Part 7 of the Regulations to the award of that or those Sub-Contract(s).
- 13.5 Without prejudice to Part 2 (*Supplier Enabling Arrangement*) of Schedule 2 (*Obligations of the System Integrator*) and subject to Clause 13.4 (*Advertising the Sub-Contracts*), where the System Integrator, after the Effective Date, elects to advertise the subject matter of any Sub-Contract with the view to appointing one or more Sub-Contractors, it shall (unless the Authority otherwise agrees in writing):
- 13.5.1 promptly notify the Authority if the System Integrator intends to award a Sub-Contract;
- 13.5.2 publish an advertisement on (and provide all information required by) Defence Contracts Online in respect of each and any Sub-Contract opportunity;
- 13.5.3 within thirty (30) days after the date on which such Sub-Contract shall have been awarded, update the relevant advertisement on Defence Contracts Online in respect of such Sub-Contract, identifying the name and registered office address details of the Sub-Contractor so appointed under such Sub-Contract and providing a description of the subject matter and the value (excluding VAT) of such Sub-Contract;
- 13.5.4 provide reports to the Authority if so requested, on the number, type and value of Sub-Contract opportunities placed on Defence Contracts Online and awarded in its supply chain during the Contract Period; and
- 13.5.5 promote Defence Contracts Online to all potential Sub-Contractors and encourage relevant operators to register on it.
- 13.6 The Authority may issue guidance to the System Integrator on how to advertise Sub-Contract opportunities on Defence Contracts Online from time to time and (where the System Integrator elects to advertise the subject matter of any Sub-Contract after the Effective Date with the view to appointing one or more Sub-Contractors after that date)

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the System Integrator shall comply with such guidance so issued in relation to the advertisement of any Sub-Contract pursuant to Clauses 13.4, 13.5 and 13.6 (*Advertising the Sub-Contracts*).

Matters to be included in Sub-Contracts

13.7 The System Integrator shall ensure that all Sub-Contracts which it enters into after the Effective Date shall at all times include:

- 13.7.1 provisions that the Authority's rights referred to in this Clause 13.7 (*Matters to be included in Sub-Contracts*), which are otherwise enforceable under the Contracts (Rights of Third Parties) Act 1999, are not rendered unenforceable;
- 13.7.2 provisions which will enable the System Integrator to discharge its obligations under this Contract;
- 13.7.3 a requirement that either party to the Sub-Contract may release to the Authority any of those parts of the Sub-Contract as are necessary to be sufficient to demonstrate compliance with the provisions of this Clause 13.7 (*Matters to be included in Sub-Contracts*) and that any such release shall not amount to a breach of any provision of confidentiality contained within the Sub-Contract;
- 13.7.4 a provision restricting the ability of the Sub-Contractor to sub-contract all or any part of the System Integrator Deliverables provided to the System Integrator under the Sub-Contract without first obtaining the written consent of the Authority;
- 13.7.5 a provision enabling the System Integrator, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 29 (*Authority Step-In*);
- 13.7.6 a provision that where any Sub-Contractor submits an invoice to the System Integrator, the System Integrator will consider and verify that invoice within thirty (30) days and that where there is an undue delay in considering and/or verifying that invoice, that such invoice shall be regarded as valid and undisputed for the purposes of Clause 13.7.7 (*Matters to be included in Sub-Contracts*);
- 13.7.7 a provision which requires payment to be made to the Sub-Contractor by the System Integrator within a specified period not exceeding thirty (30) days from receipt of a valid, undisputed invoice as defined by the Sub-Contract requirements;
- 13.7.8 a provision giving the Authority a right to publish the System Integrator's compliance with its obligation to pay undisputed invoices within the specified payment period;
- 13.7.9 a provision enabling the Authority or any other person on behalf of the Authority and the System Integrator to exercise the same rights in relation

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to the Sub-Contractors and their Employees as the Authority is entitled to exercise pursuant to Clause 44 (*Personnel Security*);

- 13.7.10 a provision enabling the System Integrator to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-Contract to the Authority or any Follow-On System Integrator without restriction (including any need to obtain any consent or approval) or payment by the Authority;
- 13.7.11 the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute as set out in Clause 7.2.11 (*System Integrator undertakings*);
- 13.7.12 a provision giving the System Integrator a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law;
- 13.7.13 a provision giving the System Integrator a right to exclude the Sub-Contract where the circumstances in Clause 13.13 (*Exclusion of Sub-Contractors*) exist; and
- 13.7.14 where relevant to the deliverables under the particular Sub-Contract (and all such provisions shall be presumed to be relevant unless the System Integrator can satisfy the Authority that such provisions are not relevant and the Authority's Representative has notified the System Integrator in writing that any such provisions shall not be required to be included in any identified Sub-Contract), the provisions (*mutatis mutandis*) of:
 - (i) Clauses 13.11 and 13.12 (*Termination of Sub-Contracts*);
 - (ii) Clause 30 (*Authority Data*);
 - (iii) Clause 32 (*The System Integrator's Records*);
 - (iv) Clause 38.2 (*Official-Sensitive Security Requirements*);
 - (v) Clause 39 (*Cyber*);
 - (vi) Clause 40 (*Intellectual Property Rights*);
 - (vii) Clause 42 (*Security Aspects Letter*);
 - (viii) Clause 43 (*Security – Secret Matters*);
 - (ix) Clause 50 (*Child Labour and Employment Law and Modern Slavery Act*);
 - (x) Clause 51 (*Equality*);
 - (xi) Clause 55 (*Supply of Hazard Data*);
 - (xii) Clause 58 (*Vesting*);

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- (xiii) Clause 78 (*Termination for Convenience*);
- (xiv) Clause 86 (*Change of Control*);
- (xv) Clause 92 (*Tax Compliance*);
- (xvi) Clause 95 (*Dispute Resolution*);
- (xvii) Clause 97 (*Conflicts of Interest and Impartiality*);
- (xviii) Schedule 11 (*IPR*);
- (xix) Part 4 of Schedule 11 (*IPR*) (*Inventions and Designs*); and
- (xx) where applicable, the Appendix to DEFCON 643 (*Price Fixing (Non-Qualifying Contracts)*);

- 13.7.15 such provisions as are required to enable the System Integrator to perform its obligations under Schedule 2 (*Obligations of the System Integrator*) and Schedule 12 (*Transfer Regulations (TUPE)*) and to acquire the rights, benefits and obligations set out in Schedule 11 (*IPR*).
- 13.8 The System Integrator shall ensure that all Sub-Contracts include the power to determine the Sub-Contract in accordance with the terms which apply to any termination of this Contract and to enable the System Integrator to comply with Clause 13 (*Sub-Contractors*) of this Contract.
- 13.9 If any Sub-Contractor refuses to accept the requirements of Clauses 13.7 and 13.8 (*Matters to be included in Sub-Contracts*) then the System Integrator shall promptly (but in any event, no later than twenty-eight (28) Working Days from identifying the issue) report the matter to the Authority and, without prejudice to the System Integrator's obligations to deliver the System Integrator Deliverables, the System Integrator shall not enter into the relevant Sub-Contract until the Authority confirms in writing to the System Integrator that the matter has been resolved.
- 13.10 Notwithstanding any other provisions of this Contract, if the System Integrator notifies the Authority that the System Integrator has failed to pay a Sub-Contractor's undisputed invoice within the period specified in accordance with Clause 13.7.7 (*Matters to be included in Sub-Contracts*), or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Termination of Sub-Contracts

- 13.11 The System Integrator shall inform the Authority immediately when it becomes aware of any breach by any Sub-Contractor of any of the requirements set out or referred to in Clause 39 (*Cyber*), Clause 43.7 (*Security – Secret Matters*), Clause 55.9 (*Supply of Hazard Data*), Clause 77 (*Termination for System Integrator Default*) (as it applies to Prohibited Acts (including any breach of (and/or the occurrence of the circumstances contemplated in) Clauses 7.1.13, 7.1.14 and/or 7.1.15 (*System Integrator warranties*))), Clause 86 (*Change of Control*) and/or Clause 92 (*Tax Compliance*) and (without prejudice to any other rights of the Authority under this Contract) if requested

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to do so by the Authority, the System Integrator shall terminate the relevant Sub-Contract.

- 13.12 The Authority may, at its sole discretion, require the System Integrator to terminate the provision by a Sub-Contractor of the whole or part (as the case may be) of the System Integrator Deliverables and/or to exclude them from the SEA (if such Sub-Contractor is an Enabling Contractor):

13.12.1 where:

- (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 77 (*Termination for System Integrator Default*);
- (ii) the relevant Sub-Contractor and/or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the System Integrator Deliverables or otherwise;
- (iii) the relevant Sub-Contractor fails to comply in the performance of its Sub-Contract with legal obligations in the fields of environmental, social or labour law; and/or
- (iv) the Authority has found grounds for exclusion of the Sub-Contractor in accordance with Clause 13.13 (*Exclusion of Sub-Contractors*); and

13.12.2 where there is a Change of Control of the relevant Sub-Contractor, unless:

- (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
- (ii) the Authority has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.

Exclusion of Sub-Contractors

- 13.13 Where the Authority considers there are grounds for the exclusion of a Sub-Contractor under the Regulations, then:

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

13.13.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the System Integrator to replace or not to appoint the Sub-Contractor and the System Integrator shall comply with such a requirement.

Security of supply

- 13.14 The System Integrator is required to and shall notify the Authority in writing where, for the purposes of performing this Contract, the System Integrator proposes to acquire on behalf of the Authority or for delivery to the Authority any hardware, software, system and/or equipment which has or is to be acquired or procured for the purposes of this Contract and/or the performance of the System Integrator Deliverables or otherwise for integration, either physically or otherwise, on a single source basis (the "**Single Source Item**"). The System Integrator:
- 13.14.1 has on or prior to the Effective Date, provided details of each Single Source Item known at the time of the Effective Date, and the source from which each Single Source Item was acquired including the company (or relevant entity) name and contact details to the Authority's Representative; and
 - 13.14.2 shall provide details of each Single Source Item proposed to be acquired following the Effective Date and the source from which such Single Source Item is proposed to be acquired including the company (or relevant entity) name and contact details to the Authority's Representative, not less than thirty (30) Working Days before such Single Source Item is proposed to be acquired.
- 13.15 In respect of any Single Source Item notified to the Authority under Clause 13.14 (*Security of supply*), the System Integrator has, on or prior to the Effective Date (in the case of Single Source Items regulated by Clause 13.14.1 (*Security of supply*)) and not less than thirty (30) Working Days prior to proposed acquisition (in the case of Single Source Items regulated by Clause 13.14.2 (*Security of supply*)), also notified or shall notify (as the case may be) the Authority:
- 13.15.1 if there are any suitable alternative items readily available within the supply market at a reasonable cost of which the System Integrator has become, or should have reasonably become, aware of as part of their supply chain procurement process, that would achieve similar levels of performance and functionality to the Single Source Item together with details on source of supply and relevant suppliers;
 - 13.15.2 if the alternative item requires modification and/or equipment to comply with the design and achieve performance and functionality consistent with the Single Source Item;
 - 13.15.3 if the alternative item requires a modification to the design; and
 - 13.15.4 if Clauses 13.15.2 and/or 13.15.3 (*Security of supply*) apply, the System Integrator shall provide details of the nature and extent of modification as they know or reasonably believe might be required to achieve the equivalent functionality and performance to the Single Source Item to the extent that the System Integrator has become, or should have reasonably become, aware of as part of their supply chain procurement process.
- 13.16 The System Integrator shall use all reasonable endeavours, in respect of any Single Source Item as is described in Clause 13.14 (*Security of supply*), to provide all relevant information relating to such Single Source Item which could impact on the Authority's

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ability to have the full benefit and use of the System Integrator Deliverables (including obtaining a similar product to the Single Source Item from alternative suppliers) and performance information together with a non-exclusive, royalty-free licence to use and have used the same such that a competent Third Party could develop or source an alternative item which achieves similar levels of performance and functionality to the Single Source Item.

- 13.17 If the System Integrator is unable to secure the rights for the Authority set out in Clause 13.16 (*Security of supply*), the System Integrator shall notify the Authority of the issue(s) preventing the System Integrator securing those rights set out in Clause 13.16 (*Security of supply*) and the System Integrator, or where applicable any Third Party, shall await further instruction before acquiring the Single Source Item. The Authority will provide a response to the System Integrator within twenty (20) Working Days of such notification and both Parties will work together to resolve the issue(s) and to mitigate any adverse impact on the performance of the System Integrator Deliverables.
- 13.18 The System Integrator shall promptly notify the Authority as soon as it becomes aware of any intention of any party to cease manufacture of any Single Source Item. Where the relevant Single Source Item is sourced from a Third Party, then the System Integrator shall place an obligation upon the Third Party to provide notification to the System Integrator of any intention to cease production as soon as the Third Party reasonably can.
- 13.19 The System Integrator shall develop a single source technical data pack (an "SSTDP") in respect of each Single Source Item for which the associated IPR is owned or controlled by the System Integrator.
- 13.20 The SSTDP shall contain sufficient information to enable a reasonably competent Third Party to manufacture the Single Source Item and provide all relevant support in respect of the Single Source Item. The SSTDP shall be maintained by the System Integrator and updated from time to time to represent the proposed build standard for the Single Source Item and shall be promptly updated by the System Integrator should the build standard or any other relevant impact on the Single Source Item change during the course of this Contract. The SSTDP and any such updates shall be issued to the Authority's Representative promptly following production and/or updating.
- 13.21 The Authority and Authority Related Parties may inspect the SSTDP developed under Clause 13.19 (*Security of supply*) above in order to verify its content and suitability for the purposes of manufacture and support of the Single Source Item. The System Integrator shall use all reasonable endeavours to remedy any defects or omissions in the SSTDP within twenty (20) Working Days. The Authority may request the System Integrator or Third Party to enter into a direct confidentiality agreement on reasonable terms prior to such inspection in the event of any reasonable concerns of the Authority as to the content and suitability of the SSTDP.
- 13.22 If the System Integrator is unable or unwilling on fair and reasonable terms to continue to supply or support a Single Source Item, then the Authority shall have the right, free of charge, to access the associated SSTDP and to have the SSTDP used with or without modification by a Third Party for manufacture and/or support of the Single Source Item.

14 Import and Export Licences

- 14.1 If, in the performance of this Contract, the System Integrator needs to import into the UK or export out of the UK anything not supplied by or on behalf of the Authority and for which a UK import or export licence is required, the responsibility for applying for the licence shall rest with the System Integrator.

Obtaining a licence or authorisation from a foreign government – System Integrator obligations

- 14.2 When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of this Contract, the System Integrator shall as soon as reasonably practicable consult with the Authority on the licence requirements and, where the System Integrator or any System Integrator Related Party is the applicant for the licence or authorisation the System Integrator shall:
- 14.2.1 ensure that when end use or end user restrictions, or both, apply to all or part of any System Integrator Deliverable (which for the purposes of this Clause 14 (*Import and Export Licences*) shall also include information, technical data and software), unless otherwise agreed with the Authority, identify in the application:
- (i) the end user as: His Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "**HM Government**"); and
 - (ii) the end use as: For the Purposes of HM Government; and
- 14.2.2 include in the submission for the licence or authorisation a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".
- 14.3 If the System Integrator or any Sub-Contractor in the performance of this Contract or a Sub-Contract (as applicable) needs to export materiel not previously supplied by or on behalf of the Authority for which an export licence or import licence or authorisation from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the System Integrator or that Sub-Contractor, provided always that for the purposes of this Clause 14 (*Import and Export Licences*) "materiel" shall mean information, technical data and items, including Articles, components of Articles and software.
- 14.4 Where the Contract performance requires the export of materiel for which a foreign export licence or import licence or authorisation is required, the System Integrator shall submit this information to the Authority's Representative.
- 14.5 During the Contract Period and for a period of up to three (3) years from the end of the Contract Period, the Authority may make a written request to the System Integrator to seek a variation to the conditions to a foreign export licence or import licence or authorisation to enable the Authority to re-export or re-transfer a licensed or authorised item or licensed or authorised information from the UK to a non-licensed or unauthorised Third Party. If the Authority makes such a request, it will consult with the

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System Integrator before making a determination of whether the Authority or the System Integrator is best placed in all the circumstances to make the request. Where subsequent to such consultation the Authority notifies the System Integrator that the System Integrator is best placed to make such request:

- 14.5.1 the System Integrator shall, or procure that the Sub-Contractor shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence or import licence or authorisation in accordance with the procedures of the licensing authority. Where the System Integrator has an objection, the Parties shall meet within five (5) Working Days of such objection to resolve the issue and, should they fail to resolve the issue, the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export licensing, import licensing or authorisation (as the case may be) subject matter experts; and
- 14.5.2 the Authority shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.
- 14.6 Where the Authority determines that it is best placed to make a request pursuant to Clause 14.5 (*Obtaining a licence or authorisation from a foreign government – System Integrator obligations*), the System Integrator shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the Authority to make the application for the requested variation.
- 14.7 Where compliance with Clauses 14.5 and 14.6 (*Obtaining a licence or authorisation from a foreign government – System Integrator obligations*) requires an amendment to this Contract, such amendment will be made and any subsequent price variation will be determined in accordance with Schedule 9 (*Change Procedure*) as a Change unless the Authority, at its option, elects to require the System Integrator to carry out some or all of the matters required to comply with Clauses 14.5 and 14.6 (*Obtaining a licence or authorisation from a foreign government – System Integrator obligations*) in accordance with Schedule 8 (*Ad Hoc Task Order Approval Process*).
- 14.8 Where the Authority invokes Clauses 14.5 and 14.6 (*Obtaining a licence or authorisation from a foreign government – System Integrator obligations*), the Authority will pay the System Integrator's fair and reasonable costs for such service based on the cost of providing it, such costs to form part of the Contract Price.

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

- 14.9 Without prejudice to HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority shall provide the System Integrator with sufficient information, certification, documentation and other reasonable assistance to facilitate the granting of export licences or import licences or authorisations by a foreign government in respect of the performance of this Contract.
- 14.10 The Authority shall provide such assistance as the System Integrator may reasonably require in obtaining any UK export licences necessary for the performance of this Contract.

System Integrator obligation to provide information

- 14.11 The System Integrator shall use reasonable endeavours to identify whether any System Integrator Deliverable is subject to:
- 14.11.1 a non-UK export licence, authorisation or exemption; or
 - 14.11.2 any other related transfer or export control,
- that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality.
- 14.12 If at any time during the Contract Period the System Integrator becomes aware that all or any part of the System Integrator Deliverables are subject to Clauses 14.11.1 or 14.11.2 (*System Integrator obligation to provide information*), it shall notify the Authority of this as soon as reasonably practicable by providing details in DEFFORM 528 or other mutually agreed alternative format. Such notification shall be no later than thirty (30) days of knowledge of any affected System Integrator Deliverable and in any event such notification shall be not less than thirty (30) days prior to delivery of the System Integrator Deliverables.
- 14.13 If the information to be provided under Clause 14.12 (*System Integrator obligation to provide information*) has been provided previously to the Authority by the System Integrator under this Contract, the System Integrator may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Clause 14.12 (*System Integrator obligation to provide information*).
- 14.14 During the Contract Period, the System Integrator shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clauses 14.12 or 14.13 (*System Integrator obligation to provide information*) of which it becomes or is aware of that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.
- 14.15 For a period of up to three (3) years from the end of the Contract Period however extended in accordance with the terms of this Contract and in response to a specific request by the Authority's Representative, the System Integrator shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clauses 14.12 or 14.13 (*System Integrator obligation to provide information*) of which it becomes aware of that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.
- 14.16 Where following receipt of materiel from a Sub-Contractor or any of its other suppliers, restrictions are notified to the System Integrator by that Sub-Contractor, supplier or other Third Party or are identified by the System Integrator, the System Integrator shall immediately inform the Authority by issuing an updated DEFFORM 528. Within five (5) Working Days of such notification, the System Integrator shall propose to the Authority actions to mitigate the impact of such restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant

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foreign government. The Authority shall notify the System Integrator within ten (10) Working Days of receipt of a proposal whether it is acceptable and where appropriate this Contract shall be modified in accordance with Clause 83 (*Change*).

- 14.17 If the restrictions prevent the System Integrator from performing its obligations under this Contract and have not been removed, modified or otherwise satisfactorily managed within a reasonable time, the Authority may at its absolute discretion elect to amend this Contract in accordance with Clause 83 (*Change*) and/or paragraph 2 of Part 1 of Schedule 9 (*Formal Amendments to this Contract*) or as otherwise may be provided by this Contract or to terminate this Contract. Except as set out in Clause 14.18 (*System Integrator obligation to provide information*), in the event of termination in these circumstances termination shall be on fair and reasonable terms having regard to all the circumstances including payments already made and payments that would otherwise be due under this Contract for work successfully carried out prior to such termination, costs incurred by the System Integrator and benefits received by the Authority. The Parties, acting in good faith, will use all reasonable endeavours to agree such fair and reasonable terms failing which either Party may refer the matter to Dispute Resolution Procedure.
- 14.18 If the restrictions notified to the Authority pursuant to Clause 14.12 (*System Integrator obligation to provide information*) were known or ought reasonably have been known by the System Integrator (but were not disclosed) at Contract Award or if restrictions notified to the Authority pursuant to Clauses 14.14 or 14.16 (*System Integrator obligation to provide information*) were known or ought reasonably to have been known by the System Integrator at the date of submission of the most recent DEFFORM 528 submitted to the Authority in accordance with Clause 14.12 (*System Integrator obligation to provide information*), termination under Clause 14.17 (*System Integrator obligation to provide information*) will be in accordance with Clause 77 (*Termination for System Integrator Default*) and the provisions of Clause 14.22 (*Interim position*) will not apply.

Authority obligation to provide information

- 14.19 The Authority shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the System Integrator. Where the Authority is to provide materiel necessary to enable the System Integrator to perform this Contract or in respect of which the System Integrator Deliverables are to be provided, and that materiel is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of Clause 14.11 (*System Integrator obligation to provide information*) above, the Authority shall provide a completed DEFFORM 528 or will provide a new or updated DEFFORM 528 to the System Integrator within thirty (30) days of the date of knowledge and in any case not later than thirty (30) days prior to the delivery of such materiel to the System Integrator.
- 14.20 If the Authority becomes aware that the DEFFORM 528 disclosure was incomplete or inaccurate or in the event additional such materiel is identified, then the Authority shall provide, as soon as reasonably practicable a new or revised DEFFORM 528. If the Authority becomes aware that a prior disclosure included in DEFFORM 528 submitted to the System Integrator was incomplete or inaccurate less than thirty (30) days prior to the delivery to the System Integrator of any materiel to which the updated or new

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disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure.

14.21 Where:

- 14.21.1 restrictions are advised by the Authority to the System Integrator in a DEFFORM 528 provided pursuant to Clause 14.19 or 14.20 (*Authority obligation to provide information*); or
- 14.21.2 any of the information provided by the Authority in any DEFFORM 528 proves to be incorrect or inaccurate,

the Authority and the System Integrator shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the System Integrator to perform its obligations under this Contract, the matter shall be handled under the terms of Clause 83 (*Change*) and/or paragraph 2 of Schedule 9 (*Formal Amendments to this Contract*) or as may otherwise be provided by this Contract as appropriate and if no alternative solution satisfies the essential terms of this Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate this Contract. Termination under these circumstances will be under the terms of Clause 78 (*Termination for Convenience*).

Interim position

- 14.22 Pending agreement of any amendment of this Contract as set out in Clause 14.17 (*System Integrator obligation to provide information*) or 14.21 (*Authority obligation to provide information*), provided the System Integrator takes such steps as are reasonable to mitigate the impact, the System Integrator shall be relieved from its obligations to perform those elements of this Contract directly affected by the restrictions or provision of incorrect or incomplete information.

PART 4 - PRICE/COSTS/PAYMENT

15 Payment under CP&F

- 15.1 In consideration of the System Integrator performing the System Integrator Deliverables, the Authority shall pay the Contract Price to the System Integrator in accordance with Schedule 7 (*Pricing and Payment*) and the following provisions of this Clause 15 (*Payment under CP&F*).
- 15.2 Payment under this Contract of the Contract Price will be made by electronic transfer and prior to submitting any invoices under Clause 15.3 (*Payment under CP&F*) the System Integrator shall register their details (supplier on-boarding) on the Contracting, Purchasing and Finance electronic procurement tool ("**CP&F**").
- 15.3 Where the System Integrator submits an invoice to the Authority in accordance with Clause 15.2 (*Payment Under CP&F*), the Authority will consider and verify that invoice in a timely fashion.

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- 15.4 The Authority shall, subject to Clause 17 (*Disputed Amounts*), pay the System Integrator any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Authority has determined that the invoice is valid and undisputed.
- 15.5 Where the Authority fails to comply with its obligations in Clause 15.3 (*Payment under CP&F*) and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Clause 15.4 (*Payment under CP&F*) only (and not further or otherwise) after a reasonable time has passed.
- 15.6 Neither:
- 15.6.1 the approval for payment of a valid and undisputed invoice by the Authority; or
 - 15.6.2 a failure by the Authority to comply with its obligations in Clause 15.3 (*Payment under CP&F*) which ultimately results in an invoice being regarded as valid and undisputed (for the purposes of and in the circumstances described in Clause 15.5 (*Payment under CP&F*)),

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

16 Unique Identifiers

- 16.1 Having regard to and subject to Clause 15 (*Payment under CP&F*), the Authority and the System Integrator shall comply with the provisions of this Clause 16 (*Unique Identifiers*).
- 16.2 For CP&F purchase orders, this contract will reference UOIs or URRIs, or both. The application of UOIs and URRIs is at the line item level. The System Integrator must quote the applicable Unique Identifier in any communication concerning a line item.
- 16.3 For EBC System Integrator logistic support contracts, the System Integrator will generate EUPIs in fulfilling demands raised under a System Integrator logistic support contract. An EUPI applies for each package and the System Integrator must quote it in any communication concerning a package. Where a delivery includes more than one package, each package must have a separate EUPI.
- 16.4 Confirmation of a receipt of deliveries by Unique Identifiers shall not be construed as an acceptance of the Articles for the purposes of Clause 56 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*) or any other term of this Contract relating to acceptance by the Authority.

17 Disputed Amounts

- 17.1 The Authority may withhold payment of any amount it believes, acting reasonably, the System Integrator is not entitled to pursuant to this Contract ("**Disputed Amount**") pending agreement or determination of the System Integrator's entitlement in relation to the Disputed Amount. The Authority shall notify the System Integrator of the reasons for withholding the Disputed Amount (together with supporting evidence) on or before

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the day on which the Disputed Amount would (but for this Clause 17.1 (*Disputed Amounts*)) otherwise fall due.

- 17.2 The Authority shall pay any undisputed amounts on or before the day on which they fall due.
- 17.3 Within ten (10) Working Days following receipt by the System Integrator of any notice served by the Authority pursuant to Clause 17.1 (*Disputed Amounts*) (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to this Contract), the System Integrator shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice and the grounds for such agreement or disagreement. If the System Integrator indicates that it does agree, the Authority shall be entitled:
- 17.3.1 to retain on a permanent basis any amounts withheld pursuant to Clause 17.1 (*Disputed Amounts*); and
- 17.3.2 to reclaim from the System Integrator the amount of any over-payment which may have been made to the System Integrator, and reserves the right to claim interest on any such amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which the over-payment was made until that amount has been paid in full and whether before or after judgment.
- 17.4 If the System Integrator responds pursuant to Clause 17.3 (*Disputed Amounts*) that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to Clause 17.1 (*Disputed Amounts*) (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to this Contract), the matter or matters in question shall be determined under the Dispute Resolution Procedure.
- 17.5 If the determination of any Dispute conducted pursuant to Clause 17.4 (*Disputed Amounts*) shows that:
- 17.5.1 the Authority has withheld any amount which the System Integrator was entitled to be paid; or
- 17.5.2 the System Integrator has claimed under Clause 15 (*Payment under CP&F*) any amount which it was not entitled to be paid,

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

18 Payment of Bills using the Bankers Automated Clearing Service System

- 18.1 The Authority shall make payment to the System Integrator of all valid claims submitted for payment in accordance with Clause 15 (*Payment under CP&F*) by means of the

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Bankers Automated Clearing Service (“**BACS**”) directly into the System Integrator's nominated bank account. To facilitate payment by means of the BACS system, the System Integrator shall provide the Authority in advance of the submission of valid claims, if it has not already done so, details of the name and address of its bank, the sort code and account number.

19 Recovery of Sums Due

- 19.1 Whenever, under this Contract, any sum of money shall be recoverable from or payable by the System Integrator, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the System Integrator under this Contract, or under any other contract with the Authority or with any Government Department.
- 19.2 Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the System Integrator to the Authority against any amount payable by the Authority to the System Integrator under this Contract or under any other contract with the Authority, or with any other Government Department.

20 VAT

- 20.1 All sums payable under this Contract exclude any UK output VAT (and any similar EU or non-EU taxes) chargeable on the provision of the System Integrator Deliverables by the System Integrator to the Authority.
- 20.2 If the System Integrator is required by UK VAT law to be registered for UK VAT (or has registered voluntarily for UK VAT purposes) in respect of its business activities at the time of any provision, and the circumstances of any provision are such that the System Integrator is liable to pay the tax due to HMRC, the Authority shall pay to the System Integrator, in addition to the Contract Price (or any other sum due to the System Integrator), a sum equal to the output VAT chargeable on the tax value of the provision of the System Integrator Deliverables, and all other payments under this Contract according to the law at the relevant tax point.
- 20.3 The System Integrator is responsible for the determination of VAT liability. The System Integrator shall consult its client relationship manager or the HMRC enquiries desk (and not the Authority's Representative) in cases of doubt. The System Integrator shall notify the Authority's Representative of the Authority's VAT liability under this Contract and any changes to it within twenty (20) Working Days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority's Representative may require the System Integrator to obtain and pass to the Authority a formal ruling from HMRC. The System Integrator shall promptly comply with any such Authority requirement. Where the System Integrator obtains a ruling from HMRC, it shall supply a copy to the Authority within three (3) Working Days of receiving such ruling unless it proposes to challenge such ruling. Where the System Integrator challenges such ruling it shall supply to the Authority a copy of the final decision issued by HMRC on completion of the challenge within three (3) Working Days of receiving such decision.
- 20.4 Where the provision of the System Integrator Deliverables comes within the scope of VAT, but the System Integrator is not required by VAT law to be registered for VAT (and has not registered voluntarily), the Authority shall be responsible for assessing

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and paying over directly to HMRC any UK output VAT due in respect of the System Integrator Deliverables. The System Integrator shall be responsible for ensuring that it takes into account any changes in VAT Legislation and VAT law regarding registration.

- 20.5 Where the System Integrator Deliverables are deemed to be provided to the Authority outside the UK, the System Integrator may be required by the laws of the country where the supply takes place to register there for turnover or similar tax. In that event, the Authority shall pay to the System Integrator, in addition to the Contract Price (and any other sum due to the System Integrator under this Contract) a sum equal to the tax the System Integrator is liable to pay to the tax authorities of the country in question in relation to the System Integrator Deliverables within thirty (30) Working Days of a written request for payment of any such sum by the System Integrator.
- 20.6 In relation to the System Integrator Deliverables supplied under this Contract the Authority shall not be required to pay any sum in respect of the System Integrator's input VAT (and/or similar EU and non-EU input taxes). However, these input taxes will be allowed where it is proven to the Authority that, despite the System Integrator having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the System Integrator has complied with this requirement either Party may resolve this matter by reference to the Dispute Resolution Procedure.
- 20.7 Should HMRC decide that the System Integrator has incorrectly determined the VAT liability, in accordance with Clause 20.2 (VAT), the Authority will pay the VAT assessed by HMRC. In the event that HMRC so determines, the System Integrator shall pay any interest charged on any assessment and/or penalties directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under this Contract or any other contract. The System Integrator shall supply the Authority with a copy of all correspondence between HMRC and the System Integrator's advisors regarding the VAT assessment within three (3) Working Days of a written request from the Authority's Representative for such correspondence.

PART 5 - PERFORMANCE AND REMEDIES

21 Key Performance Indicators and Governance and Management

- 21.1 The Parties shall comply with the provisions of Schedule 4 (*System Integrator Performance Mechanism*) and Schedule 6 (*Governance and Reporting*).
- 21.2 Without prejudice to Schedule 4 (*System Integrator Performance Mechanism*) and Schedule 6 (*Governance and Reporting*), the Authority, the Authority's Representative and any agents or consultants of the Authority (such agents and consultants to be subject to the System Integrator's consent, not to be unreasonably withheld or delayed) may, between the hours of 8:30 am to 17:30 pm on any Monday to Friday (which is a Working Day (under limb (a) of that definition) and with reasonable prior notice (having regard to any co-location working which the System Integrator hereby confirms will require a short notice period of no more than one (1) hour), undertake inspection of any of the System Integrator Deliverables, and make any audit or check of any aspect of the System Integrator's performance of this Contract as required by the Authority or where the same shall have been requested by the National Audit Office. The System Integrator shall promptly provide all reasonable co-operation in relation to any inspection, audit or check.

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- 21.3 Without prejudice to Clause 21.2 (*Key Performance Indicators and Governance and Management*), the Authority may undertake its own performance monitoring at any time for any purpose in relation to this Contract (and for any UK Government purposes as requested by the Authority from time to time with the consent of the System Integrator (such consent not to be unreasonably withheld or delayed)), including in order to ensure that the System Integrator Deliverables are being provided in accordance with this Contract.
- 21.4 The System Integrator shall meet with the Authority on a periodic basis as set out in Schedule 6 (*Governance and Reporting*), to formally discuss the performance and other aspects of this Contract.
- 21.5 Discussions and decisions taken at such meetings which make a change to this Contract shall have no contractual effect unless agreed by both Parties and incorporated in accordance with Clause 83 (*Change*) or Clause 86 (*Change of Control*). The System Integrator shall not act on any contract amendment discussed at any meeting without authorisation from the Authority and the Authority shall not be held liable for any such action by the System Integrator in anticipation of any authorisation and any related cost, however incurred, if formal authorisation is not provided.
- 21.6 Ad-hoc meetings may be called by either Party throughout the Contract Period where a specific need arises. Agreement to attend such meetings shall not be unreasonably withheld.
- 21.7 The System Integrator shall provide the Contract Data Deliverables including the relevant management information identified therein in accordance with the requirements of Schedule 6 (*Governance and Reporting*). The Authority may reject a Contract Data Deliverable which does not comply with this Contract. Where the Authority rejects any Contract Data Deliverable, the System Integrator shall resubmit it in accordance with this Contract within such period as is specified by the Authority.
- 21.8 The submission by the System Integrator and receipt by the Authority of any Contract Data Deliverables or reports on the progress of this Contract shall not prejudice any rights or obligations of either Party under this Contract.

22 Technical Assistance to the Authority

- 22.1 The System Integrator acknowledges that the Authority:
- 22.1.1 may (from time to time) use the services of personnel from other Government Departments to assist with managerial, technical and/or other support in relation to this Contract and/or the TIQUILA Programme; and
- 22.1.2 may (from time to time) use the services of specialist commercial organisations to provide managerial, technical and/or other support in relation to this Contract, the MUAS and/or the TIQUILA Programme,
- and the System Integrator agrees that, in such circumstances, such personnel and such organisations shall be deemed to be approved representatives of the Authority and the System Integrator shall make available such information (and/or consents to such information being made available (as the case may be) to such personnel and

such organisations) and/or facilities as are necessary to enable such personnel and/or such organisations to fulfil their obligations to the Authority.

23 GFX Failures

- 23.1 If and to the extent that a GFX Failure is the direct cause of the System Integrator's inability to provide the System Integrator Deliverables or perform any of its other obligations under this Contract or of the degradation of the System Integrator's performance against the KPI regime set out in Schedule 4 (*System Integrator Performance Mechanism*), then subject to Clause 23.2 (*GFX Failures*) the System Integrator is entitled, save where the GFX Failure has been caused by any act or omission of the System Integrator or any System Integrator Related Party under this Contract to apply for relief from those of its obligations that it is unable to perform as a direct result of such GFX Failure. If such act or omission of the System Integrator or any System Integrator Related Party has contributed to the GFX Failure, the System Integrator's entitlement to relief shall be reduced by an amount proportional to such contribution to the GFX Failure.
- 23.2 To obtain relief pursuant to Clause 23.1 (*GFX Failures*) the System Integrator shall:
- 23.2.1 as soon as practicable, and in any event within twenty (20) Working Days after it became aware that the GFX Failure has adversely affected or is likely to adversely affect the ability of the System Integrator to provide the System Integrator Deliverables or to perform its obligations, give to the Authority a notice of its claim for relief from its obligations under this Contract; and
- 23.2.2 as soon as practicable and in any event within ten (10) Working Days of service on the Authority of the notice referred to in Clause 23.2.1 (*GFX Failures*) notify the Authority of full details which are available in respect of the GFX Failure and the relief claimed;
- 23.2.3 demonstrate to the reasonable satisfaction of the Authority that:
- (i) the GFX Failure was the direct cause of the System Integrator's inability to provide the System Integrator Deliverables or perform any of its other obligations under this Contract or of the degradation of the System Integrator's performance against the KPI regime set out in Schedule 4 (*System Integrator Performance Mechanism*); and
- (ii) the relief claimed could not reasonably be expected to be mitigated or recovered by the System Integrator acting in accordance with Good Industry Practice, without incurring material expenditure; and
- 23.2.4 continue to perform its obligations under this Contract subject to the constraints of the GFX Failure.
- 23.3 If and to the extent that the System Integrator has complied with its obligations under this Clause 23 (*GFX Failures*), then:

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- 23.3.1 the Authority shall not be entitled to exercise its rights arising as a result of the GFX Failure to terminate this Contract; and
- 23.3.2 the Authority shall give the System Integrator such relief from its obligations as the Authority considers is reasonable for such a GFX Failure, provided always that where the Authority is able to assist to mitigate the GFX Failure (which may include requiring the System Integrator to obtain a replacement for the relevant GFX or varying the System Integrator Deliverable so as to reduce and/or eliminate the impact of the GFX Failure) and elects to do so by notice in writing to the System Integrator, the System Integrator shall accept such requirement or variation. In the event that the System Integrator is required to obtain a replacement for the relevant GFX it shall be reimbursed any reasonable additional costs, reasonably incurred (on the production of satisfactory evidence of such expenditure) in connection with the acquisition of such replacement GFX.
- 23.4 The System Integrator shall notify the Authority if at any time it realises or becomes aware of any information relating to the GFX Failure, giving details of that information, to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.
- 23.5 If the Parties cannot agree the extent of any relief from the System Integrator's obligations under this Contract or the Authority disagrees that any GFX Failure has occurred (or as to its consequences), or that the System Integrator is entitled to any relief under this Clause 23 (*GFX Failures*) the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.
- 23.6 The System Integrator shall not be entitled to any common law or equitable rights (including rights to damages or to any other rights under contract, tort or otherwise) in relation to the occurrence or subsistence of any GFX Failure.

24 **Diversion Orders**

- 24.1 For the purposes of this Clause 24 (*Diversion Orders*), "**Diversion Orders**" are defined as requests for the urgent delivery of specified quantities of System Integrator Deliverables to consignees other than that stated in this Contract.
- 24.2 The Authority shall notify the System Integrator at the earliest practicable opportunity it becomes aware that a System Integrator Deliverable is likely to be subject to a Diversion Order.
- 24.3 The Authority may issue a Diversion Order for the urgent delivery of the System Integrator Deliverables identified in it. These System Integrator Deliverables are to be delivered by the System Integrator using the quickest means available as agreed by the Authority.
- 24.4 The Authority reserves the right to cancel the Diversion Order.
- 24.5 If the terms of the Diversion Order are unclear, the System Integrator shall immediately contact the representative of the Authority who issued it for clarification and/or further instruction.

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- 24.6 If the Diversion Order increases the quantity of System Integrator Deliverables beyond the scope of this Contract, it is to be returned immediately to the Authority's Commercial Officer with an appropriate explanation.
- 24.7 The System Integrator shall be entitled to reasonable additional delivery and packaging costs incurred in complying with the Diversion Order or cancellation. Claims are to be submitted by the System Integrator to the Authority's Commercial Officer together with applicable receipts and agreed as an amendment to this Contract in accordance with Schedule 9 (*Change Procedure*). The System Integrator shall comply with the requirements of the Diversion Order upon receipt of the Diversion Order.

25 Indemnity and Liabilities

- 25.1 The System Integrator shall be responsible for and release and indemnify the Authority and its employees, agents from and against all Losses which are suffered or incurred by the Authority (and/or its employees and/or agents) arising out of or in connection with:

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

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

- 25.1.4 any:
- (i) breach of the warranties and representations contained at Clauses 7.1.13 to 7.1.20 (inclusive) (*System Integrator warranties*) and/or Clauses 7.2.5 and/or 7.2.6 (*System Integrator undertakings*); and/or
 - (ii) failure of the System Integrator to comply with its obligations in Clause 80 (*Exit Plan*) and/or Clause 82 (*Continuing Assistance*) and/or Clause 59.8 (*Custody*);
- 25.1.5 any contract with any Sub-Contractor entered into (or proposed to be entered into) by the System Integrator and/or any procurements and/or other activities undertaken by or on behalf of the System Integrator, in any case, arising out of or in connection with this Contract, in each case during or after the Contract Period, including:
- (i) a failure to provide all required and relevant information, advice, data, documents and/or other items and/or to carry out and

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complete any other required activity by the time specified and/or referred to in this Contract;

- (ii) where relevant, the failure of any matter, item or thing which is the subject of such contract and/or procurement to fully and properly Integrate with the MUAS;
- (iii) any event, matter or circumstance arising out of or in connection with the content and/or performance of any System Integrator Deliverable (including in connection with a contract and/or procurement and/or other event, matter and/or circumstance); and/or
- (iv) any work and/or additional work required to be undertaken by the Authority and/or any Third Party entering into and/or proposing to enter into any such contract and/or procurement,

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

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

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

Limitation on Liability

Unlimited liability

25.2 Neither Party limits its liability for:

- 25.2.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
- 25.2.2 fraud or fraudulent misrepresentation by it or its employees;
- 25.2.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

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- 25.2.4 any liability to the extent it cannot be limited or excluded by law.
- 25.3 The financial caps on the System Integrator's liability set out in Clause 25.4 (*Financial limits*) below shall not apply to any indemnity given by the System Integrator to the Authority under this Contract or breach by the System Integrator of Clause 37 (*Protection of Personal Data*) and Data Protection Legislation.

Financial limits

- 25.4 Subject to Clauses 25.2 and 25.3 and to the maximum extent permitted by law:
- 25.4.1 throughout the Contract Period the System Integrator's total liability in respect of losses that are caused by System Integrator Defaults shall in no event exceed:
- (i) in respect of Clause 48 (*The System Integrator's Property and Personnel at Government Establishments*) one million five hundred thousand pounds (£1,500,000.00) in aggregate;
 - (ii) in respect of Clauses 77.15 and 77.16 (*Material Breach*) twenty-six million pounds (£26,000,000.00) in aggregate;
 - (iii) in respect of Clause 59 (*Issued Property*) five hundred thousand pounds (£500,000.00) in aggregate; and
 - (iv) in respect of Clause 61 (*Loss of Or Damage to the Articles*) two hundred and fifty thousand pounds (£250,000.00) in aggregate.
- 25.4.2 without limiting Clause 25.4.1 and subject always to Clauses 25.2, 25.3 and 25.4.3, the System Integrator's total liability throughout the Contract Period in respect of all other liabilities, whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be ten million pounds (£10,000,000.00) in aggregate.
- 25.4.3 upon the extension to the Contract Period, the limitation of the System Integrator's total liability (in aggregate) set out in Clauses 25.4.1 and 25.4.2 above shall be fully replenished such that on and from each such exercise or extension of the Contract Period, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 25.4.1 and 25.4.2 of this Contract.
- 25.5 Subject to Clauses 25.2, 25.3 and 25.6, and to the maximum extent permitted by law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Contract Price paid by the Authority in the relevant contract year in respect of any and all claims in that contract year.
- 25.6 Clause 25.5 shall not exclude or limit the System Integrator's right under this Contract to claim for the Contract Price.

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Consequential loss

25.7 Subject to Clauses 25.2, 25.3 and 25.8, neither Party shall be liable to the other Party or to any Third Party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:

25.7.1 indirect loss or damage;

25.7.2 special loss or damage;

25.7.3 consequential loss or damage;

25.7.4 loss of profits (whether direct or indirect);

25.7.5 loss of turnover (whether direct or indirect);

25.7.6 loss of business opportunities (whether direct or indirect); or

25.7.7 damage to goodwill (whether direct or indirect),

even if that Party was aware of the possibility of such loss or damage to the other Party.

25.8 The provisions of Clause 25.7 shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a System Integrator Default:

25.8.1 any additional operational and administrative costs and expenses arising from the System Integrator Default, including any costs paid or payable by the Authority:

(i) to any Third Party;

(ii) in relation to deliverables that are reliant on the System Integrator Deliverables;

(iii) and relating to time spent by or on behalf of the Authority in dealing with the consequences of the System Integrator Default;

25.8.2 any or all wasted expenditure and losses incurred by the Authority arising from the System Integrator Default, including wasted management time;

25.8.3 the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Contract Period and any option period or agreed extension to the Contract Period (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable for the relevant System Integrator Deliverables);

25.8.4 any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority data, or other data or software, including, to the extent the Authority data, other data or software can be

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recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority data, data or software;

- 25.8.5 damage to the Authority's physical property and tangible assets, including damage under Clause 48 (*The System Integrator's Property and Personnel at Government Establishments*) and Clause 59 (*Issued Property*);
- 25.8.6 costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any Third Party IPR or breach of any obligations of confidence;
- 25.8.7 any additional costs incurred by the Authority in relation to the Authority's contracts with a Third Party (including any compensation or interest paid to a Third Party by the Authority) as a result of the System Integrator Default (including the extension or replacement of such contracts);
- 25.8.8 any fine or penalty incurred by the Authority pursuant to law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or
- 25.8.9 any savings, discounts or price reductions during the Contract Period and any option period or agreed extension to the Contract Period committed to by the System Integrator pursuant to this Contract.

Invalidity

- 25.9 If any limitation or provision contained or expressly referred to in this Clause 25 is held to be invalid under any law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Clause 25.

Third Party claims or Losses

- 25.10 Without prejudice to any other rights or remedies the Authority may have under this Contract, the Authority shall be entitled to make a claim under this Contract against the System Integrator in respect of any Losses incurred by the Authority which arise out of a claim made against the Authority by a Third Party under any contract with that Third Party provided that such Third Party claim:
 - 25.10.1 arises naturally and ordinarily as a result of the System Integrator's failure to provide the System Integrator Deliverables or failure to perform any of its obligations under this Contract; and
 - 25.10.2 is a type of claim or Loss that would have been recoverable under this Contract if the Third Party were a party to this Contract (whether as the Authority or the System Integrator), such claim to be construed as direct losses for the purpose of this Contract.

No double recovery

- 25.11 Neither Party shall be entitled to employ such rights and remedies available to it so as to seek to recover more than once in respect of the same loss, but the Authority shall

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be entitled to use (singly or together) such rights and remedies available to the Authority so as to recover the full extent of any recoverable losses suffered or incurred, including any remedies the Authority may have against any guarantor.

Flights Liability and Indemnity

25.12 For the purpose of Clauses 25.13 to 25.21 (*Flights Liability and Indemnity*) (inclusive), the following words and expressions shall have the following meanings:

“Aircraft” shall mean either the Manned Aircraft or Qualifying RPA to be supplied under this Contract or issued to the System Integrator under this Contract;

“Authorised Flight” means a flight, taxiing or Engine Ground Run of an Aircraft, permitted and performed in accordance with Def Stan 05-100 Issue 6 - Ministry of Defence Requirements for Aircraft Flight and Ground Running, for which the System Integrator holds a fully completed valid Flight Authorisation Certificate or in the case of an Engine Ground Run, a fully completed valid Engine Ground Running Certificate. Each Authorised Flight (except Engine Ground Run) shall:

- (a) be deemed to begin in the case of a Manned Aircraft at the time the Aircraft is embarked by the pilot (or where appropriate the first pilot) involved in the Authorised Flight (i.e. when the first foot is placed upon the ladder or access point) with an intent to move the Aircraft under its own means of propulsion, and shall conclude at the time when that pilot (or where appropriate the last pilot) has disembarked. In the case of rotary wing Aircraft, Authorised Flight shall include those occasions where the rotors are engaged with or without an intent to fly; and
- (b) be deemed to begin in the case of a Qualifying RPA at the time an operator turns on the system with an intent to move the Qualifying RPA under its own means of propulsion, and shall conclude at the time when the Qualifying RPA is stationary on the ground, and the Engine is stopped, and the operator performs the necessary function(s) to cease control of the Qualifying RPA.

“Damage” means material damage including physical loss or destruction and **“Damaged”** shall be construed accordingly;

“Engine” means the main propulsion engine or engines of the Aircraft;

“Engine Ground Run” means running the Engine in the Aircraft on the ground but with no intention to taxi or fly. Engine Ground Running shall:

- (a) be deemed to begin in the case of a Manned Aircraft, at the time the Manned Aircraft is embarked by the first person approved to carry out Engine Ground Running (i.e. when the first foot is placed upon the ladder or access point) with an intent to initiate the Engine starting sequence and shall conclude when the Engine has been safely shut down;
- (b) be deemed to begin in the case of a Qualifying RPA, at the time an approved operator turns on the RPAS of which it forms part with an intent to initiate the Engine starting sequence and shall conclude when the Engine has been safely shut down;

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“Indemnity” means the indemnity in Clause 25.14.1 (*Authority Indemnity and Waiver*);

“Losses” means all losses, liabilities, costs, expenses (including legal and other professional charges and expenses) whether arising under statute, contract or at common law, or in connection with judgments, legal proceedings, actions, demands or internal costs including the Authority’s reasonable costs of defending any claim;

“Manned Aircraft” means an aircraft that carries its human operator and means the complete aircraft including its engines and equipment;

“Personal Injury” means personal injury or death;

“Qualifying RPA” means an RPA comprising a component part of an RPAS which has been granted a Letter of Endorsed Categorisation by the Military Aviation Authority (MAA) in accordance with MAA Regulatory Article 1600(2) categorising it within category Class I(c), Class I(d), Class II, or Class III;

“Remotely Piloted Aircraft” means an aircraft that does not carry a human operator, is operated remotely using varying levels of automated functions, is normally recoverable, and can carry a lethal or non-lethal payload;

“RPA” means a Remotely Piloted Aircraft;

“Unauthorised Flight” means any flight, taxiing or Engine Ground Run of an Aircraft conducted or authorised by the System Integrator, its servants or agents or the Contractor’s subcontractor or its servants or agents, other than an Authorised Flight;

“Waiver” means the waiver in Clause 25.14.2 (*Authority Indemnity and Waiver*); and

Authorised Flights

25.13 Notwithstanding anything in Clauses 48 (*The System Integrator’s Property and Personnel at Government Establishments*), 59 (*Issued Property*) and 61 (*Loss Of Or Damage to the Articles*), liability for Damage or Personal Injury resulting from any Authorised Flight shall in all instances be determined in accordance with Clauses 25.13 to 25.21 (inclusive) irrespective of whether such Damage or Personal Injury is attributable to any negligence or misconduct of the Authority or of the System Integrator or of any of its Sub-Contractors or its / their servants or agents.

Authority Indemnity and Waiver

25.14 Where Damage or Personal Injury results from an Authorised Flight then, subject to Clause 25.15 (*Authority Indemnity and Waiver*), the Authority:

25.14.1 shall indemnify the System Integrator and keep it indemnified in respect of all Losses arising from:

- (i) Damage to any property of the System Integrator or its Sub-Contractors which is carried or installed in the Aircraft; and
- (ii) Personal Injury to or Damage to any property of any Third Party.

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- 25.14.2 shall not claim, and waives all claims against the System Integrator in respect of:
- (i) Damage to the Aircraft or to any property of the Authority;
 - (ii) Personal Injury to or Damage to any property of any representative of the Authority participating in or present at the Authorised Flight; and
 - (iii) any Losses suffered or incurred by the Authority by virtue of a Third Party claim.
- 25.15 This Clause 25.15 shall apply if any Aircraft sustains Damage in such circumstances that liability falls to the Authority under Clause 25.14 (*Authority Indemnity and Waiver*):
- 25.15.1 The Authority shall be under no obligation to have the Aircraft repaired or replaced.
- 25.15.2 Where the Aircraft which has been Damaged was to be supplied under this Contract, the Authority shall be entitled at its sole discretion either to:
- (i) accept the Aircraft in its Damaged condition in performance or partial performance of this Contract and the relevant part of the Contract Price for that Aircraft shall be reduced by such a sum as is reasonable, or
 - (ii) require the System Integrator to repair or replace the Aircraft. No profit shall be allowed to the System Integrator in respect of such repair or replacement but the relevant part of the Contract Price shall be equitably adjusted to take account of the cost of the repair or replacement and the Contract delivery date for the Aircraft shall be extended by such period as is reasonably necessary to allow for the performance of the repair or replacement.
- 25.15.3 Where the Aircraft was issued to the System Integrator for the purposes of maintenance, modification or repair, then either:
- (i) the Authority shall be entitled to accept the Aircraft in its Damaged condition in performance or partial performance of this Contract and the relevant part of the Contract Price for that maintenance, modification or repair shall be reduced by such a sum as is reasonable having regard to the extent which, at the time when the Damage was sustained, the repair or maintenance was incomplete or further work remained to be done in relation to it under the provisions of this Contract, or
 - (ii) unless it can be shown to the satisfaction of the Authority that the Aircraft is beyond possible repair, the Authority may require the System Integrator to repair, or to procure the repair of, the Aircraft. No profit shall be allowed to the System Integrator in respect of such repair but the relevant part of the Contract Price shall be equitably adjusted to take account of the cost of the repair and the Contract

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

- 25.15.4 When this Contract involves the issue of the Aircraft by the Authority to the System Integrator for purposes other than maintenance, modification or repair:
- (i) the Authority shall be entitled by notice in writing to the System Integrator to terminate this Contract pursuant to Clause 78 (*Termination for Convenience*) so far as it relates to that Aircraft and the sum payable by the Authority to the System Integrator for the work to be done under this Contract in connection with that Aircraft shall be reduced by such a sum as is reasonable having regard to the extent to which at the time when the Damage was sustained that work was incomplete;
 - (ii) if the Authority requires the Aircraft to be repaired or replaced, such repair or replacement shall be the subject of separate contractual arrangements;
 - (iii) if this Contract cannot be performed as a consequence of the Damage to the Aircraft and the Authority does not authorise its repair or replacement, the Authority shall terminate this Contract pursuant to Clause 25.15.4(i) (*Authority Indemnity and Waiver*); and
 - (iv) in all other circumstances the Contract Period shall be extended by such period as is reasonable having regard to the period of unavailability of the Aircraft and the terms and conditions of this Contract, including Contract Price, shall be equitably adjusted to take account of the unavailability of the Aircraft.
- 25.15.5 The Authority shall make its decision with regard to its entitlements under this Clause 25.15 within a reasonable period of time after it becomes aware of the Damage. The Authority shall keep the System Integrator reasonably informed of the Authority's progress towards that decision and any reasons for delay. For the purpose of this Clause 25.15, that which is reasonable shall be established by taking account of all of the relevant circumstances regarding the cause of, the level of, and the consequences of the Damage sustained.

System Integrator Indemnity

25.16 When Damage or Personal Injury results from an Authorised Flight, the System Integrator shall accept liability and indemnify the Authority accordingly for all Losses arising from:

- 25.16.1 Damage to any property of the System Integrator or its Sub-Contractors on the ground; and
- 25.16.2 Personal Injury to or Damage to any property of any person in the System Integrator's or its Sub-Contractor's employment; and

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- 25.16.3 Personal Injury to or Damage to any property of any person on board the Aircraft, excluding those covered by Clause 25.14.2(ii) (*Authority Indemnity and Waiver*).
- 25.17 The System Integrator shall not conduct, nor authorise or allow anyone else to conduct an Unauthorised Flight. In the event of an Unauthorised Flight, the System Integrator shall accept liability and indemnify the Authority accordingly for all Losses arising from:
- 25.17.1 Damage to the Aircraft or any property of the Authority or the System Integrator resulting from the Unauthorised Flight; and
- 25.17.2 Personal Injury to or Damage to property of an employee of the Authority or of the System Integrator or its Sub-Contractors or any Third Party resulting from the Unauthorised Flight.

Notification and Mitigation

- 25.18 The System Integrator shall inform the Authority, as soon as is reasonably practicable, of any accident or occurrence or circumstances that the System Integrator believes may result in Loss or Damage, Authority Personal Injury claims or Third Party claims and shall provide such evidence of the accident or occurrence together with such ongoing information as the Authority may require. The Authority may at its sole discretion and at the Authority's expense take over conduct of any such Third Party claim or Authority Personal Injury claims on behalf of itself and/or the System Integrator. The System Integrator shall offer all such reasonable assistance as the Authority may require.
- 25.19 The System Integrator is not entitled and shall not seek to recover damages or otherwise obtain restitution from the Authority more than once in respect of the same loss and should it do so it shall promptly reimburse the Authority. Where the System Integrator has benefitted from the Authority indemnity and/or waiver in Clause 25.14 (*Authority Indemnity and Waiver*) and subsequently recovers from a Third Party any sum in respect of the same losses giving rise to that benefit, the System Integrator shall promptly repay to the Authority the lower of that sum and the benefit.
- 25.20 The System Integrator shall take all reasonable steps to minimise and mitigate any Loss or Damage, Authority Personal Injury claims or Third Party claims. The System Integrator shall not be entitled to the benefit of the the Authority indemnity and/or waiver in Clause 25.14 (*Authority Indemnity and Waiver*) to the extent that any failure by the System Integrator to comply with its obligations under Clause 25.18 (*Notification and Mitigation*) and/or this Clause 25.20 has caused the Authority to suffer or incur any loss.

Supply Chain Flow-down

- 25.21 The System Integrator shall:
- 25.21.1 indemnify any of its direct Sub-Contractors who are to either perform an Authorised Flight or directly participate or assist in an Authorised Flight on the same terms as the System Integrator is indemnified by the Authority under Clause 25.14 (*Authority Indemnity and Waiver*); and

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25.21.2 ensure that its direct Sub-Contractors are subject to an equivalent obligation as that on the System Integrator in Clause 25.21.1 (*Supply Chain Flow-down*).

26 Insurances

- 26.1 Without prejudice to its obligation to indemnify or otherwise be liable to the Authority under this Contract, the System Integrator shall for the periods specified in Schedule 10 (*Required Insurances*) take out and maintain, or procure the taking out and maintenance of insurances in accordance with the requirements specified in Schedule 10 (*Required Insurances*) and any other insurances required by law (together the "**Required Insurances**"). The System Integrator shall ensure that the Required Insurances are effective in each case not later than the date on which the relevant risk commences.
- 26.2 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.
- 26.3 Where specified in Schedule 10 (*Required Insurances*), the System Integrator shall ensure that the relevant policy of insurance shall contain an indemnity to principals clause or additional insureds equivalent, under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury or Third Party property damage, and for which the System Integrator is legally liable in respect of this Contract.
- 26.4 The System Integrator shall not (and the System Integrator shall procure that none of its Sub-Contractors of any tier shall not) take any action or fail to take any action or, insofar as is reasonably within its power, permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.
- 26.5 If the System Integrator is in breach of Clause 26.2 (*Insurances*), the Authority may elect, but shall not be obliged, to purchase any insurance which the System Integrator is required to maintain pursuant to this Contract but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the premium and other reasonable costs incurred in connection therewith as a debt due from the System Integrator.
- 26.6 The System Integrator shall, upon the date of this Contract and within fifteen (15) Working Days after the renewal of any of the Required Insurances, provide evidence, in a form satisfactory to the Authority, that the Required Insurances are in full force and effect and meet the requirements of this Clause 26 (*Insurances*) and Schedule 10 (*Required Insurances*). The supply to the Authority of any evidence of insurance cover in compliance with the requirements of this Clause 26.6 (*Insurances*) shall not imply acceptance by the Authority that the extent of insurance cover is sufficient or that the terms and conditions thereof are satisfactory, in either case, for the purposes of this Contract nor be a waiver of the System Integrator's liability under this Contract.
- 26.7 The System Integrator shall notify the Authority at least ten (10) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances.

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- 26.8 The System Integrator shall promptly notify to insurers any matter arising from, or in relation to, the System Integrator Deliverables and/or this Contract for which it may be entitled to claim under any of the Required Insurances. In the event that the Authority receives a claim relating to the System Integrator Deliverables or this Contract, the System Integrator shall co-operate with the Authority and assist it in dealing with such claims including providing information and documentation in a timely manner.
- 26.9 Except where the Authority is the claimant party, the System Integrator shall notify the Authority immediately (such notification to be accompanied by reasonable particulars of the incident or circumstances giving rise to such incident) after any:
- 26.9.1 incident or circumstances which may give rise to a claim amounting to or in excess of one hundred thousand pounds (£100,000) in connection with this Contract and the Required Insurances; and
 - 26.9.2 if the incident or circumstances may give rise to any claim in connection with this Contract which may be in excess of the limits of Required Insurances in Schedule 10 (*Required Insurances*).
- 26.10 The System Integrator shall maintain a written register of all Losses which result in a claim under the Required Insurances in connection with this Contract and shall allow the Authority to review such register at any time.
- 26.11 Where any Required Insurance requires payment of a premium, the System Integrator shall be liable for such premium.
- 26.12 Where any Required Insurance referred to in Schedule 10 (*Required Insurances*) is subject to an excess or deductible, below which the indemnity from insurers is excluded, the System Integrator shall be liable for such excess or deductible which would otherwise be insured but for the excess or deductible. The System Integrator shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Required Insurances whether under the terms of this Contract or otherwise.
- 27 States of Emergency, Periods of Tension, Transition to War and Hostilities**
- 27.1 The System Integrator shall continue to provide the System Integrator Deliverables required in peace, during any state of emergency (whether or not involving hostilities), periods of tension, in transition to war, during hostilities and in any period of surge. The System Integrator shall provide all the System Integrator Deliverables throughout such period of the state of emergency, tension, transition to war or hostility unless directed otherwise by the Authority. The Authority shall advise the System Integrator of any changes or additions to the Contract requirements and the provisions of Clause 83 (*Change*) shall apply, provided that the agreement or determination of any Change pursuant to Clause 83 (*Change*) shall not relieve the System Integrator of its obligation to comply with the Authority's directions under this Clause 27 (*States of Emergency, Periods of Tension, Transition to War and Hostilities*) in the period up to the agreement or determination of such Change.

28 Force Majeure

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

- 28.1.1 war, civil war, armed conflict or terrorism;
- 28.1.2 nuclear, chemical or biological contamination, unless the source or cause of the contamination is as a result of the acts of or breaches by the Party claiming relief;
- 28.1.3 pressure waves caused by devices travelling at supersonic speeds; or
- 28.1.4 national strike (subject to the affected Party being able to demonstrate that any such strike is relevant to this Contract, is outside that Party’s control and that Party is unable to mitigate against it (including, in the case of the System Integrator, the System Integrator demonstrating the same in respect of any Sub-Contractor (where applicable)),

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

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

28.3 Subject to Clause 28.4 (*Force Majeure*) below, the affected Party shall be entitled to an appropriate extension of time for performing such obligations provided always that the such Party has used, to the satisfaction of the other Party, all reasonable endeavours, both to mitigate the effects of the Force Majeure Event, and to facilitate the continued performance of its obligations under this Contract.

28.4 The maximum extension of time granted under this Clause 28.4 (*Force Majeure*) shall be a period of two (2) months after which time the Authority may, on giving written notice to the System Integrator, terminate those elements of this Contract so effected by the Force Majeure Event with immediate effect.

29 Authority Step-In

Grounds for step-in

29.1 Subject to Clause 29.2 (*Grounds for step-in*), if the Authority:

- 29.1.1 reasonably believes that it needs to take action in connection with the System Integrator Deliverables:
 - (i) because a serious risk exists to the health or safety of persons or property or to the environment;
 - (ii) to discharge a statutory duty;

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- (iii) on the occurrence of an urgent operational requirement;
- (iv) because a breach by the System Integrator would result in a significant interruption in the delivery of the whole or part of the System Integrator Deliverables; and/or
- (v) because a breach by the System Integrator and/or the occurrence or subsistence of certain circumstances is reasonably likely to result in a delay to the delivery of the TIQUILA Programme (or any part of the TIQUILA Programme) and/or the provision of MUAS,

then the Authority shall be entitled to take action in accordance with this Clause 29 (*Authority Step-In*).

- 29.2 Save in the case of emergency, the Authority shall give the System Integrator reasonable prior written notice of its intention to take action pursuant to Clause 29.1 (*Grounds for step-in*), and the Parties shall discuss the relevant circumstances in which the Authority and/or any Third Party acting on the instruction of the Authority, intends to take action and perform the System Integrator Deliverables and the level of assistance reasonably required by the Authority from the System Integrator.

Procedure for Authority step-in

- 29.3 If Clause 29.1 (*Grounds for step-in*) applies and the Authority wishes to take action, the Authority's Representative shall notify (the "**Step-In Notice**") the System Integrator's Representative in writing of the following:
- 29.3.1 the action it wishes to take and whether the Authority requires any Third Party to carry out and/or assist the Authority in taking such action;
 - 29.3.2 the reason for such action;
 - 29.3.3 the date it wishes such action to commence;
 - 29.3.4 the time period which it believes shall be necessary for such action; and
 - 29.3.5 to the extent practicable, the effect on the System Integrator and its obligation to provide the System Integrator Deliverables during the period such action is being taken.

Following service of the Step-In Notice and without prejudice to Clause 29.2 (*Grounds for step-in*), the System Integrator may make representations to the Authority regarding the contents of such notice. The Authority shall take such action as notified under Clause 29.3 (*Procedure for Authority step-in*) (the "**Required Action**") and the System Integrator shall give such reasonable assistance to the Authority while it is taking the Required Action.

Effects of step-in without the System Integrator's Breach

- 29.4 If the System Integrator is not in breach of its obligations under this Contract and the Authority exercises its right to take action in connection with the System Integrator Deliverables pursuant to Clause 29.1 (*Grounds for step-in*):

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- 29.4.1 then for so long as and to the extent that the Required Action and the actions under the Step-Out Plan (as defined in Clause 29.7.2 (*Authority step-out*)) are taken and this prevents the System Integrator from providing the System Integrator Deliverables, the System Integrator shall be relieved from its obligations to provide such part of the System Integrator Deliverables as the Authority is undertaking and any element of the System Integrator Deliverables which the System Integrator is unable to provide as a direct result of the Authority taking the Required Action; and
- 29.4.2 in respect of the period in which the Authority is taking the Required Action and the actions under the Step-Out Plan, and provided that the System Integrator provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent incremental costs are incurred), the Contract Price due from the Authority to the System Integrator shall equal the amount the System Integrator would receive if it were satisfying all its obligations and providing the System Integrator Deliverables affected by the Required Action in full over that period and in addition the amount of any incremental costs incurred and the Authority shall continue to pay the System Integrator in accordance with the payment plan as detailed in Schedule 7 (*Pricing and Payment*).

Effects of step-in following the System Integrator's breach

- 29.5 If the System Integrator is in breach of its obligations under this Contract and the Authority exercises its right to take action in connection with the System Integrator Deliverables pursuant to Clause 29.1 (*Grounds for step-in*):
- 29.5.1 then for so long as and to the extent that the Required Action is taken, and this prevents the System Integrator from providing the System Integrator Deliverables, the System Integrator shall be relieved from its obligations to provide such part of the System Integrator Deliverables as the Authority is undertaking and any element of the System Integrator Deliverables which the System Integrator is unable to provide as a direct result of the Authority taking the Required Action; and
- 29.5.2 in respect of the period in which the Authority is taking the Required Action, the Contract Price due from the Authority to the System Integrator shall equal the amount the System Integrator would receive if it were satisfying all its obligations and providing the System Integrator Deliverables affected by the Required Action in full over that period and the Authority shall continue to pay the System Integrator in accordance with the payment plan as detailed in Schedule 7 (*Pricing and Payment*) less an amount equal to the Authority's reasonable and properly incurred costs of taking the Required Action.

Authority step-out

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

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- 29.7 On receipt of the notice referred to in Clause 29.6 (*Authority step-out*), the Parties shall jointly agree:
- 29.7.1 the method by which the Authority shall Step-Out; and
 - 29.7.2 a step-out plan (a “**Step-Out Plan**”) which shall include the actual date that the Authority shall step out and the System Integrator shall resume performance of the System Integrator Deliverables.
- 29.8 Subject to Clause 29.7 (*Authority step-out*), on the date on which the obligations contained in the Step-Out Plan have been achieved:
- 29.8.1 the Authority will be released from all of its obligations and liabilities in relation to the Required Action and the Step-Out Plan other than its obligations to pay the System Integrator as required in this Clause 29 (*Authority Step-In*); and
 - 29.8.2 the System Integrator shall resume all or any part of the System Integrator Deliverables which was the subject of the Required Action.

PART 6 - INFORMATION PROVISIONS

30 Authority Data

- 30.1 For the purposes of this Clause 30 (*Authority Data*), “**Authority Data**” means:
- 30.1.1 the data, text, drawings, diagrams or images (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and:
 - (i) which are supplied to the System Integrator by or on behalf of the Authority; or
 - (ii) which the System Integrator is required to generate, process, store or transmit and which are material to the performance of this Contract; or
 - 30.1.2 any Personal Data for which the Authority is the Controller,
- provided that, for the avoidance of doubt, the term Authority Data does not imply any ownership rights in any Authority Data pursuant to this Clause 30 (*Authority Data*).
- 30.2 The System Integrator shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 30.3 The System Integrator shall not store, copy, disclose, modify, adapt or use the Authority Data except as necessary for the performance by the System Integrator of its obligations under this Contract (and in accordance with the relevant licence rights set out in Schedule 11 (*IPR*)) or as otherwise expressly authorised in writing by the Authority.
- 30.4 To the extent that Authority Data is held and/or processed by the System Integrator, the System Integrator shall supply that Authority Data to the Authority as requested by

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the Authority in the format reasonably specified by the Authority from time to time and/or specified in Schedule 2 (*Obligations of the System Integrator*) (in each case at no additional cost to the Authority).

- 30.5 The System Integrator shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- 30.6 The System Integrator shall perform secure back-ups of all electronic Authority Data held on the System Integrator's IT systems and shall ensure that up-to-date back-ups are stored in accordance with Good Industry Practice and the System Integrator shall procure (as reasonably required by the Authority) that the Sub-Contractors perform secure back-ups of all electronic Authority Data held on the Sub-Contractor's IT systems. The System Integrator shall ensure that such back-ups are made available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than six (6) monthly intervals (or such other intervals as may be agreed by the Parties in writing).
- 30.7 The System Integrator shall ensure that any electronic system on which the System Integrator holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.
- 30.8 If the Authority Data is corrupted, lost or sufficiently degraded so as to be unusable as a result of the System Integrator's failure to fulfil its obligations under this Contract and/or exercise reasonable skill and care, the Authority may:
 - 30.8.1 require the System Integrator (at the System Integrator's expense) to restore or procure the restoration of Authority Data and the System Integrator shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Authority's notice; and/or
 - 30.8.2 itself restore or procure the restoration of Authority Data in any manner reasonably available to it, and shall be repaid by the System Integrator any reasonable expenses incurred directly in doing so.
- 30.9 If at any time the System Integrator suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the System Integrator shall notify the Authority immediately and inform the Authority of the remedial action the System Integrator proposes to take.

Malicious Software

- 30.10 The System Integrator shall, as an enduring obligation throughout the term of this Contract and without prejudice to its obligations in Schedule 2 (*Obligations of the System Integrator*):
 - 30.10.1 use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of any Malicious Software in the System Integrator System and/or the Tiquila System; and

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- 30.10.2 use all reasonable endeavours to ensure that neither it nor any System Integrator Related Party introduces any Malicious Software into the Authority System.
- 30.11 Notwithstanding Clause 30.10 (*Malicious Software*), if Malicious Software is found, the Parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses.
- 30.12 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 30.11 (*Malicious Software*) shall be borne by the Parties as follows:
- 30.12.1 by the System Integrator where such Malicious Software has been introduced:
- (i) by the System Integrator and/or any System Integrator Related Party, including where such Malicious Software originates from the System Integrator System, the Tiquila System any Third Party software supplied by the System Integrator or the Authority Data (whilst the Authority Data was under the control of the System Integrator) unless the System Integrator can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the System Integrator; or
 - (ii) by a Third Party as a result of a security vulnerability in the System Integrator System, the Tiquila System or any Third Party software supplied by the System Integrator and/or a failure by the System Integrator to comply with Clause 30.10 (*Malicious Software*); and
- 30.12.2 otherwise by the Authority.

31 Authority Disclosed Data

- 31.1 The Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any data disclosed by the Authority prior to and/or after the Effective Date and neither the Authority nor any of their agents or employees shall be liable to the System Integrator in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:
- 31.1.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in any data disclosed by the Authority prior to and/or after the Effective Date; or
- 31.1.2 any failure to make available to the System Integrator prior to and/or after the Effective Date any materials, documents, drawings, plans or other information relating to this Contract.
- 31.2 The System Integrator acknowledges that any data (including all information provided by the Authority to the System Integrator for the purposes of assisting the System Integrator to carry out the System Integrator Deliverables or providing contextual or other information relating to the System Integrator Deliverables and/or

the TIQUILA Programme and/or other related contracts and procurements) is data for the purposes of this Clause 31 (*Authority Disclosed Data*) and, for the avoidance of doubt, in addition to the restriction of liability of the Authority as set out in this Clause 31 (*Authority Disclosed Data*), the System Integrator shall not be entitled to any relief from its obligations under this Contract in the event that any of such data disclosed by the Authority is as described in Clause 31.1.1 (*Authority Disclosed Data*) and/or is not made available to the System Integrator as described in Clause 31.1.2 (*Authority Disclosed Data*).

- 31.3 Nothing in this Clause 31 (*Authority Disclosed Data*) shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the System Integrator in respect of any statements made fraudulently or fraudulent omissions to make statements prior to and/or after the Effective Date.

32 The System Integrator's Records

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

- 32.1.1 of all incidents relating to health, safety, the environment and security which occur during the Contract Period to the extent that the Authority is not legally obliged to do so as owner of the Authority Sites;
- 32.1.2 of all claims made by a Third Party against either Party that are submitted to the System Integrator and/or a Sub-Contractor in connection with this Contract;
- 32.1.3 of all claims made under any policy of insurance that the System Integrator is required to maintain pursuant to Clause 26 (*Insurances*);
- 32.1.4 of all Disputes dealt with pursuant to the Dispute Resolution Procedure that arise during the Contract Period;
- 32.1.5 of all certification and/or authorised documentation relating to the attainment of Necessary Consents, Third Party quality standards and/or evidence of compliance with any specified Def Stan requirements;
- 32.1.6 relating to hazardous substances pursuant to Clause 55 (*Supply of Hazard Data*); and
- 32.1.7 any of the System Integrator owned Intellectual Property Rights, the System Integrator's use of Authority owned Intellectual Property Rights and records relating to applicable Third Party IPR,

(the "**Records**") and without prejudice to Clause 34 (*Disclosure of Information*) and Clause 40 (*Intellectual Property Rights*) make the Records available to be examined and if necessary, copied, by or on behalf of the Authority, as the Authority may reasonably require when requested upon reasonable notice.

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- 32.2 The Authority shall be entitled to disclose the Records set out in Clause 32.1 (*The System Integrator's Records*) to potential Follow-On System Integrators as the Authority may reasonably require.
- 32.3 The Records shall be retained for a period of at least six (6) years from:
- 32.3.1 the end of the Contract Period; or
 - 32.3.2 the final payment,
- whichever occurs latest.

33 SME Spend Data Collection

- 33.1 In this Clause 33 (*SME Spend Data Collection*), the following words and expressions shall have the following meanings given to them:
- 33.1.1 "**Reporting Date**" means 31 March (or such alternative date agreed between the Parties (acting reasonably) in writing having regard for the end date of the System Integrator's financial year) each year of the Contract Period;
 - 33.1.2 "**Revenue**" means the aggregate revenue (excluding VAT and before the application of any deduction, set-off or other remedy) that the System Integrator has received under this Contract with the Authority;
 - 33.1.3 "**SME**" means Small and Medium-sized Enterprise, an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;
 - 33.1.4 "**Sub-Contractor Revenue**" means the aggregate revenue (excluding VAT and before the application of any deduction, set-off or other remedy) that any Sub-Contractor has been paid by the System Integrator under a Sub-Contract; and
 - 33.1.5 "**VCSE**" means Voluntary, Community and Social Enterprise, a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.
- 33.2 The System Integrator shall by 30 June (or such alternative date agreed between the Parties (acting reasonably) in writing having regard for the end date of the System Integrator's financial year) of each year during the Contract Period at no additional cost, charge and expense to the Authority and provide to the Authority the information identified in DEFFORM 139 (as amended by the Authority from time to time and with each such amended version taking effect in accordance with Clause 33.4 (*SME Spend Data Collection*)), including:
- 33.2.1 the total Revenue on and prior to the Reporting Date in respect of the relevant financial year immediately prior to the Reporting Date;
 - 33.2.2 the total value of Sub-Contract Revenue paid under this Contract in respect of the relevant financial year immediately prior to the Reporting Date; and

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- 33.2.3 the total value of Sub-Contract Revenue paid to SMEs and VCSEs in respect of the relevant financial year immediately prior to the Reporting Date.
- 33.3 The Authority may issue from time to time guidance to the System Integrator in relation to the completion of DEFFORM 139 (and the System Integrator shall not unreasonably refuse to comply with any such guidance so issued when completing such DEFFORM and complying with this Clause 33 (*SME Spend Data Collection*)).
- 33.4 The Authority may at any time during the Contract Period change the reporting template in DEFFORM 139, provided that the Authority shall have given a minimum of thirty (30) days' notice in writing of the scope and nature of such change or changes. The changes may include the data required or format of the report or both. The Parties agree that no such change shall constitute a formal amendment of this Contract.
- 33.5 Notwithstanding the requirements of Clause 32 (*The System Integrator's Records*), the System Integrator shall retain the information identified in Clause 33.2 (*SME Spend Data Collection*) and supporting records for a period of twenty-four (24) months commencing on the date of their provision pursuant to Clause 33.2 (*SME Spend Data Collection*).

34 Disclosure of Information

- 34.1 Subject to Clauses 34.1 to 34.8 (inclusive) (*Disclosure of Information*), each Party:
- 34.1.1 shall treat in confidence all Information it receives from the other;
- 34.1.2 shall not disclose any of that Information to any Third Party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the System Integrator may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of this Contract;
- 34.1.3 shall not use any of that Information otherwise than for the purpose of this Contract; and
- 34.1.4 shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under this Contract.
- 34.2 The System Integrator shall take all reasonable precautions necessary to ensure that all Information disclosed to the System Integrator by or on behalf of the Authority under or in connection with this Contract:
- 34.2.1 is disclosed to its Employees and Sub-Contractors, only to the extent necessary for the performance of this Contract; and
- 34.2.2 is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing work or having work performed for the Authority under this Contract or any Sub-Contract.
- 34.3 The System Integrator shall ensure that its Employees and Sub-Contractors are aware of its arrangements for discharging the obligations at Clauses 34.1 and 34.2

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(*Disclosure of Information*) before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.

34.4 Clauses 34.1 and 34.2 (*Disclosure of Information*) shall not apply to any Information to the extent that either Party:

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

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

34.4.3 can show:

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

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

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

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

provided the relationship to any other Information is not revealed.

34.5 Neither Party shall be in breach of this Clause 34 (*Disclosure of Information*) where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this Clause 34 (*Disclosure of Information*).

34.6 The Authority may disclose the Information:

34.6.1 on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body, which shall include: disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes;

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

34.6.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

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- 34.6.4 on a confidential basis to a professional adviser, consultant or other person engaged by any Central Government Body and/or the Authority (including benchmarking organisation) for any purpose relating to or connected with this Contract;
- 34.6.5 on a confidential basis for the purpose of the exercise of its rights under this Contract; or
- 34.6.6 on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 34 (*Disclosure of Information*).

- 34.7 Before sharing any Information in accordance with Clause 34.6 (*Disclosure of Information*), the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.
- 34.8 The Authority shall not be in breach of this Contract where it can show that any disclosure of Information is made solely and to the extent necessary to comply with the FOI Act or the Environmental Regulations. To the extent permitted by the time for compliance under the FOI Act or the Environmental Regulations, the Authority shall consult the System Integrator where the Authority is considering the disclosure of Information under the FOI Act or the Environmental Regulations and, in any event, shall provide prior notification to the System Integrator of any decision to disclose the Information. The System Integrator acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the FOI Act or the Environmental Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the FOI Act or the Environmental Regulations. For the avoidance of doubt, nothing in this Clause 34.8 (*Disclosure of Information*) shall affect the System Integrator's rights at law.
- 34.9 Nothing in this Clause 34 (*Disclosure of Information*) shall affect the Parties' obligations of confidentiality where information is disclosed orally in confidence.

Controlled Information

- 34.10 This Clause 34.10 (*Controlled Information*) and Clauses 34.11 to 34.13 (inclusive) (*Controlled Information*) shall apply in respect of any Controlled Information communicated to and/or held by the System Integrator, in addition to and notwithstanding Clauses 34.1 to 34.9 (inclusive) (*Disclosure of Information*), or any other confidentiality Clause of this Contract.
- 34.11 The System Integrator shall:
 - 34.11.1 hold the Controlled Information and not use it other than for the purpose of discharging its obligations under this Contract;

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- 34.11.2 not copy the Controlled Information except as strictly necessary for the purpose of discharging its obligations under this Contract;
 - 34.11.3 not disclose the Controlled Information to any Third Party unless so authorised in writing beforehand by the Authority;
 - 34.11.4 protect the Controlled Information diligently against unauthorised access and against loss; and
 - 34.11.5 act diligently to ensure that:
 - (i) Controlled Information is disclosed to its Employees only to the extent necessary for the purpose of discharging its obligations under this Contract; and
 - (ii) Employees to whom Controlled Information is disclosed are made aware of and required to comply with the terms of these Clauses 34.10 to 34.13 (inclusive) (*Controlled Information*).
- 34.12 Where Controlled Information is provided to the System Integrator, it shall:
- 34.12.1 compile a register of that Controlled Information, which shall include an explicit description of the Controlled Information, a record of the number of copies made and a record of all access to the Controlled Information including access to any copies of the Controlled Information;
 - 34.12.2 maintain such register for the duration of this Contract and for two (2) years following expiry or earlier termination of this Contract in accordance with its terms;
 - 34.12.3 make such register of access available to the Authority upon reasonable notice for inspection and audit for so long as it is required to be maintained under Clause 34.12.2 (*Controlled Information*); and
 - 34.12.4 on expiry or earlier termination of this Contract in accordance with its terms, return to the Authority all original and duplicate copies of the Controlled Information, or else at the Authority's option destroy these copies and provide a certificate of destruction to the Authority.
- 34.13 Nothing in these Clauses 34.10 to 34.13 (inclusive) (*Controlled Information*) shall diminish or extinguish any right of the System Integrator to copy, use or disclose any information that is not Controlled Information to the extent that it can show:
- 34.13.1 that the information concerned was or has become published or publicly available for use without breach of any provision of this Contract or any other agreement between the Parties;
 - 34.13.2 that such information was already known to it (without restrictions on disclosure or use) prior to receiving it under or in connection with this Contract;
 - 34.13.3 that the information concerned was lawfully provided by a Third Party without restriction on use or further disclosure; or

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

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

Publicity and communications with the media

34.14 The System Integrator shall not by itself, its Employees or agents (and shall ensure that its Sub-Contractors shall not):

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

34.14.2 photograph or film in or upon any Authority Sites;

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

34.14.4 exhibit or attach to any part of the Authority Sites any notice or advertisement,

unless:

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

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

34.15 Should the System Integrator wish to release any publicity material or display hardware that arises from this Contract, the System Integrator must seek the prior approval of the Authority. Publicity material includes open publication in the System Integrator'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 Authority or any other government department.

35 Transparency

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

35.2 Before publishing the Transparency Information to the general public in accordance with Clause 35.1 (*Transparency*), the Authority shall redact any information that would be exempt from disclosure if it was the subject of a request for information under the FOI Act or the Environmental Regulations, including the System Integrator Commercially Sensitive Information as listed in Schedule 13 (*System Integrator's Commercially Sensitive Information (DEFFORM 539A)*).

- 35.3 The Authority may consult with the System Integrator before redacting any information from the Transparency Information in accordance with Clause 35.2 (*Transparency*). The System Integrator acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the FOI Act or the Environmental Regulations.
- 35.4 For the avoidance of doubt, nothing in this Clause 35 (*Transparency*) shall affect the System Integrator's rights at law.

36 Accuracy of Information

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

37 Protection of Personal Data

- 37.1 In this Clause 37 (*Protection of Personal Data*), the following wording and expressions shall have the following meanings given to them, except where the context requires a different meaning:
- 37.1.1 **"Data Loss Event"** means any event that results in unauthorised access to Personal Data held by the System Integrator under this Contract, and/or actual loss and/or destruction of Personal Data in breach of the Contract, including any Personal Data Breach;
- 37.1.2 **"Data Protection Legislation"** means
- (i) the UK GDPR and any applicable national implementing Laws as amended from time to time;
 - (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and
 - (iii) all applicable Law about the processing of personal data and privacy;
- 37.1.3 **"Data Protection Impact Assessment"** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
- 37.1.4 **"Data Subject Request"** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
- 37.1.5 **"DPA 2018"** means the Data Protection Act 2018;
- 37.1.6 **"UK GDPR"** means the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in UK law by the EU (Withdrawal) Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;

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- 37.1.7 “**Law**” means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the System Integrator is bound to comply;
- 37.1.8 “**Protective Measures**” means appropriate technical and organisational measures which may include (as appropriate):
- (i) pseudonymising and encrypting Personal Data;
 - (ii) ensuring confidentiality, integrity, availability and resilience of systems and services;
 - (iii) ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and
 - (iv) regularly assessing and evaluating the effectiveness of such measures adopted by it, including those set out in DEFFORM 532;
- 37.1.9 “**Sub-processor**” means any Third Party appointed to process Personal Data on behalf of the System Integrator related to this Contract;
- 37.1.10 The following expressions shall have the same meanings as in Article 4 of the UK GDPR:
- (i) Controller;
 - (ii) Processor;
 - (iii) Data Subject;
 - (iv) Personal Data;
 - (v) Personal Data Breach; and
 - (vi) Data Protection Officer.
- 37.2 In connection with the Personal Data received under the Contract, each Party undertakes to comply with its obligations under Data Protection Legislation and in particular, but without limitation, each Party shall take appropriate technical and organisational measures against unauthorised or unlawful Processing of Personal Data provided to it by the other Party, and against accidental loss, alteration, unauthorised disclosure or destruction of or damage to that Personal Data.
- 37.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the System Integrator is the Processor. The only processing that the System Integrator is authorised to do is listed in DEFFORM 532 by the Authority and may not be determined by the System Integrator.
- 37.4 The System Integrator shall notify the Authority without undue delay if it considers that any of the Authority’s instructions infringe the Data Protection Legislation. The Authority agrees that the System Integrator shall not be required to provide legal advice

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to the Authority and that no notification (or absence of notification) by the System Integrator will be construed as legal advice or a representation by the System Integrator.

- 37.5 The System Integrator shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing that is likely to result in a high risk to the rights and freedoms of Data Subjects. Such assistance may, at the discretion of the Authority, include:
- 37.5.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 37.5.2 an assessment of the necessity and proportionality of the processing operations in relation to the services provided under this Contract;
 - 37.5.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 37.5.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 37.6 The System Integrator shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- 37.6.1 process that Personal Data only in accordance with DEFFORM 532, unless the System Integrator is required to do otherwise by Law. If it is so required the System Integrator shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
 - 37.6.2 ensure that it has in place Protective Measures, including those set out in DEFFORM 532, as appropriate to protect against a Data Loss Event, which the Authority may acting reasonably reject (but failure to reject shall not amount to approval by the Authority of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - 37.6.3 ensure that:
 - (i) subject to Clause 37.6.1 (*Protection of Personal Data*), the System Integrator Personnel do not process Personal Data except in accordance with this Contract (and in particular DEFFORM 532);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any System Integrator Personnel who have access to the Personal Data by ensuring that they undertake the Government's Baseline

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Personnel Security Standard or other standard as specified in this Contract and ensure that they:

- (A) are aware of and comply with the System Integrator's duties under this Clause 37 (*Protection of Personal Data*);
 - (B) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any Third Party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
 - (C) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (iii) not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled;
- (A) the Authority or the System Integrator has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or DPA 2018 Article 73) as determined by the Authority;
 - (B) the Data Subject has enforceable rights and effective legal remedies;
 - (C) the System Integrator complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
 - (D) the System Integrator complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data,
- 37.7 Subject to Clause 37.6 (*Protection of Personal Data*), the System Integrator shall notify the Authority without undue delay if, in connection with Personal Data processed under this Contract, it:
- 37.7.1 receives a Data Subject Request (or purported Data Subject Request);
 - 37.7.2 receives a request to rectify, block or erase any Personal Data;
 - 37.7.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 37.7.4 receives any communication from the Information Commissioner (as defined in the Data Protection Legislation) or any other regulatory authority;
 - 37.7.5 receives a request from any Third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

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- 37.7.6 becomes aware of a Data Loss Event.
- 37.8 The System Integrator's obligation to notify under Clause 37.7 (*Protection of Personal Data*) shall include the provision of further information to the Authority in phases, as details become available.
- 37.9 Taking into account the nature of the processing, the System Integrator shall provide the Authority with assistance, insofar as possible, in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 37.7 (*Protection of Personal Data*) (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
- 37.9.1 the Authority with full details and copies of the complaint, communication or request;
 - 37.9.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 37.9.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 37.9.4 assistance as requested by the Authority following any Data Loss Event;
 - 37.9.5 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner.
- 37.10 The System Integrator shall maintain complete and accurate records and information as necessary to fulfil its obligations under Clause 37.9 (*Protection of Personal Data*).
- 37.11 The System Integrator shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor as required to demonstrate the Authority's compliance with its obligations as a Controller. Such audits will be conducted in accordance with general audit conditions contained in this Contract.
- 37.12 The System Integrator shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 37.13 Before allowing any Sub-processor to process any Personal Data related to this Contract, the System Integrator must:
- 37.13.1 notify the Authority in writing of the intended Sub-processor and processing;
 - 37.13.2 obtain the written consent of the Authority;
 - 37.13.3 enter into a written contract with the Sub-processor which give effect to the terms set out in this Clause 37 (*Protection of Personal Data*) such that they apply to the Sub-processor; and
 - 37.13.4 provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

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- 37.14 The System Integrator shall remain fully liable for all acts or omissions of any Sub-processor.
- 37.15 The System Integrator may, at any time on not less than thirty (30) Working Days' notice, revise this Clause 37 (*Protection of Personal Data*) by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 37.16 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than thirty (30) Working Days' give notice to the System Integrator to amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 37.17 Any Contract amendments resulting from Clause 37.15 (*Protection of Personal Data*) and/or Clause 37.16 (*Protection of Personal Data*) shall be conducted in accordance with Clause 83 (*Change*).

38 Official-Sensitive Security Requirements

- 38.1 The System Integrator shall protect (including protection from deliberate and/or opportunistic attack) all Information relating to the aspects designated as "OFFICIAL" and "OFFICIAL SENSITIVE" as identified in the Security Aspects Letter.
- 38.2 The System Integrator shall include the requirements and obligations set out in Clause 38.1 (*Official-Sensitive Security Requirements*) in any Sub-Contract placed in connection with or for the purposes of this Contract which requires disclosure of OFFICIAL-SENSITIVE Information to the Sub-Contractor or under which any Information relating to aspects designated as OFFICIAL-SENSITIVE is created by the Sub-Contractor. The System Integrator shall also include in the Sub-Contract a requirement for the Sub-Contractor to flow the requirements of this Clause 38.2 (*Official-Sensitive Security Requirements*) to its Sub-Contracts and through all levels of the supply chain to the lowest level where any OFFICIAL-SENSITIVE Information is handled.

39 Cyber

Definitions

- 39.1 In this Clause 39 (*Cyber*), the following words and expressions shall have the meanings given to them below, except where the context requires a different meaning:

39.1.1 "Associated Company" means:

- (i) any associated company of the System Integrator from time to time within the meaning of section 449 of the Corporate Tax Act 2010 or any subordinate legislation; and
- (ii) any parent undertaking or subsidiary undertaking of the System Integrator from time to time within the meaning of section 1162 of the Companies Act 2006 and it is further agreed that where the ownership of shares in any such undertaking have been pledged or

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transferred to a Third Party by way of security, the original parent shall still be considered a member of the subsidiary undertaking;

- 39.1.2 **“Cyber Risk Level”** means the level of Cyber Risk relating to this Contract and/or any Sub-Contract assessed in accordance with the Cyber Security Model;
- 39.1.3 **“Cyber Security Implementation Plan”** means the plan referred to in Clause 39.3 (*System Integrator Obligations*), including but not limited to any risk-balance case and mitigation measures required by the Authority;
- 39.1.4 **“Cyber Security Incident”** means an event, act or omission which gives rise or may give rise to:
- (i) unauthorised access to an information system or electronic communications network;
 - (ii) disruption or change of the operation (including but not limited to takeover of control) of an information system or electronic communications network;
 - (iii) destruction, damage, deletion or the change of MOD Identifiable Information residing in an information system or electronic communications network;
 - (iv) removal or limiting the possibility to use MOD Identifiable Information residing in an information system or electronic communications network; or
 - (v) the appropriation, publication, dissemination or any other use of non-public MOD Identifiable Information by persons unauthorised to do so;
- 39.1.5 **“Cyber Security Instructions”** means Def Stan 05-138, together with any relevant ISN and specific security instructions relating to this Contract issued by the Authority to the System Integrator;
- 39.1.6 **“Cyber Security Model”** or **“CSM”** means the process by which the Authority ensures that MOD Identifiable Information is adequately protected from a Cyber Security Incident and includes the CSM Risk Assessment Process, Def Stan 05-138 and the CSM Supplier Assurance Questionnaire;
- 39.1.7 **“CSM Risk Assessment Process”** means the risk assessment process which forms part of the Cyber Security Model and is used to measure the Cyber Risk Level for this Contract and any Sub-Contract;
- 39.1.8 **“CSM Supplier Assurance Questionnaire”** means the supplier assessment questionnaire which forms part of the Cyber Security Model and is to be used by the System Integrator to demonstrate compliance with this Clause 39 (*Cyber*);

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- 39.1.9 “**Data**” means any data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media;
- 39.1.10 “**Def Stan 05-138**” means the Defence Standard 05-138 as amended or replaced from time to time;
- 39.1.11 “**Electronic Information**” means all information generated, processed, transferred or otherwise dealt with under or in connection with this Contract, including but not limited to Data, recorded or preserved on any information system or electronic communications network;
- 39.1.12 “**Good Industry Practice**” means in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgment and the making of any expenditure that would reasonably be expected from a skilled person in the same type of undertaking under the same or similar circumstances;
- 39.1.13 “**ISN**” means Industry Security Notices issued by the Authority to the System Integrator whether directly or by issue on the gov.uk website at: <https://www.gov.uk/government/publications/industry-security-notices-isns>;
- 39.1.14 “**JSyCC WARP**” means the Joint Security Co-ordination Centre MOD Defence Industry Warning, Advice and Reporting Point or any successor body notified by way of ISN;
- 39.1.15 “**MOD Identifiable Information**” means all Electronic Information which is attributed to or could identify an existing or proposed Authority capability, defence activities or personnel and which the Authority requires to be protected against loss, misuse, corruption, alteration and unauthorised disclosure;
- 39.1.16 “**NSA/DSA**” means, as appropriate, the National or Designated Security Authority of the System Integrator that is responsible for the oversight of the security requirements to be applied by the System Integrator and for ensuring compliance with applicable national security regulations;
- 39.1.17 “**Sites**” means any premises from which System Integrator Deliverables are provided in connection with this Contract or from which the System Integrator or any relevant Sub-Contractor manages, organises or otherwise directs the provision or the use of the System Integrator Deliverables and/or any sites from which the System Integrator or any relevant Sub-Contractor generates, processes, stores or transmits MOD Identifiable Information in relation to this Contract; and
- 39.1.18 “**Supplier Cyber Protection Service**” means the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire.

Authority obligations

- 39.2 The Cyber Risk Profile/ Level of this Contract is “moderate”, as defined in Def Stan 05-138. The Authority shall notify the System Integrator as soon as reasonably practicable where the Authority reassesses the Cyber Risk Level relating to this Contract.

System Integrator obligations

- 39.3 The System Integrator shall, and shall procure that its Sub-Contractors shall:
- 39.3.1 comply with Def Stan 05-138;
 - 39.3.2 complete the CSM Risk Assessment Process in accordance with the Authority’s instructions, ensuring that any change in the Cyber Risk Level is notified to any affected Sub-Contractors, and complete a further CSM Risk Assessment Process or CSM Supplier Assurance Questionnaire where a change is proposed to the System Integrator’s supply chain which has or may have an impact on the Cyber Risk Level of this Contract or on receipt of any reasonable request by the Authority;
 - 39.3.3 carry out the CSM Supplier Assurance Questionnaire no less than once in each year of this Contract, commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire;
 - 39.3.4 having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge its obligations under this Clause 39 (*Cyber*) in accordance with Good Industry Practice, provided always that where there is a conflict between the System Integrator’s obligations under Clause 39.3.1 and this Clause 39.3.4 (*System Integrator obligations*), the System Integrator shall notify the Authority in accordance with the notification provisions in Def Stan 05-138 as soon as it becomes aware of the conflict and the Authority shall determine which standard or measure shall take precedence;
 - 39.3.5 comply with all Cyber Security Instructions notified to it by the Authority as soon as reasonably practicable;
 - 39.3.6 notify the JSyCC WARP in accordance with ISN 2014/02 as amended or updated from time to time and the System Integrator’s NSA/DSA, and in the case of a Sub-Contractor also notify the System Integrator, immediately in writing as soon as they know or believe that a Cyber Security Incident has or may have taken place providing full details of the circumstances of the incident and any mitigation measures already taken or intended to be taken;
 - 39.3.7 in coordination with its NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the Authority and its agents and representatives and its NSA/DSA to take all steps to mitigate the impact of the Cyber Security Incident and minimise the likelihood of any further similar Cyber Security Incidents. For the avoidance of doubt, this shall include complying with any reasonable technical or organisational security measures deemed appropriate by the System Integrator’s NSA/DSA in the circumstances and taking into account the Cyber Risk Level;

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- 39.3.8 consent to the Authority recording and using information obtained in relation to this Contract for the purposes of the Cyber Security Model whether on the Supplier Cyber Protection Service or elsewhere. For the avoidance of doubt such information shall include the cyber security accreditation of the System Integrator and/or Sub-Contractor as appropriate; and
- 39.3.9 include provisions equivalent to Clause 39.16 (*Breach of obligations*) in all Sub-Contracts imposing provisions equivalent to this Clause 39.3 (*System Integrator obligations*) (the “**Equivalent Provisions**”) and, where a Sub-Contractors breaches terms implementing this Clause 39.3 (*System Integrator obligations*) in a Sub-Contract, the System Integrator shall and shall procure that its Sub-Contractors shall, in exercising their rights or remedies under the relevant Sub-Contract:
- (i) notify the Authority of any such breach and consult with the Authority regarding any remedial or other measures which are proposed as a consequence of such breach, taking the Authority’s view into consideration; and
 - (ii) have regard to the Equivalent Provisions,

PROVIDED ALWAYS THAT where the System Integrator has notified the Authority that it or one or more of its Sub-Contractors cannot comply with Clauses 39.3.1 to 39.3.9 (inclusive) (*System Integrator obligations*), the Authority and System Integrator will seek to agree a Cyber Security Implementation Plan and where the Authority has agreed a Cyber Security Implementation Plan with the System Integrator, the System Integrator shall, and shall procure that its Sub-Contractors shall, comply with such Cyber Security Implementation Plan until implementation is agreed to have been achieved whereupon Clauses 39.3.1 to 39.3.9 (inclusive) (*System Integrator obligations*) shall apply in full. In the event that a Cyber Security Implementation Plan cannot be agreed the matter shall be resolved in accordance with the Dispute Resolution Procedure.

Management of Sub-Contractors

- 39.4 The Authority agrees that the System Integrator shall be entitled to rely upon the self-certification by a Sub-Contractor of its compliance with its obligations pursuant to Clause 39.3 (*System Integrator obligations*). In the event that a Sub-Contractor is found to be in breach of its obligations in Clause 39.3 (*System Integrator obligations*), and where the System Integrator has relied upon the Sub-Contractor’s self-certification, the System Integrator shall not be held to be in breach of this Clause 39.4 (*Management of Sub-Contractors*).
- 39.5 Where the System Integrator becomes aware that a Sub-Contractor is not complying with its obligations, the System Integrator shall notify the Authority and provide full details of the Sub-Contractors non-compliance as soon as reasonably practicable and shall consult with the Authority as to the appropriate course of action which may include but not be limited to the agreement of a remedial plan or termination of the Sub-Contract having regard to Clause 39.3.9 (*System Integrator obligations*).
- 39.6 Having regard to the Authority’s views, the System Integrator shall take all reasonable measures to address any non-compliance of a Sub-Contractor in accordance with the

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reasonable timescales required by the Authority. Where the System Integrator fails to do so, this shall amount to a breach of Clauses 39.4 to 39.7 (inclusive) (*Management of Sub-Contractors*) and the provisions of Clause 39.17 or 39.18 (*Breach of obligations*) as appropriate shall apply.

- 39.7 The System Integrator shall, and shall procure that its Sub-Contractors shall, include provisions equivalent to Clauses 39.4 to 39.7 (inclusive) (*Management of Sub-Contractors*) in all Sub-Contracts which flow down the obligations set out in Clause 39.3 (*System Integrator obligations*) of this Contract.

Records

- 39.8 The System Integrator shall keep and maintain, and shall ensure that any Sub-Contractor shall keep and maintain, until six (6) years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records including but not limited to:
- 39.8.1 details of all MOD Identifiable Information relating to the System Integrator Deliverables provided under this Contract; and
 - 39.8.2 copies of all documents required to demonstrate compliance with Def Stan 05-138 and this Clause 39 (*Cyber*), including but not limited to any information used to inform the CSM Risk Assessment Process and to carry out the CSM Supplier Assurance Questionnaire, together with any certificates issued to the System Integrator and/or Sub-Contractor.
- 39.9 The System Integrator shall, and shall ensure that any Sub-Contractor shall, on request provide the Authority, the Authority's Representatives and/or the System Integrator's NSA/DSA such access to those records as may be required in connection with this Contract.

Audit

- 39.10 Except where an audit is imposed on the Authority by a regulatory body or there is a Cyber Security Incident in which case the System Integrator agrees, and shall procure that its Sub-Contractors agree, that the Authority and its representatives, in coordination with the NSA/DSA or the NSA/DSA on behalf of the Authority, may conduct such audits as it considers in its absolute opinion necessary, the Authority, its representatives and/or the NSA/DSA may, not more than twice in any calendar year and for a period of six (6) years following the termination or expiry of this Contract, whichever is the later, conduct an audit for the following purposes:
- 39.10.1 to review and verify the integrity, confidentiality and security of any MOD Identifiable Information;
 - 39.10.2 to review the System Integrator's and/or any Sub-Contractor's compliance with its obligations under this Clause 39 (*Cyber*); and
 - 39.10.3 to review any records created during the provision of the System Integrator Deliverables, including but not limited to any documents, reports and minutes which refer or relate to the System Integrator Deliverables for the purposes of Clauses 39.10.1 and 39.10.2 (*Audit*).

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- 39.11 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the System Integrator and/or Sub-Contractor or delay the provision of the System Integrator Deliverables and supplier information received by the Authority in connection with the audit shall be treated as confidential information.
- 39.12 The System Integrator shall, and shall ensure that any Sub-Contractor shall, on demand provide the Authority and any relevant regulatory body, including the NSA/DSA, (and/or their agents or representatives), together the “**Auditors**”, with all reasonable co-operation and assistance in relation to each audit, including but not limited to:
- 39.12.1 all information requested by the Authority within the permitted scope of the audit;
 - 39.12.2 any Associated Company or any Sub-Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of this Contract and, where such Sites and/or equipment are not within the control of the System Integrator, shall secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and
 - 39.12.3 access to any relevant staff.
- 39.13 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) calendar days’ notice of its intention to conduct an audit.
- 39.14 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 39 (*Cyber*), unless the audit identifies a material breach of the terms of this Clause 39 (*Cyber*) by the System Integrator and/or Sub-Contractor in which case the System Integrator shall reimburse the Authority for all the Authority’s reasonable costs incurred in the course of the audit.

Cyber Accreditation

- 39.15 Not used.

Breach of obligations

- 39.16 In exercising its rights or remedies under this Clause 39 (*Cyber*), the Authority shall:
- 39.16.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of any breach or potential breach and the Cyber Risk Level of this Contract; and
 - 39.16.2 give all due consideration, where appropriate, to action other than termination of this Contract, including but not limited to a remedial period if this is appropriate in all the circumstances.
- 39.17 Where the Cyber Risk Level of this Contract is assessed to be moderate or high, and the System Integrator breaches the terms of this Clause 39 (*Cyber*), the Authority shall be entitled to terminate this Contract (whether in whole or in part) and the provisions of Clause 77 (*Termination for System Integrator Default*) shall apply.

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- 39.18 Where the Cyber Risk Level of this Contract is assessed to be very low or low, and the System Integrator breaches the terms of this Clause 39 (*Cyber*), the Authority shall be entitled:
- 39.18.1 to recover from the System Integrator the amount of any Loss sustained in consequence of any breach of this Clause 39 (*Cyber*); and
 - 39.18.2 where the System Integrator does not comply with any reasonable instructions issued by the Authority or the NSA/DSA within the time period specified to remedy such breach or prevent further breaches, the Authority shall be entitled to terminate this Contract (whether in whole or in part) and the provisions of Clause 79.6 (*Termination for System Integrator Default*) shall apply.
- 39.19 Where the System Integrator commits an act of fraud, negligence or wilful misconduct in respect of its obligations under this Clause 39 (*Cyber*) the Authority shall be entitled to terminate this Contract (whether in whole or in part) and the provisions of Clause 79.6 (*Termination for System Integrator Default*) shall apply.

General

- 39.20 On termination or expiry of this Contract, the provisions of this Clause 39 (*Cyber*) (excepting Clauses 39.3.2 and 39.3.3 (*System Integrator obligations*)) shall continue in force so long as the System Integrator and/or Sub-Contractor holds any MOD Identifiable Information relating to this Contract.
- 39.21 Without prejudice to Clause 81.1.1 (*Continuing Obligations*), termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Clause 39 (*Cyber*) that have accrued up to the date of termination or expiry, including but not limited to the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination or expiry.
- 39.22 The System Integrator agrees that the Authority has absolute discretion to determine changes to Def Stan 05-138 and/or the Cyber Risk Level. In the event that there is such a change to Def Stan 05-138 or the Cyber Risk Level, then either Party may seek an adjustment to the Contract Price for any associated increase or decrease in costs and the System Integrator may request an extension of time for compliance with such revised or amended Def Stan 05-138 or Cyber Risk Level, provided always that the System Integrator shall seek to mitigate the impact on time and cost to the extent which it is reasonably practicable to do so and further provided that such costs shall not be allowed unless they are considered to be appropriate, attributable to this Contract and reasonable in all the circumstances.
- 39.23 Subject to Clause 39.22 (*General*), where the System Integrator seeks such adjustment or extension, the provisions of Schedule 9 (*Change Procedure*) shall apply to determine the request for such adjustment or extension, provided always that:
- 39.23.1 notwithstanding Schedule 9 (*Change Procedure*), the System Integrator shall deliver an Estimate to the Authority within eight (8) weeks of the occurrence of the change in Def Stan 05-138 or Cyber Risk Level (or such longer period as may be agreed by the Parties) and such Estimate shall, without prejudice to Schedule 9 (*Change Procedure*), identify the impact of

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that change and shall be accompanied by full details of the request for adjustment (and for the purposes of Schedule 9 (*Change Procedure*), the notice given by the Authority pursuant to Clause 39.22 (*General*) of the changes to Def Stan 05-138 and/or the Cyber Risk Level shall be deemed to be an Authority Notice of Change and the request for such proposed changes shall be deemed to be a Change and the subject of such Authority Notice of Change); and

- 39.23.2 the System Integrator shall not be entitled to refuse the proposed Change pursuant to Schedule 9 (*Change Procedure*) insofar as it relates to Def Stan 05-138 or the Cyber Risk Level whether or not the System Integrator Estimate is rejected. In the event that the System Integrator does not agree with the Authority's determination, then the provisions of the Dispute Resolution Procedure shall apply.
- 39.24 The System Integrator shall not recover any costs and/or other Losses under or in connection with this Clause 39 (*Cyber*) where such costs and/or other Losses are recoverable or have been recovered by the System Integrator elsewhere in this Contract or otherwise. For the avoidance of doubt, this shall include but not be limited to the cost of implementing any upgrades or changes to any information system or electronic communications network whether in response to a Cyber Security Incident or otherwise, where the System Integrator is able to or has recovered such sums in any other provision of this Contract or has recovered such costs and/or Losses in other contracts between the System Integrator and the Authority or with other bodies.

PART 7 - INTELLECTUAL PROPERTY RIGHTS

40 Intellectual Property Rights

- 40.1 The Parties shall comply with their respective rights and obligations in Schedule 11 (*IPR*).

41 Authorisation by the Crown for use of Third Party IPR

Notwithstanding any other provisions of this Contract and for the avoidance of doubt, award of this 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 System Integrator acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

PART 8 - SECURITY PROVISIONS

42 Security Aspects Letter

- 42.1 The System Integrator shall comply with the requirements of the Security Aspects Letter.

43 Security – Secret Matters

43.1 In this Clause 43 (*Security – Secret Matters*), the following words and expressions shall have the following meanings:

43.1.1 “**Employee**” shall include any person who is an employee or director of the System Integrator or who occupies the position of a director of the System Integrator, by whatever title given;

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

43.1.3 “**Security Policy**” has the meaning given it in Schedule 1 (*Definitions, Acronyms and Initialisms*).

Official Secrets Acts

43.2 The System Integrator shall:

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

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

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

Security measures

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

43.3.1 who is not a British citizen;

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

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- 43.3.3 in respect of whom the Authority has notified the System Integrator in writing that the Secret Matter shall not be disclosed to or acquired by that person;
 - 43.3.4 who is not an Employee of the System Integrator; or
 - 43.3.5 who is an Employee of the System Integrator and has no need to know the information for the proper performance of this Contract.
- 43.4 Unless it has the written authorisation of the Authority to do otherwise, the System Integrator and its Employees shall, both before and after the completion or termination of this Contract, take all reasonable steps to ensure that:
- 43.4.1 no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of this Contract; and
 - 43.4.2 any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy (as amended from time to time) and, upon request, is delivered up to the Authority who shall be entitled to retain it.
- A decision of the Authority on the question of whether the System Integrator has taken or is taking reasonable steps as required by this Clause 43 (*Security – Secret Matters*) shall be final and conclusive.
- 43.5 The System Integrator shall:
- 43.5.1 provide to the Authority:
 - (i) upon request, such records giving particulars of those Employees who have had, at any time, access to any Secret Matter that is required to be kept in accordance with Clause 43.4.2 (*Security measures*);
 - (ii) upon request, such information as the Authority may from time to time require so as to be satisfied that the System Integrator and its Employees are complying with its obligations under this Clause 43 (*Security – Secret Matters*), including the measures taken or proposed by the System Integrator so as to comply with its obligations and to prevent any breach of them; and
 - (iii) full particulars of any failure by the System Integrator and its Employees to comply with any obligations relating to any Secret Matter arising under this Clause 43 (*Security – Secret Matters*) immediately upon such failure becoming apparent; and
 - 43.5.2 ensure that, for the purpose of checking the System Integrator's compliance with the obligation in Clause 43.4.2 (*Security measures*), a representative of the Authority shall be entitled at any time to enter and inspect any premises used by the System Integrator which are in any way connected with this Contract and inspect any document or thing in any such premises, which is being used or made for the purposes of this Contract. Such

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representative shall be entitled to all such information as he may reasonably require.

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

Sub-Contracts

- 43.7 If the System Integrator proposes to make a Sub-Contract which will involve the disclosure of Secret Matter to the Sub-Contractor, the System Integrator shall:
- 43.7.1 submit for approval of the Authority the name of the proposed Sub-Contractor, a statement of the work to be carried out and any other details known to the System Integrator which the Authority shall reasonably require;
 - 43.7.2 incorporate into the Sub-Contract the terms of the Appendix to DEFCON 659A and such secrecy and security obligations as the Authority shall direct. In the appendix "Agreement" shall mean the "Sub-Contract", "First Party" shall mean "the System Integrator" and "Second Party" shall mean the "Sub-Contractor"; and
 - 43.7.3 inform the Authority immediately if it becomes aware of any breach by the Sub-Contractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the Sub-Contract.

Termination

- 43.8 The Authority shall be entitled to terminate this Contract immediately if:
- 43.8.1 the System Integrator is in breach of any obligation under this Clause 43 (*Security – Secret Matters*); or
 - 43.8.2 the System Integrator is in breach of any secrecy or security obligation imposed by any other contract with the Crown,

where the Authority considers that the circumstances of the breach jeopardise the secrecy or security of the Secret Matter and claim such damages as may have been sustained as a result of the System Integrator's breach of this Clause 43 (*Security – Secret Matters*).

Acknowledgement by the System Integrator

- 43.9 By entering into this Contract, the System Integrator confirms that:
- 43.9.1 it has received the Security Aspects Letter;
 - 43.9.2 the Secret Matter has been brought to the attention of the person directly responsible for the security of this Contract;

- 43.9.3 the nature and details of the Secret Matter are understood; and
- 43.9.4 measures will be taken to safeguard the Secret Matter in accordance with the requirements of this Clause 43 (*Security – Secret Matters*).

Submission of security information

- 43.10 The System Integrator shall submit all information required to be submitted under this Clause 43 (*Security – Secret Matters*) to:

FAO RPAS Security Accreditation Coordinator
Defence Equipment & Support
#1251 Yew 2c
MOD Abbey Wood
Bristol
BS34 8JH

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

44 Personnel Security

- 44.1 Without prejudice to the provisions of Clauses 44.2 and 44.3 (*Personnel Security*), if the Authority considers that any of the Employees are for any reason unsatisfactory to the Authority, it may:

- 44.1.1 refuse admission to the relevant person(s) to the Authority Site; and/or

- 44.1.2 direct the System Integrator to end the involvement of the relevant person(s) in the provision of the System Integrator Deliverables,

and the System Integrator shall replace and/or procure the replacement of any such Employees as soon as reasonably practicable, whilst ensuring that any System Integrator Key Role is not vacant for a period exceeding ten (10) Working Days.

- 44.2 The System Integrator shall ensure and/or procure that the Employees comply with all reasonable requirements of the Authority concerning conduct at Authority Sites and make themselves familiar with and at all times shall conduct themselves in accordance with any rules and regulations as issued from time to time by the Authority in relation to the relevant Authority Site and/or by the Authority.
- 44.3 The Authority reserves the right to refuse access to, or remove anyone from, any Authority Site who fails to comply with the applicable rules and regulations.
- 44.4 Should an Employee be refused access to, or be removed from an Authority Site for failure to comply with applicable rules and regulations, the System Integrator shall not be relieved from its obligations to provide the System Integrator Deliverables in full.

Security clearance

- 44.5 The System Integrator shall be responsible for ensuring that each Employee holds and maintains a valid security clearance up to and including “Secret” level at all times during their employment or engagement in connection with this Contract.

Admission to Authority Sites

- 44.6 The System Integrator shall provide the Authority with details of each Employee and any other details the Authority may require, together with details of the Authority Site to which access is required and the capacity in which such person is concerned with the provision of the System Integrator Deliverables.
- 44.7 The Authority shall issue a pass for all Employees who are security cleared to an appropriate level for the Authority Site pursuant to Clause 44.5 (*Security clearance*) before such person is intended to enter onto an Authority Site in connection with the provision of the System Integrator Deliverables. Passes shall remain the property of the Authority and the System Integrator shall ensure that passes shall be surrendered on demand or on termination or expiry of this Contract.
- 44.8 A person not in possession of a pass who is required by the System Integrator or any Sub-Contractor to attend an Authority Site to provide emergency reactive services shall be allowed temporary admission to the Authority Site provided that the System Integrator shall, or shall procure that any Sub-Contractor shall, ensure that such individual is accompanied at all times whilst on the Authority Site by a member of the System Integrator or Sub-Contractor's staff who has been issued with a pass pursuant to Clause 44.5 (*Security clearance*).
- 44.9 Whilst engaged at the Authority's Sites, the System Integrator shall, and shall procure that any Sub-Contractor shall, ensure that all Employees and other accompanied emergency reactive workers pursuant to Clause 44.8 (*Admission to Authority Sites*) comply with the Authority's policies as notified to the System Integrator from time to time relating to the conduct of staff and security arrangements.
- 44.10 Notwithstanding the provisions of Clauses 44.6 to 44.9 (inclusive) (*Admission to Authority Sites*), the Authority may refuse any person admission to an Authority Site or require the removal of any person from an Authority Site for any reason.
- 44.11 The Authority's decision on any matter arising under Clause 44.10 (*Admission to Authority Sites*) shall be final and conclusive.
- 44.12 Where a person is refused admission:
- 44.12.1 to an Authority Site or is removed from an Authority Site, then the System Integrator shall not be relieved from its obligations to provide the System Integrator Deliverables in full; or
 - 44.12.2 to an Authority Site or is removed from an Authority Site, in each case pursuant to Clause 44.10 (*Admission to Authority Sites*), then the Authority shall give the System Integrator such relief from its obligations in respect of those System Integrator Deliverables in which such person is or would have been engaged for a reasonable period to allow the System Integrator or any Sub-Contractor to make alternative arrangements to replace the person whose admission has been refused or whose removal has been required by the Authority.

45 Co-operation for Security Investigation

- 45.1 The System Integrator shall, and shall procure that each Sub-Contractor shall, notify the Authority's Representative immediately it becomes aware that an Employee or an accompanied emergency reactive worker pursuant to Clause 44.8 (*Admission to Authority Sites*) has breached Clause 43 (*Security – Secret Matters*) and/or Clause 44 (*Personnel Security*).
- 45.2 The System Integrator shall, and shall procure that its Sub-Contractors shall, give reasonable assistance to the Authority's Representative and/or any other representative or adviser of the Authority for the purposes of carrying out any investigation that the Authority undertakes (acting reasonably).

PART 9 - SITE ISSUES

46 Access to the System Integrator's Premises

Authority's monitoring and inspection rights

- 46.1 Without prejudice to the other provisions of this Contract, the System Integrator shall ensure that the Authority and the representatives of the Authority shall have the right at all reasonable times and on reasonable notice (but not so as to materially delay or impede the progress of the provision of the System Integrator Deliverables):
- 46.1.1 to enter any of the System Integrator's Premises in order to inspect the state and progress of the provision of the System Integrator Deliverables (and to ascertain whether the System Integrator Deliverables are being properly provided in accordance with this Contract) and to monitor compliance by the System Integrator with its obligations under this Contract; and
- 46.1.2 subject to obtaining the consent of the relevant Sub-Contractor, manufacturer or supplier (which the System Integrator shall use all reasonable endeavours to obtain), to visit any property, site or workshop other than the System Integrator's Premises where materials, plant or equipment are being manufactured, prepared or stored for use in connection with this Contract (for the purposes of general inspection and of attending any test or investigation being carried out), or any property other than the System Integrator's Premises used by the System Integrator as training or workshop facilities or as a place where work is being prepared or materials are being obtained in relation to this Contract.
- 46.2 The System Integrator shall provide and shall ensure the Sub-Contractors provide to the Authority and the representatives of the Authority (in each case without any additional cost to the Authority) for the purposes of Clause 46.1 (*Authority's monitoring and inspection rights*):
- 46.2.1 all reasonable access to premises and such accommodation and facilities for representatives of the Authority as the Authority may reasonably require (provided that all accommodation shall be adequately furnished, lit, heated and ventilated and shall include suitable cloakroom and communication facilities) for an agreed reasonable period; and

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

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

Authority's conduct on the System Integrator's Premises

46.3 In exercising any right under Clause 46.1 (*Authority's monitoring and inspection rights*), the Authority shall comply with all relevant safety procedures (which shall include any relevant health and safety plans), the System Integrator's site rules from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the System Integrator from time to time.

46.4 The Authority shall indemnify the System Integrator for any material damage caused by it to the System Integrator's Premises whilst exercising any right under this Clause 46 (*Access to the System Integrator's Premises*).

47 Authority Sites

The System Integrator's rights over Authority Sites

47.1 During the Contract Period, the Authority shall afford the following rights to the System Integrator solely for the purpose of the provision of the System Integrator Deliverables:

47.1.1 a non-exclusive licence to enter and remain upon those parts of the Authority Sites that the System Integrator and/or any System Integrator Related Party requires access to;

47.1.2 such non-exclusive rights of access to and egress from the Authority Sites as are necessary for the System Integrator and/or System Integrator Related Parties to perform their obligations and exercise their rights under this Contract or their relevant contracts and in particular for the purposes of providing the System Integrator Deliverables, provided that such routes may be varied by the Authority to such alternative routes as the Authority may reasonably specify from time to time if such variation does not have a material adverse effect on the provision of the System Integrator Deliverables; and

47.1.3 use of services and utilities including water, waste water, gas, electricity, telephone and other services serving the Authority Sites as specified in Schedule 5 (*GFX*),

provided that:

- (i) the rights shall not in any circumstances entitle the System Integrator or any System Integrator Related Party to exclusive occupancy or exclusive possession of any part of the Authority Sites (save as may be required by the System Integrator and approved by the Authority in order to comply with relevant health and safety legislation on a temporary basis); and

- (ii) the System Integrator and System Integrator Related Parties do not cause any material disruption to the operations or activities carried out by the Authority on or at the Authority Sites or any of the Authority's legal duties or other functions.

The System Integrator's conduct on Authority Sites

- 47.2 The System Integrator shall ensure, and/or shall procure, that in providing the System Integrator Deliverables at the Authority Sites it and/or any System Integrator Related Party shall:
- 47.2.1 not act or omit to act in any way which shall give rise to a right for any person to obtain title to or any right or interest over an Authority Site or any part of any of them (save in accordance with the terms of this Contract);
 - 47.2.2 not use or occupy the Authority Sites for any purpose other than the provision of the System Integrator Deliverables and only to the extent that such System Integrator Deliverables are required to be performed at such Authority Site;
 - 47.2.3 not deposit or manufacture on the Authority Sites any materials which are not required for the provision of the System Integrator Deliverables and, in the case of materials which are required for the provision of the System Integrator Deliverables, shall only deposit or manufacture such materials at such Authority Site to the extent that such part of the System Integrator Deliverables to which such materials are being deposited or manufactured are required to be performed at such Authority Site;
 - 47.2.4 not store materials or park vehicles in the immediate external vicinity of the boundaries of the Authority Sites other than for reasonable periods necessary for loading and unloading;
 - 47.2.5 not discharge any oil, grease or deleterious, dangerous, poisonous, explosive or radioactive matter from the Authority Sites into any rivers or any ditches or conduits on such Authority Sites and/or any Adjoining Property and not permit or suffer the blockage of any of such rivers, ditches and conduits by reason of anything done or omitted on such Authority Sites by the System Integrator or System Integrator Related Parties, and shall comply at the System Integrator's expense with any requirements of the Environment Agency or any other Relevant Authority which are required to remedy the breach of this Clause 47.2.5 (*The System Integrator's conduct on Authority Sites*). The Authority shall allow the System Integrator access to environmental systems for inspection to confirm they meet the necessary standards;
 - 47.2.6 procure that those parts of the Authority Site which are from time to time occupied by the System Integrator and/or System Integrator Related Parties for the purpose of carrying out the provision of the System Integrator Deliverables (and only to the extent that such System Integrator Deliverables are required to be performed at such Authority Site) are maintained in a clean and tidy state so far as practicable having regard to the nature of the System Integrator Deliverables; and

- 47.2.7 not without the written consent of the Authority's Representative erect any temporary structure.

48 The System Integrator's Property and Personnel at Government Establishments

Liability in respect of damage to Government and Third Party property

- 48.1 Without prejudice to the provisions of Clause 59 (*Issued Property*), the System Integrator shall, except as otherwise provided for in this Contract, make good or, at the option of the Authority, pay compensation for all damage occurring to any Government and/or Third Party property (which includes land or buildings), occasioned by the System Integrator, or by any System Integrator's Representative or System Integrator Related Party, arising from his or their presence on a Government Establishment in connection with this Contract, provided that this Clause 48.1 (*Liability in respect of damage to Government and Third Party property*) shall not apply to the extent that the System Integrator is able to show that any such damage was not caused or contributed to by any circumstances within its reasonable control.

The System Integrator's property

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

Transport overseas

- 48.3 Where the System Integrator's representatives are required by this Contract to join or visit a Government Establishment overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) may be provided by the Authority by Royal Air Force or by Authority chartered aircraft. The System Integrator shall make such arrangements through the Authority's Representative. When such transport is not available within a reasonable time, the System Integrator shall make its own transport arrangements. The Authority shall reimburse the System Integrator's costs for such transport in accordance with paragraph 10.4 of Part 1 of Schedule 7 (*Pricing and Payment*) as far as those costs are in accordance with the Expense Policy, provided that the System Integrator provides evidence supporting the use of alternative transport and proof of the costs involved. Should the System Integrator make travel arrangements outside of the standards detailed in the Expense Policy, the System Integrator shall not be eligible for reimbursement from the Authority of any costs incurred for that travel arrangement.

Medical treatment overseas

- 48.4 Out-patient medical treatment given to the System Integrator's representatives by a medical officer at a Government Establishment overseas shall be free of charge. Treatment in an Authority hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery

not within the Government Establishment, and transportation of the System Integrator's representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the System Integrator at the appropriate local rate.

Injuries, disease and dangerous occurrences

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

Dependants of System Integrator's Representatives

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

Provision of funds overseas

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

Health and safety hazard control

- 48.8 Without prejudice to the System Integrator's obligations under Clause 55 (*Supply of Hazard Data*), where the System Integrator enters a Government Establishment for the purpose of providing the whole or any part of the System Integrator Deliverables:
- 48.8.1 the System Integrator shall notify the officer in charge or the site project liaison officer or overseeing officer or other person nominated by the Authority of:
- (i) any health and safety hazards associated with the delivery of that part of the System Integrator Deliverable to be provided by it or System Integrator Related Party;
 - (ii) any foreseeable risks to the health and safety of all persons associated with such hazards; and

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- (iii) any precautions to be taken by it as well as any precautions which, in its opinion, ought to be taken by the Authority or other person, in order to control such risks;

48.8.2 the Authority shall notify the System Integrator of:

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

48.8.3 the System Integrator shall notify the System Integrator Related Parties of and, where appropriate, provide adequate instruction in relation to:

- (i) the hazards, risks and precautions notified by it to the Authority under Clause 48.8.1 (*Health and safety hazard control*);
- (ii) the hazards, risks and precautions notified by the Authority to the System Integrator under Clause 48.8.2 (*Health and safety hazard control*); and
- (iii) the precautions which, in its opinion, ought to be taken by the System Integrator Related Parties in order to control those risks;

48.8.4 the System Integrator shall provide the officer in charge or the site project liaison officer or overseeing officer nominated in this Contract with:

- (i) copies of those sections of its own and, where appropriate, System Integrator Related Party's safety policies which are relevant to the risks notified under Clause 48.8.1 (*Health and safety hazard control*);
- (ii) copies of any related risk assessments; and
- (iii) copies of any notifications and instructions issued by it to any System Integrator Related Party under Clause 48.8.3 (*Health and safety hazard control*);

48.8.5 the Authority shall provide the System Integrator with:

- (i) copies of those sections of its own or (to the extent that the same are provided to the Authority) any Third Party's (as the case may be) safety policies which are relevant to the risks notified under Clause 48.8.2 (*Health and safety hazard control*);
- (ii) copies of any related risk assessments; and

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- (iii) copies of any notifications and instructions issued by it to its employees similar to those called for from the System Integrator under Clause 48.8.3 (*Health and safety hazard control*); and
- 48.8.6 where the System Integrator identifies a health and safety hazard associated with services provided by the Authority under Schedule 5 (*GFX*), the System Integrator shall notify the Authority of the hazard and the risk to the System Integrator's or the Authority's personnel and:
- (i) the Authority shall implement any urgent temporary actions agreed by the Parties to rectify the hazard within five (5) Working Days; and
 - (ii) the Authority shall implement permanent changes to rectify the hazard as soon as practicable but no later than three (3) months from the notification in Clause 48.8.6 (*Health and safety hazard control*).

PART 10 - PEOPLE ISSUES

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

- 49.1 The Parties shall comply with their respective rights and obligations in Schedule 12 (*Transfer Regulations (TUPE)*).

50 Child Labour and Employment Law and Modern Slavery Act

- 50.1 The System Integrator shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where this Contract is being performed.
- 50.2 The System Integrator agrees to take reasonable efforts to reflect this Clause 50 (*Child Labour and Employment Law and Modern Slavery Act*) in any Sub-Contract that it enters into to satisfy the requirements of this Contract and to require its Sub-Contractors to reflect this Clause 50 (*Child Labour and Employment Law and Modern Slavery Act*) in their Sub-Contracts that they enter into to satisfy the requirements of this Contract.
- 50.3 The Authority has a zero-tolerance approach to modern slavery and human trafficking, and it is committed to acting ethically in its business dealings and relationships and to implement and enforce effective procedures and controls to prevent modern slavery and human trafficking in its business dealings and relationships. The Authority expects the same high standards from all its consultants, suppliers, employees and agents. The System Integrator undertakes and warrants that it:
- 50.3.1 has not committed any offence under the Modern Slavery Act 2015;
 - 50.3.2 has in place adequate procedures and controls to prevent modern slavery and human trafficking as contemplated by the Modern Slavery Act 2015; and
 - 50.3.3 shall comply, and shall require its Sub-Contractors, suppliers, employees and agents to comply, with the Modern Slavery Act 2015 and the Authority's Anti-Slavery and Human Trafficking Policy.

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- 50.4 The System Integrator shall notify the Authority immediately if it becomes aware that it, its Sub-Contractors, suppliers, employees or agents are in breach of Clause 50.3 (*Child Labour and Employment Law and Modern Slavery Act*) (had such Sub-Contractors, suppliers, employees or agents been subject to the same provisions).
- 50.5 In the event that the System Integrator, its Sub-Contractors, suppliers, employees or agents are in breach of Clause 50.3 (*Child Labour and Employment Law and Modern Slavery Act*) (had such Sub-Contractors, suppliers, employees or agents been subject to the same provisions), the breach will be considered a System Integrator Default for the purpose of this Contract and the Authority shall be entitled to terminate the whole or any part of this Contract in accordance with the provisions of Clause 77.1 (*Termination for System Integrator Default*), subject to the provisions of Clauses 77.3 to 77.6 (inclusive) (*Rectification*).

51 Equality

- 51.1 The System Integrator shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including re-assignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.
- 51.2 Without prejudice to the generality of the obligation in Clause 51.1 (*Equality*), the System Integrator shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent legislation in the country where this Contract is being performed.
- 51.3 The System Integrator agrees to take reasonable efforts to secure the observance of the provisions of this Clause 51 (*Equality*) by any of its employees, agents or other persons acting under its direction or control who are engaged in the performance of this Contract.
- 51.4 The System Integrator agrees to take reasonable efforts to reflect this Clause 51 (*Equality*) in any Sub-Contract that it enters into to satisfy the requirements of this Contract and to require its Sub-Contractors to reflect this Clause 51 (*Equality*) in their Sub-Contracts that they enter into to satisfy the requirements of this Contract.

PART 11 - ASSET RELATED PROVISIONS

52 Packaging

Definitions

- 52.1 For the purposes of this Clause 52 (*Packaging*):
- 52.1.1 “**Commercial Packaging**” means commercial Packaging for military use as described in Def Stan 81-041 (Part 1);
- 52.1.2 “**Dangerous Goods**” means those substances, preparations and articles that are capable of posing a risk to health, safety, property or the environment which are prohibited by regulation, or classified and authorised only under the conditions prescribed by the:

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- (i) Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (as amended 2011);
 - (ii) European Agreement Concerning the International Carriage of Dangerous Goods by Road;
 - (iii) Regulations Concerning the International Carriage of Dangerous Goods by Rail;
 - (iv) International Maritime Dangerous Goods Code;
 - (v) International Civil Aviation Organisation Technical Instructions for the Safe Transport of Dangerous Goods by Air; and
 - (vi) International Air Transport Association Dangerous Goods Regulations;
- 52.1.3 **“Military Level Packaging”** or **“MLP”** means Packaging that provides enhanced protection in accordance with Def Stan 81-041 (Part 1), beyond that which Commercial Packaging normally provides for the military supply chain;
- 52.1.4 **“Military Packager Approval Scheme”** or **“MPAS”** means an Authority sponsored scheme to certify military Packaging designers and register organisations, as capable of producing acceptable Services Packaging Instruction Sheet (**“SPIS”**) designs in accordance with Defence Standard (Def Stan) 81-041 (Part 4);
- 52.1.5 **“Military Packaging Level”** or **“MPL”** shall have the meaning described in Def Stan 81-041 (Part 1);
- 52.1.6 **“Packaging”** when used as a verb means the preparation of Articles for transportation, storage and delivery in accordance with this Contract. The term includes, as appropriate, cleaning and preservation processes, packing techniques and marking procedures;
- 52.1.7 **“Packaging”** when used as a noun means the materials, and components, used for the preparation of the Articles for transportation, storage and delivery in accordance with this Contract;
- 52.1.8 **“Packaging Design Authority”** or **“PDA”** means the organisation that is responsible for the design of the packaging, identified in Box 3 of DEFFORM 111;
- 52.1.9 **“Primary Packaging Quantity”** or **“PPQ”**, and Standard Family Specification (**“SFS”**) shall have the meaning as described in Def Stan 81-041 (Part 1);
- 52.1.10 **“Robust Articles”** means Robust items as described in Def Stan 81-041 (Part 2); and
- 52.1.11 **“Safety Data Sheet”** shall have the meaning as defined in REACH.

Specifications for Packaging

- 52.2 General requirements for service Packaging, including details of UK and NATO MLP and Commercial Packaging descriptions, are contained in Def Stan 81-041 (Part 1) "Packaging of Defence Materiel". Def Stans, STANAGs and further information are available from the DefStan internet site at: <http://www.dstan.mod.uk/>
- 52.3 In the event of conflict between this Contract and Def Stan 81-041, this Contract shall take precedence.

Responsibilities

- 52.4 Packaging responsibilities are as follows:
- 52.4.1 The System Integrator shall be responsible for providing Packaging which fully complies with the requirements of this Contract.
 - 52.4.2 The Authority shall indicate in this Contract or order raised against a framework agreement (where applicable) the standard or level of Packaging required for each Article, including the PPQ. If a standard or level of Packaging (including the PPQ) is not indicated in this Contract or order, the System Integrator shall request such instructions from the Authority before proceeding further.
 - 52.4.3 The System Integrator shall ensure all relevant information necessary for the effective performance of this Contract is made available to all Sub-Contractors.
 - 52.4.4 Where the System Integrator or any of their Sub-Contractors have concerns relating to the appropriateness of the Packaging design and or MPL prior to manufacture or supply of the Articles they shall use DEFFORM 129B to feedback these concerns to the System Integrator or Authority, as appropriate.
 - 52.4.5 Where the volumetric data of individual package designs is required to be compiled as part of the codification data set, the System Integrator shall do so in accordance with Clause 53 (*Supply of Information for NATO Codification and Defence Inventory Introduction*).

Commercial Packaging

- 52.5 The System Integrator shall supply Commercial Packaging meeting the standards and requirements of Def Stan 81-041 (Part 1). In addition the following requirements apply:
- 52.5.1 The System Integrator shall provide Packaging which:
 - (i) will ensure that each Article may be transported and delivered to the consignee named in this Contract in an undamaged and serviceable condition; and
 - (ii) is labelled to enable the contents to be identified without need to breach the package; and

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- (iii) is compliant with statutory requirements and this Clause 52 (*Packaging*).

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

- (i) reference in this Contract to a PPQ means the quantity of an Article to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;
- (ii) Robust Articles, which by their nature require minimal or no packaging for commercial deliveries, shall be regarded as "PPQ packages" and shall be marked in accordance with Clauses 52.12 (*Package labelling and marking*) to 52.15 (*Consignment of aggregated packages*) (inclusive). References to "PPQ packages" in subsequent text shall be taken to include Robust Articles; and
- (iii) for ease of handling, transportation and delivery, packages which contain identical Articles may be bulked and overpacked, in accordance with Clauses 52.12 (*Package labelling and marking*) to 52.13 (*Bar code marking*) (inclusive).

Packaging Regulations for Dangerous Goods

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

- 52.6.1 The Health and Safety At Work etc. Act 1974 (as amended);
- 52.6.2 The Classification Hazard Information and Packaging for Supply Regulations (CHIP) 2009 (as amended);
- 52.6.3 The REACH Regulations 2007 (as amended); and
- 52.6.4 The Classification, Labelling and Packaging Regulations (CLP) 2009 (as amended).

52.7 The System Integrator shall package the Dangerous Goods as limited quantities, excepted quantities or similar derogations, for UK or worldwide shipment by all modes of transport in accordance with the regulations relating to the Dangerous Goods and:

- 52.7.1 The Safety Of Lives At Sea Regulations (SOLAS) 1974 (as amended); and
- 52.7.2 The Air Navigation (Amendment) Order 2019.

52.8 As soon as possible, and in any event no later than one (1) month before delivery is due, the System Integrator shall provide a Safety Data Sheet in respect of each Dangerous Good in accordance with the REACH Regulations 2007 (as amended) and the Health and Safety At Work etc. Act 1974 (as amended).

UK military or NATO Packaging

52.9 The System Integrator shall comply with the requirements for the design of MLP which include Clauses 52.9 (*UK military or NATO Packaging*) and 52.10 (*Military Packaging design procedure*) as follows:

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

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

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

Tel. +44(0)30679-35353

DESSEOCSCG-SCEng-Pkg@mod.gov.uk

Note 2: The MPAS documentation is also available on the DefStan website

52.9.2 MLP shall be designed to comply with the relevant requirements of Def Stan 81-041, and be capable of meeting the appropriate test requirements of Def Stan 81-041 (Part 3). Packaging designs shall be prepared on a Service Packaging Instruction Sheet ("**SPIS**"), in accordance with Def Stan 81-041 (Part 4).

52.9.3 The System Integrator shall ensure a search of the SPIS index (the "**SPIN**") is carried out to establish the SPIS status of each requirement (using DEFFORM 129A 'Application for Packaging Designs or their Status').

52.9.4 New designs shall not be made where there is an existing usable SPIS, or one that may be easily modified.

52.9.5 Where there is a usable Standard Family Specification ("**SFS**"), it shall be used in place of a SPIS design unless otherwise stated by this Contract. When an SFS is used or replaces a SPIS design, the System Integrator shall upload this information on to SPIN in Adobe PDF.

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

Manufacture of Packaging to a Military Packaging Level

52.9.7 Where it is necessary to use an existing SPIS design, the System Integrator shall ensure the Packaging manufacturer is a registered organisation in accordance with Clause 52.9.1 (*UK military or NATO Packaging*), or if un-registered, is compliant with MPAS ANNEX A Supplement (Code) M. The

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System Integrator shall ensure, as far as possible, that the SPIS is up to date.

Intellectual Property Rights (IPR)

52.9.8 The documents supplied under Clause 52.9.6 (*UK military or NATO Packaging*) shall be subject to Part 1 (*Intellectual Property Rights*) of Schedule 11 (*IPR*).

Military Packaging design procedure

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

52.10.1 if the System Integrator or their Sub-Contractor is the PDA they shall:

- (i) on receipt of instructions received from the Authority's representative nominated in Box 2 of DEFFORM 111, prepare the required package design in accordance with Clause 52.9 (*UK military or NATO Packaging*).
- (ii) where the System Integrator or their Sub-Contractor is registered they shall, on completion of any design work, provide the Authority with the following documents electronically:
 - (A) a list of all SPIS which have been prepared or revised against this Contract; and
 - (B) a copy of all new/revised SPIS, complete with all continuation sheets and associated drawings, where applicable, to be uploaded onto SPIN;
 - (C) where the PDA is not a registered organisation, then they shall obtain approval for their design from a registered organisation before proceeding, then follow Clause 52.10.1(ii) (*Military Packaging design procedure*);

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

52.10.3 where the System Integrator or their Sub-Contractor is un-registered and has been given authority to produce, modify, and update SPIS designs by this Contract, it shall obtain approval for their design from a registered organisation using DEFFORM 129A before proceeding, then follow Clause 52.10.1(ii) (*Military Packaging design procedure*); and

52.10.4 where the System Integrator or their Sub-Contractor is not a PDA but is registered, it shall follow Clauses 52.10.1(i) and 52.10.1(ii) (*Military Packaging design procedure*).

Tools

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

Package labelling and marking

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

Labelling – General

52.12.1 if this Contract specifies UK or NATO MLP, labelling and marking of the packages shall be in accordance with Def Stan 81-041 (Part 6) and this Clause 52 (*Packaging*) as follows:

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

Marking – General

- (ii) each consignment package shall be marked with details as follows:
 - (A) name and address of consignor;
 - (B) name and address of consignee (as stated in this Contract or order);
 - (C) destination where it differs from the consignee's address, normally either:
 - 1) delivery destination/address; or
 - 2) transit destination, where delivery address is a point for aggregation/disaggregation and/or onward shipment elsewhere, e.g., railway station, where that mode of transport is used; and
 - (D) the unique order identifiers and the CP&F Delivery Label / Form which shall be prepared in accordance with DEFFORM 129J; and
- (iii) if aggregated packages are used, their consignment marking and identification requirements are stated at Clause 52.15 (*Consignment of aggregated packages*).

Marking of Commercial Packaging

52.12.2 if this Contract specifies Commercial Packaging, an external surface of each PPQ package and each consignment package, if it contains identical

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PPQ packages, shall be marked, using details of the Articles, to state the following:

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

Bar code marking

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

- 52.13.1 the full 13-digit NSN;
- 52.13.2 denomination of quantity ("D of Q");
- 52.13.3 actual quantity (quantity in package);
- 52.13.4 manufacturer's serial number and/or batch number, if one has been allocated; and
- 52.13.5 the unique order identifier.

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

Consignment of aggregated packages

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52.15 The requirements for the consignment of aggregated packages are as follows:

- 52.15.1 With the exception of packages containing Dangerous Goods, over-packing for delivery to the consignee shown in this Contract may be used by the consignor to aggregate a number of packages to different Packaging levels, provided that the package contains Articles of only one NSN or class group. Over-packing shall be in the cheapest commercial form consistent with ease of handling and protection of over-packed items.
- 52.15.2 Two adjacent sides of the outer container shall be clearly marked to show the following:
- (i) class group number;
 - (ii) name and address of consignor;
 - (iii) name and address of consignee (as stated on this Contract or order);
 - (iv) destination if it differs from the consignee's address, normally either:
 - (A) delivery destination/address; or
 - (B) transit destination, if the delivery address is a point of aggregation/disaggregation and/or onward shipment e.g. railway station, where that mode of transport is used;
 - (v) where applicable, the reference number if the delivery note produced by CP&F relating to the contents. The consignee's copy of each delivery note shall be placed in the case/container. If the Articles listed in the delivery note are packed in several cases, the consignee's copy shall be placed in the first case and a separate list detailing the contents shall be prepared for each case after the first and placed in the case to which it relates. Each case is to be numbered to indicate both the number of the case and the total number of cases concerned e.g. 1/3, 2/3, 3/3;
 - (vi) shipping label in accordance with Clause 57 (*The Use of The Electronic Business Delivery Form*); and
 - (vii) any statutory hazard markings and any handling markings.

Concessions

52.16 Authorisation of the System Integrator to undertake Packaging design, or to use a packaging design, that was not part of the original requirement under this Contract, shall be considered as an alteration to the specification under Schedule 9 (*Change Procedure*).

Environmental – requirements for wood used in Packaging

52.17 The System Integrator shall ensure that timber and wood-containing products supplied under this Contract comply with DEFCON 691 and Annex I and Annex II of the

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

Environmental – Packaging and Packaging waste

- 52.18 All Packaging shall meet the requirements of the Packaging (Essential Requirements) Regulations 2003 (as amended) where applicable.
- 52.19 In any design work the System Integrator shall comply with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) or equivalent legislation. Evidence of compliance shall be a System Integrator record in accordance with Clause 32 (*The System Integrator's Records*).

Packaging design liability statement

- 52.20 This Clause 52 (*Packaging*) is concerned with the supply of Packaging suitable to protect and ease handling, transport and storage of specified items. Where there is a failure of suitable Packaging (a design failure), or Packaging fails and this is attributed to the Packaging supplier, then the supplier shall be liable for the cost of replacing the Packaging.
- 52.21 Liability for other Losses resulting from Packaging failure or resulting from damage to Packaging, (such as damage to the packaged item etc), shall be specified elsewhere in this Contract.

53 Supply of Information for NATO Codification and Defence Inventory Introduction

- 53.1 The purpose of Codification is to catalogue Items of Supply, using the minimum information required to distinguish them from similar items available. The cataloguing information is not normally a full technical specification and definition that could be used for manufacture of alternative items.
- 53.2 For the purposes of this Clause 53 (*Supply of Information for NATO Codification and Defence Inventory Introduction*) and Clause 54 (*Codification Requirements for Item Identification*):
- 53.2.1 "**Authority's Agent**" means the Government Departments authorised by the Codification Authority to undertake NATO codification;
- 53.2.2 "**Codification**" means the application of unique identification and classification information to Items of Supply, using a common supply language (as set out in Clause 54 (*Codification Requirements for Item Identification*)) which is recorded in sufficient detail to distinguish uniquely Items of Supply from other items, using NSNs;
- 53.2.3 "**Codification Authority**" means the United Kingdom National Codification Bureau or "**UKNCB**", except as provided in Clause 53.13 (*Supply of Information for NATO Codification and Defence Inventory Introduction*);
- 53.2.4 "**Codification Purposes**" means use to enable maximum effectiveness in national and international logistic support, data management in the area of materiel, supply and inventory introduction and management, throughout

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the life of an equipment, by the United Kingdom Ministry of Defence and its NATO partners;

- 53.2.5 **"Design Control Authority" or "DCA"** means the individual, company, firm, corporation, designing authority or government department, which controls the design, characteristics and production of an Item by means of its engineering drawings, specifications and inspection requirements;
- 53.2.6 **"Form, Fit and Function"** means, in respect of each of its elements:
- (i) Form: The shape, size, dimensions, and other physically measurable parameters that uniquely characterise an article. For software, form denotes the language and media;
 - (ii) Fit: The characteristics of an article to enable it to interface or interconnect with a part of another article, including the dimensional relationship between mating parts and the limits of tolerances;
 - (iii) Function: The actions that a product is designed to perform in normal use or operation.
- 53.2.7 **"Item"** means the part or the whole of any Article as defined in DEFCON 501 or any other Article (as defined in DEFCON 501) to the same design or any modification of it;
- 53.2.8 **"Item Identification"** means the minimum information required to uniquely identify the Item of Supply derived from information supplied in response to the requirements specified in Clause 54 (*Codification Requirements for Item Identification*);
- 53.2.9 **"Item of Supply"** means an Item, or where two or more Items are attached or assembled together, the minimum assembly of Items listed in the Design Control Authority's Master Parts List or required to be delivered to the Authority under this Contract;
- 53.2.10 **"NATO Commercial & Government Entity code" or "NCAGE"** means the unique code allocated to a supplier by the UKNCB; and
- 53.2.11 **"Technical Data"** means the cataloguing information identified in Clause 54 (*Codification Requirements for Item Identification*) to be supplied to enable the creation of Item Identification.
- 53.3 In the case of an Item of Supply for which the System Integrator is the DCA, the System Integrator shall:
- 53.3.1 provide Technical Data to the Codification Authority, or the Authority's Agent specified by the Codification Authority, where:
- (i) the Item of Supply is not already codified in the NATO Codification System or **"NCS"**; or

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- (ii) the System Integrator has not previously supplied that information either in the recommended spare parts list supplied by the System Integrator in the initial provisioning phase or under another contract;
- 53.3.2 where the Item of Supply has already been NATO codified, supply the NSN(s) to the Codification Authority, or the Authority's Agent; and
- 53.3.3 inform the Codification Authority, or its agent, when and to whom the data was supplied if the information has previously been supplied by the System Integrator.
- 53.4 In the case of an Item of Supply for which the System Integrator is not the DCA, the System Integrator shall ensure that the Technical Data is supplied, either by the subcontract DCA or by the System Integrator. The System Integrator shall, where appropriate, consider including the terms of this Condition, or equivalent text, in any Sub-Contracts, to ensure delivery of the cataloguing information.
- 53.5 Unless otherwise provided by this Contract, the cost of supplying the information under Clauses 53.3 and 53.4 (*Supply of Information for NATO Codification and Defence Inventory Introduction*) above, and any other information specifically called for under this Contract, shall be deemed to have been included in the Contract Price.
- 53.6 The System Integrator may from time to time be requested to supply additional information necessary for Codification. To the extent that it has the right to do so, the System Integrator shall supply that additional data. The extent of information shall be governed by the requirements of the Codification system at that time. Full details of the Codification system can be obtained from the Codification Authority.
- 53.7 At any time during the life of this Contract the System Integrator shall notify the Codification Authority of all modifications or design changes made to an Item of Supply, which affect the Item Identification, including reference number changes, Form, Fit or Function.
- 53.8 Fair and reasonable payment, based upon the actual work involved, will be made to the System Integrator for the supply of additional information under Clause 53.6 (*Supply of Information for NATO Codification and Defence Inventory Introduction*) above and, in respect of modifications and design changes approved by the Authority, the supply of updated information under Clause 53.7 (*Supply of Information for NATO Codification and Defence Inventory Introduction*).
- 53.9 Subject to the restrictions resulting from Clause 53.11 (*Supply of Information for NATO Codification and Defence Inventory Introduction*), the Authority shall have the right, free of charge, to use and copy or have used and copied for Codification Purposes information supplied under the provisions of this Clause 53 (*Supply of Information for NATO Codification and Defence Inventory Introduction*), use and copying being limited to that necessary for Codification Purposes. The Authority may convert or have converted any Technical Data provided in whatever format to an alternative format, including digital formats.
- 53.10 Subject to the restrictions resulting from Clause 53.11 (*Supply of Information for NATO Codification and Defence Inventory Introduction*), the information constituting the Item Identification may be included in the databases of codification data which are produced

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by the Authority or any international organisation of which the Authority is a member and may be made available to other governments, organisations or individuals who are authorised to have access to those databases by the Authority or the organisation(s) of which the Authority is a member.

- 53.11 The System Integrator shall endeavour to ensure that all information supplied under this Clause 53 (*Supply of Information for NATO Codification and Defence Inventory Introduction*) can be used for Codification Purposes, however, where any of the information supplied is marked to indicate it is proprietary in nature the System Integrator shall indicate the restrictions which apply to its use.
- 53.12 The Codification Authority shall not retain or use the Technical Data supplied under this Clause 53 (*Supply of Information for NATO Codification and Defence Inventory Introduction*) for any purpose other than for Codification.
- 53.13 If the DCA is located in a NATO country other than the UK, the equivalent organisation in that NATO country shall be substituted for the UKNCB. All contact between the System Integrator and those equivalent organisations will be via the UKNCB.
- 53.14 If the DCA is located in a country which is not a member of the NATO Alliance or a NATO sponsored (NCS participating) country, the Codification Authority will be deemed to be the UKNCB, which may nominate an agent to act on its behalf.
- 53.15 The System Integrator, Sub-Contractor or supplier may contact the Codification Authority for any information concerning the NCS.
- 53.16 The requirements set out in Clause 54 (*Codification Requirements for Item Identification*) shall apply in relation to Item Identification.

54 Codification Requirements for Item Identification

- 54.1 Information to be supplied and used for the purposes of Codification is governed by the requirements of the NCS Item Identification Guide (“**IIG**”) and the approved item name shall be used for Codification. The exact requirements are item specific and will vary on an item by item basis.
- 54.2 Information may be provided in the form of engineering drawings, international/national or commercial standards and specifications, commercial literature such as catalogues, brochures or similar documentation, in hard or soft copy. Alternatively arrangement may be made to allow the data to be retrieved via a URL or similar.
- 54.3 This Clause 54 (*Codification Requirements for Item Identification*) covers all Items of Supply, and the following information must be supplied:
 - 54.3.1 The NCAGE or name, address and contact details of the DCA;
 - 54.3.2 The name of the Item of Supply, as recognised by the DCA;
 - 54.3.3 Identifying references:
 - (i) the DCA's drawing or part number(s), and National or International Standard or Specification Reference, or both (indicating definitive or

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non-definitive). The references will be assumed to be fully definitive unless stated otherwise;

- (ii) where the System Integrator's own identifying reference differs from the DCA's reference, this shall also be provided;
- (iii) any associated bar code or product identification numbers, assigned by companies compliant with GS1 or the Uniform Code Council; and
- (iv) for medical items, the ATC Code (World Health Organisation (WHO) Anatomical Therapeutic Codes), BNF code (British National Formulary) or the ECRI Universal Medical Device Nomenclature code shall be supplied where relevant; and

54.3.4 The following "**Volumetric Data**". Definitions equate to those in ASD S2000M and the data is to be supplied in the format specified therein:

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

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

- 54.4.1 Basic material (the base material from which the item is fabricated) surface treatment (the finish by which the item is plated, dipped and/or coated, including any special cleanliness conditions).
- 54.4.2 All key dimensions shall be supplied for common mechanical parts, such as nuts, bolts, screws, washers etc.
- 54.4.3 Where items are threaded, include the size, type, length, class and direction of the thread.
- 54.4.4 Electrical characteristics, such as nominal voltage, current or rated power, or both, of the item, rated resistance, capacitance or inductance, and operating frequencies.
- 54.4.5 For any pressure system components and equipment details of the pressure ratings.

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- 54.4.6 Temperature ratings.
- 54.4.7 Information on distinguishing features, e.g. colour, shape, style, holes, cut-outs, keyways or slots, etc.
- 54.4.8 Radioactive components - radioactive materials.
- 54.4.9 Software - the software identification number.
- 54.4.10 Markings - markings that indicate the primary purpose, function or application of the Item of Supply.
- 54.5 For assemblies only, the System Integrator shall supply the final assembly drawing or parts list, or both, including known NSNs and part numbers of constituent parts.
- 54.6 Where the Item of Supply is designed for a specific application, the source data shall identify the end item application.
- 54.7 Where the Item of Supply contains items of a hazardous nature, the information shall identify the existence of any hazard and the System Integrator shall provide a safety data sheet in accordance with Clause 55 (*Supply of Hazard Data*).

Requests for NATO Codification

- 54.8 Where the System Integrator is required to apply for NATO Codification on behalf of the Authority:
 - 54.8.1 All requests for codification action must be submitted using the Authority's mandated system.
 - 54.8.2 Access to the Authority's mandated system is via a user account allocated by UK NCB (subject to conditions).
 - 54.8.3 The System Integrator shall supply the following additional information to the Codification Authority to enable automated item introduction on the Authority's relevant base inventory system. Where this information is not known, the Authority's Representative shall be contacted for guidance:

Data Field	CRISP	SS3	SCCS	ASTRID
Domestic Management Code – DMC		Y		
Inventory Management Code – IMC	Y			
Supply Management Branch – SMB			Y	
Requirement for Provenance and Traceability (items fitted to aircraft requiring Certificate of Conformity)	Y	Y	Y	Y
Used on next higher assembly – End item information	Y	Y	Y	Y
Unit of Issue Code	Y	Y	Y	Y
Hazardous Indicator	Y	Y	Y	Y
Materiel Accounting Classification Code	Y	Y	Y	Y
Shelf Life Code	Y	Y	Y	
Estimated Price	Y			

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Procurement Reference Code	Y	Y		
Special To Contents Container Indicator	Y		Y	
Periodic Maintenance Interval Code	Y			
Pre-Issue Inspection Code	Y			
Quality Assurance Documentation Code	Y			
Inventory Classification Code		Y		
Capital Indicator Code		Y		

55 Supply of Hazard Data

55.1 The System Integrator shall provide to the Authority:

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

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

Nothing in this Clause 55 (*Supply of Hazard Data*) shall reduce or limit any statutory duty or legal obligation of the Authority or the System Integrator and/or the System Integrator’s obligations under Schedule 2 (*Obligations of the System Integrator*).

55.2 If the Item of Supply contains or is a substance falling within the scope of the extant REACH Enforcement Regulations 2008 (“**REACH**”):

55.2.1 the System Integrator shall provide to the Authority an SDS for the substance in accordance with REACH. If the System Integrator becomes aware of new information which may affect the risk management measures or new information on the hazard, the System Integrator shall update the SDS and forward it to the Authority and to the address listed in Clause 55.8 (*Supply of Hazard Data*); and

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

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

55.4 The System Integrator shall provide to the Authority a completed DEFFORM 68 in accordance with Schedule 19 (*Hazardous Materials (DEFFORM 68)*).

55.5 If the Articles, materials or substances are ordnance, munitions or explosives, in addition to the requirements of GB CLP and REACH the System Integrator shall

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comply with the hazard reporting requirements of Def Stan 07-085 (Design Requirements for Weapons and Associated Systems).

- 55.6 If the Articles, materials or substances are or contain or embody a radioactive substance as defined in the extant Ionising Radiation Regulations 2017, the System Integrator shall additionally provide details of:

55.6.1 activity; and

55.6.2 the substance and form (including any isotope).

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

- 55.8 Any SDS to be provided in accordance with this Clause 55 (*Supply of Hazard Data*), including any related information to be supplied in compliance with the System Integrator's statutory duties under Clauses 55.1.1 and 55.2.1 (*Supply of Hazard Data*), any information arising from the provisions of Clauses 55.5, 55.6 and 55.7 (*Supply of Hazard Data*) and the completed DEFFORM 68, shall be sent directly to the Authority's Representative as soon as practicable, and no later than one (1) month prior to the delivery of the relevant Articles, materials or substances. In addition, so that the safety information can reach users without delay, the System Integrator shall send a copy preferably as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hard copy is available, to the addresses below:

55.8.1 Hard copies to be sent to:

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

55.8.2 Emails to be sent to:

DESTECH-QSEPEnv-HSISMulti@mod.gov.uk

- 55.9 Failure by the System Integrator to comply with the requirements of this Clause 55 (*Supply of Hazard Data*) shall be grounds for rejecting the affected Articles. Any withholding of information concerning hazardous Articles, materials or substances shall be regarded as a breach of this Contract for which the Authority reserves the right to require the System Integrator to rectify the breach immediately at no additional cost to the Authority or to terminate this Contract pursuant to Clause 77 (*Termination for System Integrator Default*) without compensation to the System Integrator.

- 55.10 Where delivery is made to the Defence Fulfilment Centre and/or other Team Leidos location/building, the System Integrator must comply with the Logistic Commodities and Services Transformation Supplier Manual.

56 Delivery, Acceptance, Rejection and transfer of Title and Risk

Delivery

- 56.1 Unless otherwise agreed by the Parties, delivery of Articles shall occur upon the Articles being handed over by the System Integrator to the Authority or to the Authority's Representative at the then relevant address in the United Kingdom that the Authority has notified the System Integrator (such address as may change from time to time following notification (in accordance with Clause 94 (*Notices*)) by the Authority to the System Integrator).
- 56.2 Unless otherwise agreed by the Parties and subject to Clauses 56.4 to 56.16 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*) (inclusive), the title and risk in the Articles shall pass from the System Integrator to the Authority upon delivery at the address in Clause 56.1 (*Delivery*) provided the System Integrator has complied with its obligations in this Clause 56 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*).
- 56.3 The System Integrator shall ensure that the Articles are packaged in accordance with the terms of this Contract (including Clause 52 (*Packaging*)).
- 56.4 Where an Article is rejected by the Authority in accordance with Clauses 56.5 and 56.6 (*Rejection*) that Article shall, for the purposes of this Contract, be considered as not having been delivered under this Contract and the title, property and risk in that Article shall return to the System Integrator (unless, in the case of an Article purported to have been rejected by the Authority, a notice of objection has been issued to the Authority in accordance with Clause 56.11 (*Rejection*), when the title, property and risk in that Article shall only return to the System Integrator if it is agreed or determined such objection is not valid).

Rejection

- 56.5 Prior to acceptance by the Authority in accordance with Clauses 56.12 to 56.16 (inclusive) (*Acceptance*), the Authority may reject any Article (whether or not after inspection) which does not conform with the requirements of this Contract.
- 56.6 The Authority may (whether or not after inspection) reject the whole of any consignment of the Articles if:
- 56.6.1 a reasonable proportion or percentage of such Articles in that consignment does not conform with the requirements of this Contract; or
 - 56.6.2 samples, whether of Articles or of the material in the Articles, taken randomly from that consignment do not conform with the requirements of this Contract; and
 - 56.6.3 in either such case, where not more than ten (10) Working Days have elapsed since the date of delivery in the manner required in Clauses 56.1 to 56.3 (inclusive) (*Delivery*), subject always to Clause 56.14 (*Acceptance*).
- 56.7 For the purposes of this Clause 56 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*), an item of Issued Property in connection with which the System

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Integrator is required to perform obligations in accordance with this Contract shall, following completion of the relevant part of the System Integrator Deliverables, be subject to rejection under Clause 56.6 (*Rejection*) as if it was an Article, but without prejudice to the Authority's proprietary and other rights in that item of Issued Property. The provisions of Clauses 56.8 to 56.11 (inclusive) (*Rejection*) shall similarly apply to such items.

- 56.8 Subject to Clause 56.11 (*Rejection*), the System Integrator shall at its own expense and within fourteen (14) Working Days of being notified of the rejection, or within any other applicable period specified in this Contract, remove any such Article and/or consignment which the Authority has rejected.
- 56.9 If the System Integrator fails to remove the relevant Article and/or consignment in accordance with Clause 56.8 (*Rejection*) or the Authority considers such Article and/or consignment is defective and is in need of repair, the Authority may return it to the System Integrator at the System Integrator's risk and expense.
- 56.10 The System Integrator shall at its own expense and within the contractual period for delivery, or within such further reasonable period as the Authority may allow, supply and deliver Articles that conform with the requirements of this Contract.
- 56.11 The System Integrator may object in writing to a notification of rejection of an Article by the Authority within the period specified at Clause 56.8 (*Rejection*). If the objection is not resolved within a reasonable time, it shall be treated as a Dispute and the provisions of the Dispute Resolution Procedure shall apply. Unless otherwise agreed the System Integrator shall not remove the Articles which are the subject of the rejection notice unless and until the objection or Dispute has been resolved in favour of the Authority.

Acceptance

- 56.12 Subject to Clause 56.13 (*Acceptance*), acceptance of an Article and/or consignment occurs at the time and in accordance with the procedure specified in this Contract on the date that is ten (10) Working Days from delivery in accordance with Clause 56.1 (*Delivery*) unless the Authority has rejected such Article in accordance with Clause 56.6 (*Rejection*).
- 56.13 The Authority shall not have accepted an Article:
 - 56.13.1 merely because the Authority asks for, or agrees to, its repair by or under an arrangement with the System Integrator; or
 - 56.13.2 unless otherwise specified in this Contract, merely because the Article has been delivered to a Third Party.
- 56.14 The Authority shall not be deemed to have accepted an Article unless it has had a reasonable opportunity to examine it after delivery for the purpose of ascertaining whether it is in conformity with this Contract.
- 56.15 Acceptance of any Article and/or consignment does not limit or in any way affect the System Integrator's obligations to remedy any defects which are discovered in any Articles after the date such Article was accepted.

- 56.16 Where software is to be supplied as a requirement of this Contract it will be subject to the provisions of this Clause 56 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*) as if it were an Article.

57 The Use of the Electronic Business Delivery Form

Form usage

- 57.1 Having regard to and subject to Clause 15 (*Payment under CP&F*), the Authority and the System Integrator shall comply with the provisions of this Clause 57 (*The Use of the Electronic Business Delivery Form*).
- 57.2 The System Integrator must use the electronic business delivery form for all deliveries of Articles and performance of System Integrator Deliverables.
- 57.3 The electronic business delivery form, DEFFORM 129J, must accompany the package or consignment to which it applies. The System Integrator must either:
- 57.3.1 attach the form as a label, directly to the package surface; or
- 57.3.2 forward the form in a document envelope,
- as provided in Clauses 57.4 and 57.5 (*Form Structure*).

Form structure

For the provision of Articles

- 57.4 Where delivery is for a physical Article, the following criteria apply:
- 57.4.1 the nominal label size is A6 (102 mm x 152 mm) but A5 (148 mm x 210 mm) is acceptable. If required by package size, the System Integrator may use other label sizes, but only if no degradation to the text, bar code legibility and quality occurs, as referred to in Clause 57.7 (*Bar code symbology and print quality*);
- 57.4.2 the System Integrator must use the bar coded Unique Identifier as defined in Clause 16 (*Unique Identifiers*), unless specified otherwise in this Contract; and
- 57.4.3 the System Integrator must attach two labels to each package or consignment delivered. One label must be detachable for use in processing the information through the appropriate Authority receipting system.

For the provision of System Integrator Deliverables which are not physical Articles

- 57.5 Where performance is for System Integrator Deliverables which are not physical Articles, the following criteria apply:
- 57.5.1 standard size is A4 (210 mm x 297 mm);

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- 57.5.2 the System Integrator must use the bar coded Unique Identifier as defined in Clause 16 (*Unique Identifiers*), unless specified otherwise in this Contract; and
- 57.5.3 the System Integrator must provide one form either on completion of the System Integrator Deliverables which are not physical Articles or on completion of each agreed stage of the System Integrator Deliverables which are not physical Articles.

Bar code symbology and print quality

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

Methods of printing

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

58 Vesting

- 58.1 Subject to the following provisions of this Clause 58 (*Vesting*):

- 58.1.1 each Article as it is constructed together with its component parts and equipment so far as incorporated in the Articles; and
- 58.1.2 all materiel which the System Integrator acquires or allocates for incorporation in any of the Articles,

shall vest in and become the absolute property of the Authority, as from the time the construction of the Article begins or the materiel is acquired specifically for or is allocated for incorporation in any of the Articles and shall from that time be in the possession of the System Integrator for the sole purpose of completing the Articles and delivering them when completed to the Authority, and shall not be within the control or disposition of the System Integrator other than for that purpose.

- 58.2 Neither the System Integrator, nor a subcontractor, nor any other person shall have a lien on any Article or materiel which have vested in the Authority under Clause 58.1 (*Vesting*) for any sum due to the System Integrator, subcontractor or other person. The System Integrator shall take all reasonable steps necessary to ensure that the provisions of this Clause are brought to the notice of all subcontractors and other persons dealing with any such Articles or materiel.
- 58.3 Without prejudice to Clause 58.1 (*Vesting*), the System Integrator shall ensure that from the time when the construction of any Article begins, or as soon as practicable thereafter, or when any materiel is acquired specifically for or is allocated for incorporation in any of the Articles, they are marked or recorded so that they are readily

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identifiable as the property of the Authority. The System Integrator shall comply with any direction given by the Authority in this respect.

- 58.4 Any Article or materiel which is rejected by the Authority shall immediately re-vest in the System Integrator.
- 58.5 If the Authority terminates this Contract otherwise than under Clause 78 (*Termination for Convenience*) and Clauses 79.7 to 79.10 (*Termination for Convenience*), any Article which has not been accepted in accordance with Clause 56 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*) and any materiel which has not been incorporated in any Article which has been accepted in accordance with Clause 56 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*) shall re-vest in the System Integrator. Such re-vesting shall occur on the expiry of thirty (30) days from the date on which that termination shall take effect, unless the Authority has given the System Integrator notice, prior to that expiry, that the Authority elects to retain the property in the Article or materiel.
- 58.6 Any payment made by the Authority in respect of any Article or materiel which re-vest in the System Integrator under Clauses 58.4 or 58.5 (*Vesting*) shall be recoverable from the System Integrator.
- 58.7 The System Integrator shall hand over to the Authority any Article or materiel in which the Authority has elected to retain the property under Clause 58.5 (*Vesting*). If the System Integrator fails to do so, the Authority shall have the right to enter the System Integrator's premises and remove the Article or materiel and recover the cost of doing so from the System Integrator.
- 58.8 The Authority shall pay a fair and reasonable price for any Article or materiel in which it has elected to retain the property under Clause 58.5 (*Vesting*) and which are handed over to it by the System Integrator or otherwise come into his possession.
- 58.9 Where any Article or materiel in the Authority's possession or control has re-vested in the System Integrator in accordance with Clause 58.4 or Clause 58.5 (*Vesting*), the System Integrator shall bear the cost of resuming possession and control of them from the place of delivery in the UK as specified in this Contract. If the Article or materiel is on the premises of the Authority or the premises of any Government Department (including any agencies thereof), the System Integrator shall remove them within fourteen (14) days of their re-vesting.

59 Issued Property

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

Receipt

- 59.3 Subject to Clauses 59.4 and 59.7 (*Receipt*), within fourteen (14) Working Days of receipt of Issued Property, or such other longer period as may be specified in this Contract, the System Integrator shall:
- 59.3.1 check the Issued Property to verify that it corresponds with the Issued Property specified in this Contract;
 - 59.3.2 conduct a reasonable visual inspection; and
 - 59.3.3 conduct any additional inspection and testing as may be necessary and practicable to check that the Issued Property is not defective or deficient for the purpose for which it has been provided,
- and notify the Authority of any defects, deficiencies or discrepancies discovered.
- 59.4 Where Issued Property is packaged it shall not be unpacked earlier than is necessary. The period identified at Clause 59.3 (*Receipt*) shall count from the date on which packages are opened.
- 59.5 The Authority shall within a reasonable time after receipt of any notice under Clause 59.3 (*Receipt*) replace, re-issue or authorise repair of Issued Property agreed to be defective or deficient and the System Integrator shall (having first taken all reasonable measures to mitigate the consequences of any such delay) consider whether such matter gives rise to a GFX Failure and, if so, shall consider initiating the procedures in Clause 23 (*GFX Failures*) and shall also issue written instructions for the return or disposal of the defective or deficient Issued Property.
- 59.6 In the event that the Authority fails to provide, replace or authorise repair of defective or deficient Issued Property within a reasonable time of receipt of a notice in accordance with Clause 59.3 (*Receipt*), the System Integrator shall (having first taken all reasonable measures to mitigate the consequences of any such delay) consider whether such matter gives rise to a GFX Failure and, if so, shall consider initiating the procedures in Clause 23 (*GFX Failures*) and if the Parties agree fair and reasonable revisions of the Contract Price, delivery schedule and/or any other matter, then a Change may be initiated to incorporate the agreed changes to this Contract (such changes having due regard to any relief that may have been granted to the System Integrator in accordance with Clause 23 (*GFX Failures*)).
- 59.7 Clauses 59.3 to 59.6 (inclusive) (*Receipt*) do not apply in the following circumstances:
- 59.7.1 where Issued Property is issued for the purpose of repair, overhaul, conversion or other work to be performed on the Issued Property, inspection of such property shall be as specified in this Contract;
 - 59.7.2 where the System Integrator can show that the Issued Property cannot be fully tested until it has been integrated with other items, inspection of such property shall be as specified in this Contract;
 - 59.7.3 where Special Jigs, Tools Etc. become Issued Property under Clause 68 (*Special Jigs, Tooling and Test Equipment*); and/or

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59.7.4 where Issued Property is in the care, custody or control of the System Integrator as at the Effective Date.

Custody

- 59.8 Subject to Clause 59.11 (*Custody*), the System Integrator shall be responsible for the safe custody and due return of Issued Property, whether or not incorporated into any Articles, and shall be responsible for all Loss or damage thereto, until re-delivered in accordance with the Authority's instructions (as may be amended from time to time) or until the expiry of the period specified in Clause 59.15 (*Accounting and return of Issued Property*).
- 59.9 The System Integrator shall be responsible for such calibration and maintenance of the Issued Property as may be required for the purpose of the System Integrator delivering the System Integrator Deliverables and performing its other obligations in accordance with this Contract.
- 59.10 If requested, the Authority, within a reasonable time, and where practicable before delivery of the Issued Property, shall notify the System Integrator of the value of the Issued Property, provided that the provisions of this Clause 59.10 (*Custody*) shall not apply to any Issued Property in the care, custody or control of the System Integrator as at the Effective Date.
- 59.11 The System Integrator shall not be liable in respect of:
- 59.11.1 defects or deficiencies notified to the Authority in accordance with Clause 59.3 (*Receipt*) or latent defects which the System Integrator can show could not reasonably have been discovered by means of the activities described at Clause 59.3 (*Receipt*);
 - 59.11.2 fair wear and tear in Issued Property resulting from its normal and proper use in the execution of this Contract (except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance by the System Integrator);
 - 59.11.3 Issued Property rendered unserviceable as a direct result of ordinary performance of this Contract; and
 - 59.11.4 any Loss or damage to Issued Property arising from:
 - (i) aircraft or other aerial devices or objects dropped from them, including pressure waves caused by aircraft or such devices whether travelling at sonic or supersonic speeds;
 - (ii) ionising radiation or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel;
 - (iii) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof; or
 - (iv) riot, civil commotion, civil war, rebellion, revolution, insurrection, military or usurped power or acts of the Queen's enemies.

Accounting and return of Issued Property

59.12 The System Integrator shall:

- 59.12.1 open and maintain a Public Store Account (“PSA”) in accordance with Def Stan 05-099;
- 59.12.2 ensure that all property of the Authority recorded in the PSA, including but not limited to Issued Property, is available for inspection by the Authority at any reasonable time; and
- 59.12.3 on being given two (2) months’ notice or such other period as has been stated in this Contract permit, and co-operate with, the Authority to conduct audits of the property of the Authority recorded in the PSA in a manner to be determined by the Authority and where the Authority has reasonable grounds to believe that the property of the Authority has not been used in accordance with the terms of issue, then these audits may be conducted without notice.

59.13 Once title in Special Jigs, Tools Etc. has passed to the Authority in accordance with Clause 68.4 (*Passing of property*), the System Integrator shall record that equipment in the PSA in accordance with Def Stan 05-099.

59.14 The System Integrator shall at least once in every two (2) Contract Months forward a list of Issued Property which is in its possession but which is no longer required by the System Integrator for the provision of the System Integrator Deliverables, to the Authority's Representative. The Authority's Representative shall, within two (2) Contract Months from receipt of the relevant list notify the System Integrator of a place or places within the United Kingdom where the System Integrator should deliver such Issued Property. Where the Authority has notified such delivery instructions, the System Integrator shall comply with such instructions as soon as is reasonably practicable, ensuring that appropriate packaging (having due regard to the nature of the relevant Issued Property) is utilised. Where there is no such notification, the System Integrator shall request (in writing) the Authority for delivery instructions and shall repeat such request at least once weekly thereafter until such delivery instructions are notified to the System Integrator by the Authority. Following receipt of such delivery instructions the System Integrator shall deliver the relevant Issued Property to the Authority (in each case ensuring appropriate packaging (having due regard to the nature of the relevant Issued Property) is utilised).

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

60 Accounting for property of the Authority

60.1 The System Integrator shall:

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- 60.1.1 maintain a PSA, as defined in Def Stan 05-099, which shall include a complete list of all property of the Authority, as defined in Clause 60.2 (*Accounting for property of the Authority*), and record for that property all transactions or other accounting information specified in Annex A to DEFCON 694;
 - 60.1.2 supply to the Authority quarterly reports on the current PSA holdings. At least one report in any twelve (12) month accounting period or part thereof shall be a reconciled report. This shall be submitted with the Annual Certificate Form AAC 32 as required in Def Stan 05-099. The other three (3) reports submitted in the period may be un-reconciled advisory reports. The submission by the System Integrator and receipt by the Authority of these reports shall not prejudice any rights or obligations of the Authority or the System Integrator under this Contract;
 - 60.1.3 ensure that the PSA is available for inspection by the Authority at any reasonable time;
 - 60.1.4 on being given two (2) months' notice permit, and co-operate with, the Authority to conduct audits of the PSA in a manner to be determined by the Authority provided that where the Authority is not satisfied of the proper use of property of the Authority, an audit may be conducted without notice;
 - 60.1.5 retain the PSA for a period of three (3) years after disposal of the last item of the property of the Authority or for any other period as may be specified in this Contract;
 - 60.1.6 if the Authority agrees that a Sub-Contractor at whatever level of sub-contracting shall have responsibility in the Sub-Contractor's PSA for property of the Authority issued in aid of this Contract, the System Integrator shall include in any Sub-Contract with those Sub-Contractors the provisions corresponding to those set out in this Clause 60 (*Accounting for property of the Authority*) that apply to property of the Authority issued in aid of the Sub-Contract, in particular Clauses 60.1, 60.2, 60.4 and 60.7 (*Accounting for property of the Authority*); and
 - 60.1.7 manage the GFX component of the PSA in accordance with the provisions of Def Stan 05-099 and implement any new edition of or amendment to Def Stan 05-099 subject to Clause 83 (*Change*) within three (3) months of the publication date of the new edition. These amendments shall not have retrospective effect.
- 60.2 For the purposes of this Clause 60 (*Accounting for property of the Authority*), "**property of the Authority**" means GFX and fixed assets, including property issued under Clause 59 (*Issued Property*) and property of the Authority issued to the System Integrator under any other authorising document.
- 60.3 For the avoidance of doubt, it is a condition of this Contract that this Clause 60 (*Accounting for property of the Authority*) shall apply to all property issued to the System Integrator from the Effective Date, whether in aid of this Contract, any other contract or other agreement with the Authority. Property of the Authority issued prior to the Effective Date may be subject to separate contractual arrangements.

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- 60.4 The obligations of the System Integrator arising under this Clause 60 (*Accounting for property of the Authority*) in respect of property of the Authority issued in aid of this Contract shall survive completion of this Contract and shall not be completed until all such obligations are fulfilled including the provisions of Clause 60.1.5 (*Accounting for property of the Authority*).
- 60.5 The obligations of the System Integrator arising under this Clause 60 (*Accounting for property of the Authority*) in respect of property of the Authority unconnected with this Contract shall survive completion of this Contract and shall not be completed until all those obligations are fulfilled including the provisions of Clause 60.1.5 (*Accounting for property of the Authority*) unless and until a subsequent contract containing DEFCON 694 is placed with the System Integrator at which time obligations in respect of any remaining property of the Authority unconnected with this Contract shall be subsumed in the subsequent contract.
- 60.6 If, after completion of this Contract, no subsequent contract is placed containing DEFCON 694 within the period detailed at Clause 60.1.5 (*Accounting for property of the Authority*) then the obligations of the System Integrator arising under this Clause 60 (*Accounting for property of the Authority*) in respect of property of the Authority unconnected with this Contract shall cease on expiry of the period detailed in Clause 60.1.5 (*Accounting for property of the Authority*).
- 60.7 The Authority reserves the right to amend Annex A to DEFCON 694 without further consultation where the amendments arise from the Authority's proper and reasonable accounting requirements. For the purposes of this Clause 60 (*Accounting for property of the Authority*), Annex A to DEFCON 694 shall be regarded as a specification which is subject to the provisions of Clause 83 (*Change*). If the Authority exercises this right:
- 60.7.1 the System Integrator shall implement the amendment to Annex A to DEFCON 694 at the commencement of the Authority's next accounting year provided that a notice of six (6) months or such other period as may expressly be agreed between the Authority and the System Integrator is given to the System Integrator. These amendments shall not have retrospective effect; and
- 60.7.2 the System Integrator shall inform the Authority as soon as practicable, but in any event within three (3) months of notice having been given, if the System Integrator cannot comply with the amendment to Annex A to DEFCON 694.

61 Loss Of Or Damage To The Articles

- 61.1 Until delivery, the risk of loss of or damage to the Articles remains with the System Integrator. Without prejudice to any other rights or remedies of the Authority, the System Integrator shall make good any such loss or damage however caused or occasioned which occurs before delivery.
- 61.2 Clause 61.1 (*Loss Of Or Damage To The Articles*) shall apply notwithstanding:
- 61.2.1 that the Articles may have been inspected by the Authority; or
- 61.2.2 that the property therein may have passed earlier than upon delivery.

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- 61.3 Unless otherwise agreed and save for the provisions of Clause 61.4 (*Loss Of Or Damage To The Articles*) the System Integrator shall not after delivery be at risk in respect of the Articles, except where the Authority rejects any Article under Clause 56 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*), in which case the risk in the rejected Article shall revert to the System Integrator on the earlier of:
- 61.3.1 the removal of the Article by the System Integrator in accordance with Clause 56.8 (*Rejection*); or
 - 61.3.2 the close of business on the last day of the period in which the System Integrator is required to remove the rejected Article in accordance with Clause 56.8 (*Rejection*); or
 - 61.3.3 the return of the Article by the Authority in accordance with Clause 56.9 (*Rejection*).
- 61.4 Notwithstanding the provisions of Clause 61.3 (*Loss Of Or Damage To The Articles*), if the System Integrator has given notice of objection under Clause 56.11 (*Rejection*), he shall not be at risk in respect of the rejected Article where a dispute between the parties relating to the rejection remains unresolved and the Article remains in the possession of the Authority.
- 61.5 This Clause 61 (*Loss Of Or Damage To The Articles*) shall not apply to any Articles issued to the System Integrator by or on behalf of the Authority in connection with which the System Integrator is required to carry out any Service. Such Articles shall be subject to Clause 58 (*Vesting*).

62 Repair And Maintenance Information

- 62.1 Repair and maintenance information identified in Annex 2 (*Deliverables to be delivered as Unlimited Rights*) to Schedule 11 (*IPR*) or generated subject to Schedule 11 (*IPR*) shall be delivered to the Authority and marked according to the marking requirements of Schedule 11 (*IPR*).

63 Retention of Records

- 63.1 Retention of Records shall be subject to Part 1 (*Intellectual Property Rights*) of Schedule 11 (*IPR*).

64 Marking of Articles

- 64.1 Each Article shall be marked in accordance with the procedure laid out in this Contract. Where no procedure is stated, the System Integrator shall mark each Article clearly and indelibly in accordance with the requirements of the relevant Def Stan 05-132 as specified in this Contract or specification. In the absence of such requirements, the Articles shall be marked with the Authority stock reference, NSN or alternative reference number shown in this Contract. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Articles.
- 64.2 The marking shall include any serial numbers allocated to the Article.

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- 64.3 Where because of its size or nature it is not possible to mark an Article with the required particulars, the required information should be included on the package or carton in which the Article is packed in accordance with Clause 52 (*Packaging*).

65 Redundant Materiel

- 65.1 All Redundant Materiel resulting from work carried out under, or procured for the purposes of, this Contract, the costs of which have been paid by the Authority under this Contract, or which is otherwise owned by the Authority, shall be disposed of in accordance with this Clause 65 (*Redundant Materiel*).

- 65.2 On expiry or termination of this Contract or earlier if appropriate, the System Integrator shall prepare:

65.2.1 a list of those items of the materiel referred to in Clause 65.1 (*Redundant Materiel*) which are considered to be serviceable or repairable. The list shall record the condition of each item, its actual cost or estimated value and in the case of repairable items, the estimated price of repair; and

65.2.2 a list of those items of the materiel which are considered to be unserviceable and which cannot be economically repaired or are otherwise considered to be scrap.

- 65.3 The System Integrator shall send the lists referred to in Clause 65.2 (*Redundant Materiel*) to the Authority's Commercial Officer.

- 65.4 Within three months of the date of receipt of the lists pursuant to Clause 65.3 (*Redundant Materiel*), the Authority shall issue disposal instructions to the System Integrator. Such disposal instructions shall require that the items of materiel are either:

65.4.1 transferred to other subsisting contracts;

65.4.2 subject to contract, retained by the System Integrator for use in the performance of future contracts placed with the System Integrator;

65.4.3 subject to contract, repaired by the System Integrator; or

65.4.4 at the discretion of the Authority, sold by the System Integrator, acting on behalf of the Authority, for the best price reasonably obtainable,

and materiel designated in accordance with Clause 65.2.2 (*Redundant Materiel*) shall be dismantled and disposed of in such a manner as to preclude the possibility of resale in its existing form.

- 65.5 The proceeds of the sale of items of materiel sold pursuant to Clause 65.4.4 (*Redundant Materiel*) shall be credited to the Authority in accordance with arrangements made between the System Integrator and the Authority.

- 65.6 A list of the items sold by the System Integrator shall be sent to the Authority's Commercial Officer together with a statement of the proceeds of sale.

66 Defect Investigation and Liability

- 66.1 The procedure for the reporting, investigation and rectification of all defects whether or not they relate to design, software or manufacturing shall be carried out as specified by the Authority acting reasonably.
- 66.2 Where it is established that, pursuant to this Contract or any other contract relating to the System Integrator Deliverables, the System Integrator bears the liability for any of the costs of investigating, repairing or rectifying a defect, the costs of any such work undertaken by the System Integrator shall be borne by the System Integrator.
- 66.3 If liability for the defect is in dispute, the System Integrator shall separately identify and record all related costs.
- 66.4 Any System Integrator Deliverable, and work thereon, which after examination is required to be rectified/repaired at the Authority's or System Integrator's expense, (or if liability is in dispute), is to be notified to the Delivery Team or the Project Manager, prior to any work being put in hand, or transfer to any other contract placed by the Authority, e.g. for repair, overhaul and/or modification.
- 66.5 The System Integrator shall submit to the Authority's Representative a tasks list, in duplicate, countersigned by the Project Manager, of the System Integrator Deliverables or work which have been investigated/rectified. The list shall be submitted in accordance with the timescales laid down in this Contract and if none is specified within four (4) weeks of completion of all work. The list shall include:
- 66.5.1 the description, including, where appropriate, the Stores Reference Number and Serial Number of all System Integrator Deliverables or work investigated;
- 66.5.2 the description of all other tasks (e.g. design of modification, amendments of drawings);
- 66.5.3 against each Item (as defined in Clause 53.2.7), whether liability has been accepted by the Authority or the System Integrator, or is still to be determined, quoting dates and references of relevant correspondence;
- 66.5.4 against each Item, the Contract Number and Item Number against which repair, overhaul and/or modification of the System Integrator Deliverables has been or will be carried out;
- 66.5.5 where liability rests with the System Integrator or where overhaul, repair or modification has already been completed for any item, the Unique Order Identifier generated by the CP&F electronic procurement tool.

67 Transport

- 67.1 The System Integrator shall be responsible for transporting the Articles supported under this Contract and returning the items of Issued Property (as the case may be) from the point of origin to a purple gate within the United Kingdom as notified by the Authority to the System Integrator from time to time. The System Integrator shall also

be responsible for all loading and unloading of the Articles and the items of Issued Property, including, where necessary, the provision of special handling equipment.

- 67.2 Where this Contract states that the Authority is responsible for transport of items of Issued Property, the Authority shall only be responsible to transport such Issued Property to a purple gate within the United Kingdom.

68 Special Jigs, Tooling and Test Equipment

- 68.1 The System Integrator shall provide all jigs, tools, patterns, moulds, dies, manufacturing gauges and test equipment, together with associated fixtures, fittings and software necessary for the manufacture of the Articles or for the provision of the System Integrator Deliverables, unless supplied by the Authority in accordance with Schedule 5 (*GFX*).

Pricing

- 68.2 The Contract Price includes an appropriate amount to enable the System Integrator to recover his expenditure on Special Jigs, Tools Etc., including the cost of maintenance and calibration under Clause 68.8 (*Accounting and Control*).
- 68.3 The System Integrator shall not claim assistance from other government funds (e.g. Regional Development Grants or selective financial assistance) or other third parties towards the costs of any Special Jigs, Tools Etc.

Passing of property

- 68.4 Except where otherwise specified in this Contract, the Special Jigs, Tools Etc. shall become the property of the Authority:
- 68.4.1 where the Special Jigs, Tools Etc. are delivered to the Authority before being utilised by the System Integrator for any purpose, in accordance with Clause 56 (*Delivery, Acceptance, Rejection and Transfer of Title and Risk*) as if they were Articles; or
 - 68.4.2 where the Authority authorises the System Integrator to utilise the Special Jigs, Tools Etc. for the production of articles for a Third Party in advance of their being used for the production of Articles under this Contract, upon delivery of the first article so produced for the Third Party; or
 - 68.4.3 where the System Integrator is to utilise the Special Jigs, Tools Etc. in respect of the System Integrator Deliverables before delivery of such Special Jigs, Tools Etc. to the Authority, the earlier to occur of when the Special Jigs, Tools Etc. are delivered to the System Integrator or title to such Special Jigs, Tools Etc. is secured by the System Integrator or any System Integrator Related Party through any contractual arrangement to which the System Integrator or any System Integrator Related Party is a party; and
 - 68.4.4 in all other cases upon acceptance of the first Article delivered under this Contract or upon expiry or termination of this Contract whichever is the earlier.

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- 68.5 Where property in the Special Jigs, Tools Etc. passes to the Authority while they are still required to provide the System Integrator Deliverables, they shall be treated thereafter as Issued Property for the purposes of Clauses 59 (*Issued Property*) and 60 (*Accounting for property of the Authority*).

Modifications

- 68.6 Notwithstanding the passing of property to the Authority pursuant to Clause 68.4 (*Passing of property*), the System Integrator shall be free to modify the Special Jigs, Tools Etc. as it may deem necessary in order to produce the Articles or to provide the System Integrator Deliverables, and the Authority's approval of such modifications shall not be required.

Accounting and control

- 68.7 The System Integrator shall account for and control the Special Jigs, Tools Etc. in accordance with the provisions of Clause 68.5 (*Passing of property*). Pending the transfer to the Public Store Account, the System Integrator shall:

- 68.7.1 maintain a list of Special Jigs, Tools Etc. procured or manufactured by the System Integrator;
- 68.7.2 make the list available to the Authority for inspection by the Authority;
- 68.7.3 maintain the list for three (3) years after disposal of the Special Jigs, Tools Etc., where not transferred to the Public Store Account in accordance with Clause 59 (*Issued Property*);
- 68.7.4 forward the list to the Authority's Representative following first Article acceptance and prior to transfer of Special Jigs, Tools Etc. to the Public Store Account; and
- 68.7.5 remove from the list any Special Jigs, Tools Etc. transferred to the Public Store Account.

- 68.8 The System Integrator shall be responsible for the safe custody, maintenance and calibration necessary to retain the relevant Special Jigs, Tools Etc. on any System Integrator premises until delivered to the Authority.

Availability

- 68.9 Once property in the Special Jigs, Tools Etc. has passed to the Authority in accordance with Clause 68.4 (*Passing of property*), the System Integrator shall, if required, deliver the Special Jigs, Tools Etc. to such individual, company, factory or Government Establishment as may be named by the Authority. The System Integrator shall not be entitled to any further payment for delivering the Special Jigs, Tools Etc. other than for the recovery of packing and carriage costs reasonably incurred. This Clause 68.9 (*Availability*) shall not, however, entitle the Authority to require the System Integrator to dispose of the Special Jigs, Tools Etc. to the prejudice of this Contract or other contracts held by the System Integrator with the Authority or with another customer, unless the Authority's approval for such use has been given in accordance with Clause 68.11 (*Use for other than the purposes of the Authority*). Where the System Integrator

holds no contracts for such articles, but having received the Authority's approval in accordance with Clause 68.11 (*Use for other than the purposes of the Authority*), has made a firm written offer to a Third Party to supply such articles, the Authority shall not be entitled to dispose of the Special Jigs, Tools Etc. until such time as the System Integrator's offer has expired and no commitment to supply those articles or perform those services remains.

Delivery

- 68.10 Subject to Clause 68.9(*Availability*), the Special Jigs, Tools Etc. shall be delivered to the Authority by the System Integrator as notified to the System Integrator from time to time (in each case at no additional cost to the Authority).

Use for other than the purposes of the Authority

- 68.11 The System Integrator shall not use the Special Jigs, Tools Etc. for any other purposes other than those of the Authority without first obtaining the written approval of the Authority and in accordance with the terms, including payment, for such other use as stated in a commercial exploitation or other agreement between the System Integrator and the Authority. In Sub-Contracts, which include the provisions of this Clause 68 (*Special Jigs, Tooling and Test Equipment*), the System Integrator shall require that such written approval be obtained direct from the Authority.

69 Automatic Test Equipment Data Requirements

- 69.1 The System Integrator shall, upon request, supply the Authority with such of the test data as may be required for the design and provision of test programmes, jigs and adaptors etc. necessary to enable the Articles to be supported by Automatic Test Equipment ("**ATE**").
- 69.2 To enable efficient use of ATE, the principles of testability shall be incorporated in accordance with BS EN 60706-5 (*Maintainability of equipment – Part 5: Testability and diagnostic testing*), or equivalent.
- 69.3 The test data shall normally be contained within the test specification and written in accordance with the documentation referred to in DEFSTAN 00-052 (*The General Requirements for Product Acceptance and Maintenance Test Specifications and Test Schedules*) for each Article requiring a test as stated in this Contract, taking cognisance of DEFSTAN 00-070 (*Standard Serviceability Test - The Process for the Preparation of and Requirements and Guidance for, a Standard Serviceability Test Specification*) and will be a System Integrator Deliverable.
- 69.4 The ATE shall comply with the requirements stated within DEFSTAN 66-031 Part 8 (*Requirements for Electronic and Electrical Test and Measurement Equipment - Requirements for Automatic Test Systems utilising an Open System Architecture*).
- 69.5 In the event that the System Integrator is required under this Contract to provide test data, a fair and reasonable price based on the actual work involved shall be paid to the System Integrator by the Authority for the supply of such test data.

70 Counterfeit Materiel

70.1 For the purposes of this Clause 70 (*Counterfeit Materiel*), “**Counterfeit Materiel**” shall mean any Article or any part thereof whose origin, age, composition, configuration, certification status or other characteristic (including whether or not such Article or part has been used previously) has been falsely represented by:

70.1.1 misleading marking of the materiel, labelling or packaging;

70.1.2 misleading documentation; or

70.1.3 any other means, including failing to disclose information;

except where it has been demonstrated that the false representation was not the result of dishonesty by the System Integrator or any party within the System Integrator's supply chain.

70.2 Where the Authority suspects that any Article or consignment of Articles contains Counterfeit Materiel, it shall:

70.2.1 notify the System Integrator of its suspicion and reasons therefor;

70.2.2 where reasonably possible, and if requested by the System Integrator within ten (10) Working Days of such notification, (at the System Integrator's own risk and expense and subject to any reasonable controls specified by Authority) afford the System Integrator the facility to (i) inspect the Article or consignment and/or (ii) obtain a sample thereof for validation or testing purposes;

70.2.3 give the System Integrator a further twenty (20) Working Days or such other reasonable period agreed by the Authority, from the date of the inspection at Clause 70.2.2 (*Counterfeit Materiel*) or the provision of a sample at Clause 70.2.2 (*Counterfeit Materiel*), to comment on whether the Article or consignment meets the definition of Counterfeit Materiel; and

70.2.4 determine, on the balance of probabilities and strictly on the evidence available to it at the time, whether the Article or consignment meets the definition of Counterfeit Materiel.

Where the Authority has determined that the Article, part or consignment of Articles contain Counterfeit Materiel then it may reject the Article, part or consignment under Clause 56 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*).

70.3 In addition to its rights under Clause 56 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*), where the Authority reasonably believes that any Article or consignment of Articles contains Counterfeit Materiel, it shall be entitled to:

70.3.1 retain any Counterfeit Materiel; and/or

70.3.2 retain the whole or any part of such Article or consignment where it is not possible to separate the Counterfeit Materiel from the rest of the Article, or consignment;

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and such retention shall not constitute acceptance under Clause 56 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*).

70.4 Where the Authority intends to exercise its rights under Clause 70.3 (*Counterfeit Materiel*) it shall where reasonable permit the System Integrator, within a period specified by the Authority, to arrange at its own risk and expense and subject to any reasonable controls specified by Authority, for:

70.4.1 the separation of Counterfeit Materiel from any Article or part of an Article; and/or

70.4.2 the removal of any Article or part of an Article that the Authority is satisfied does not contain Counterfeit Materiel.

70.5 In respect of any Article, consignment or part thereof that is retained in accordance with Clause 70.3 (*Counterfeit Materiel*), including where the Authority permits the System Integrator to remove non-Counterfeit Materiel under Clause 70.4 (*Counterfeit Materiel*) but the System Integrator fails to do so within the period specified by the Authority and subject to Clause 70.9 (*Counterfeit Materiel*), the Authority shall be entitled to exercise any, all, or any combination of, the following rights:

70.5.1 to dispose of it responsibly, and in a manner that does not permit its reintroduction into the supply chain or market;

70.5.2 to pass it to a relevant investigatory or regulatory authority;

70.5.3 to retain conduct or have conducted further testing including destructive testing, for further investigatory, regulatory or risk management purposes. Results from any such tests shall be shared with the System Integrator; and/or

70.5.4 to recover the reasonable costs of testing, storage, access, and/or disposal of it from the System Integrator.

Exercise of the rights granted at with Clause 70.5.1, 70.5.2 and 70.5.3 (*Counterfeit Materiel*) shall not constitute acceptance under Clause 56 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*).

70.6 Any scrap or other disposal payment received by the Authority shall be off set against any amount due to the Authority under Clause 70.5.4 (*Counterfeit Materiel*). If the value of the scrap or other disposal payment exceeds the amount due to the Authority under Clause 70.5.4 (*Counterfeit Materiel*) then the balance shall accrue to the System Integrator.

70.7 The Authority shall not use a retained Article or consignment other than as permitted in this Clause 70 (*Counterfeit Materiel*).

70.8 The Authority may without restriction report a discovery of Counterfeit Materiel and disclose information necessary for the identification of similar materiel and its possible sources.

70.9 Where the System Integrator has objected in writing to the notification of the rejection by the Authority in accordance with Clause 56 (*Delivery, Acceptance, Rejection and*

transfer of Title and Risk), the Authority shall not exercise its rights at Clause 70.5 (*Counterfeit Materiel*), unless and until the objection or dispute has been resolved in favour of the Authority. If no such written objection is received, then the System Integrator shall be deemed to have waived any rights to object to the Authority exercising the rights granted at Clause 70.5 (*Counterfeit Materiel*).

- 70.10 The System Integrator shall not be entitled to any payment or compensation from the Authority as a result of the Authority exercising the rights set out in this Clause 70 (*Counterfeit Materiel*) except where it has been determined by the Contract dispute resolution procedure that the Authority has made an incorrect determination under Clause 70.2.4 (*Counterfeit Materiel*). In such circumstances the Authority shall reimburse the System Integrators reasonable costs of complying with Clause 70.2 (*Counterfeit Materiel*).

71 Safety and Airworthiness

- 71.1 The System Integrator shall comply with the provisions of Part 6 (*Safety and Airworthiness*) of Schedule 2 (*Obligations of the System Integrator*).

72 Radio Transmissions

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

73 Use Of Asbestos

Definitions

- 73.1 For the purposes of this Clause 73 (*Use Of Asbestos*), "**Asbestos**" shall have the same meaning as "asbestos" as defined in Regulation 2 of the Control of Asbestos Regulations 2012 (**COAR**).

Prohibition of Asbestos

- 73.2 Subject to Clauses 73.4 and 73.5 (*Exemption*) below, no Asbestos of any type shall be incorporated into any Articles (as defined in Schedule 1 (*Definitions, Acronyms and Initialisms*)) or other material to be supplied under this Contract.

Notification

- 73.3 The System Integrator shall notify the Authority in writing as soon as they become aware that Asbestos may be incorporated in Articles or other materials to be supplied or processed during performance of this Contract.

Exemption

- 73.4 The Secretary of State may issue a Defence Exemption Certificate under REACH exempting the System Integrator from parts of REACH. The System Integrator may incorporate Asbestos into Articles and / or material supplied, or use or process it in the performance of services under this Contract in accordance with the conditions set out in the Defence Exemption Certificate.
- 73.5 If at any stage during the Contract Period, an alternative substance becomes available, the System Integrator shall bring this to the attention of the Authority immediately, by notice in writing. The Authority shall then determine, in consultation with the System Integrator and the Health and Safety Executive where appropriate, whether the substance would be suitable for incorporation into any Articles or material which have yet to be supplied under this Contract. The Authority may require the System Integrator to suspend any further production of such Articles or material or delivery of services, pending such determination, thereby relieving the System Integrator (for the time being) of any contractual obligations to provide such Articles, material or services. In the event that the Authority determines that the alternative substance would be suitable for incorporation into such Articles or material or in the performance of services in lieu of Asbestos, the Authority may vary its requirements in the light of any such determination.
- 73.6 If, at any stage during the Contract Period, the Secretary of State issues a further certificate which varies or revokes any Defence Exemption Certificate granted in accordance with REACH, the effect of which is that any further supply of the Articles or delivery of services under this Contract would be prohibited by REACH, the System Integrator shall, on becoming aware of the further certificate, immediately refrain from incorporating Asbestos into any such Articles or performing the service and shall provide the Authority with written confirmation of this within forty-eight hours. The Authority reserves the right to vary its requirements in the light of any such decision.
- 73.7 The System Integrator shall obtain from the Health and Safety Executive or the Secretary of State for Defence as appropriate, an exemption from the requirements of the COAR under Regulation 29 or 30 where an exemption is necessary for performance of this Contract.

PART 12 - CONTRACT SPECIFIC PROVISIONS

74 Quality Assurance

- 74.1 The System Integrator shall comply with the Quality Assurance Plan at Schedule 16 (*Quality Assurance Plan*) of this Contract and the Quality Assurance Plan shall be amended from time to time in accordance with Good Industry Practice and AQAP 2105.
- 74.2 Notwithstanding that the Quality Assurance Plan will have been seen and agreed by the Authority, the System Integrator shall be solely responsible for the accuracy, suitability and applicability of the Quality Assurance Plan.
- 74.3 The System Integrator shall comply with:
- 74.3.1 AQAP 2105 Ed C (*NATO Requirements for Deliverable Quality Plans*);

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- 74.3.2 AQAP 2210 Ed A – NATO (*Supplementary Software Quality Assurance Requirements*);
 - 74.3.3 AQAP 2310 Ed B - NATO (*QA Requirements for Aviation Space and Defence Suppliers*) (AS9100 Based);
 - 74.3.4 DEF STAN 05-61, Part 1 (*Concessions*);
 - 74.3.5 DEF STAN 05-61, Part 4 (*Contractor Working Parties*);
 - 74.3.6 DEF STAN 05-61, Part 9 (*Independent Inspection of Safety Critical Item*);
 - 74.3.7 DEF STAN 05-135 (*Avoidance of Counterfeit Materiel*);
 - 74.3.8 DEF STAN 05-57 (*Configuration Management of Defence Materiel*); and
 - 74.3.9 DEF STAN 05-100 (*MOD Requirements for Aircraft Flight and Ground Running*).
- 74.4 The System Integrator is responsible for ensuring that all System Integrator Deliverables conform to the requirements of this Contract and where applicable shall provide a Certificate of Conformity in accordance with Schedule 2 (*Obligations of the System Integrator*) and the Quality Assurance Plan at Schedule 16 (*Quality Assurance Plan*). One copy of the Certificate of Conformity shall be sent to the Authority (using the details set out at Box 2 of Schedule 20 (*Addresses and Other Information (DEFFORM 111)*)) upon delivery and one copy shall be provided with the Articles to the recipient of the Service.
- 74.5 The Certificate of Conformity shall be considered by the System Integrator as a record and Clause 32 (*The System Integrator's Records*) shall apply.
- 74.6 The information provided on the Certificate of Conformity shall include:
- 74.6.1 System Integrator name and address;
 - 74.6.2 System Integrator unique Certificate of Conformity reference number;
 - 74.6.3 contract number and where applicable a contract amendment number;
 - 74.6.4 details of any approved concessions;
 - 74.6.5 acquirer name and organisation;
 - 74.6.6 delivery address;
 - 74.6.7 contract item number;
 - 74.6.8 description of Article or Service including part number, specification and configuration status;
 - 74.6.9 identification marks, batch and serial number(s) in accordance with the specification; and

- 74.6.10 quantities;
- 74.6.11 a signed and dated statement by the System Integrator that Articles or Services provided comply with the requirements of this Contract, and approved concessions;
- 74.6.12 exceptions or additions to the above are to be documented.
- 74.7 Where the provisions of Schedule 2 (*Obligations of the System Integrator*) and the Quality Assurance Plan at Schedule 16 (*Quality Assurance Plan*) requires demonstration of traceability and design provenance through the supply chain, the System Integrator shall include in any relevant Sub-Contract the requirement for the information called for in Clause 74.6 (*Quality Assurance*). The System Integrator shall ensure that this information is available to the Authority through the supply chain, upon request in accordance with Clause 32 (*The System Integrator's Records*).
- 74.8 The System Integrator shall provide access to the information and data, and all reasonable assistance to the Authority (and shall procure the same for all Sub-Contractors) as is required for the Authority to audit the System Integrator's quality management systems in accordance with RA4951.
- 75 Social Value Plans**
- 75.1 The System Integrator shall comply with each of the Social Value Plans as set out in Schedule 18 (*Social Value Plans*).
- 75.2 By no later than the end of the first month of the Contract Period, the System Integrator and the Authority shall review the Social Value Plans and agree the contents. The System Integrator shall issue to the Authority the revised and final versions of the Social Value Plans, incorporating all agreed changes (with the Authority having full and final discretion on the revised version).
- 76 Verification and Validation Requirements Matrix (VVRM)**
- 76.1 The System Integrator shall provide the Services in accordance with the Authority approved VVRM as set out in Part 2 (VVRM) of Schedule 3 (*System Integrator Proposals*).

PART 13 - TERMINATION

77 Termination for System Integrator Default

Right to Terminate

- 77.1 If a System Integrator Default has occurred, the Authority shall be entitled to terminate the whole or any part of this Contract in accordance with the provisions of Clause 77.2 (*Right to Terminate*) and subject to the provisions of Clauses 77.3 to 77.6 (inclusive) (*Rectification*).
- 77.2 If a System Integrator Default has occurred (including a default as contemplated in Clause 77.14 (*Termination Following a Change of Control*)) and the Authority wishes to terminate the whole or any part of this Contract pursuant to this Clause 77

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(*Termination for System Integrator Default*), it must serve a notice (the “**Termination Notice**”) on the System Integrator stating:

- 77.2.1 that the Authority is terminating this Contract or part thereof for System Integrator Default;
- 77.2.2 where relevant, the part of this Contract that the Authority is terminating;
- 77.2.3 the type and nature of the System Integrator Default that has occurred, giving reasonable details; and
- 77.2.4 that this Contract or part thereof shall (subject to the provisions of Clauses 77.3 to 77.6 (inclusive) (*Rectification*)) terminate on the day (the “**System Integrator Default Termination Date**”) falling twenty (20) Working Days after the date the System Integrator receives the Termination Notice.

Rectification

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

Termination Date for System Integrator Default

- 77.7 Following the issue of a Termination Notice pursuant to Clause 77.2 (*Right to Terminate*) and where the Authority is terminating the whole of this Contract, this Contract shall (subject to the provisions of Clauses 77.3 to 77.6 (inclusive) (*Rectification*)) terminate on the System Integrator Default Termination Date.

Partial Termination

- 77.8 Notwithstanding any other provision of this Contract, where the Authority is entitled to terminate this Contract for any reason, the Authority shall be entitled to terminate this Contract in whole or in part.
- 77.9 Where the Authority is terminating part of this Contract, the Parties shall, subject to Clause 81 (*Continuing Obligations*), owe each other no further obligations in respect of such part of this Contract as is specified in the Termination Notice from the System Integrator Default Termination Date.
- 77.10 For the avoidance of doubt, where Clause 77.8 (*Partial Termination*) applies, the Parties shall continue to fulfil their respective obligations in respect of those parts of this Contract that are not identified in the Termination Notice as being terminated.

Termination following a Prohibited Act

- 77.11 If the System Integrator commits a Prohibited Act and/or breaches and/or is in default under Clauses 7.1.13, 7.1.14 and/or 7.1.15 (*System Integrator warranties*), the Authority may (without prejudice to its rights in Clauses 13.11 and 13.12 (*Termination of Sub-Contractors*)) and subject to the provisions of Clause 77.12 (*Termination following a Prohibited Act*)) by notice:
- 77.11.1 require the System Integrator to remove from performance of this Contract any System Integrator Related Party, and any of the System Integrator's employees, consultants, or agents whose acts or omissions have caused the default; or
 - 77.11.2 immediately terminate this Contract; and
 - 77.11.3 any notice served by the Authority under this Clause 77.11 (*Termination following a Prohibited Act*) shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Contract shall terminate).
- 77.12 In exercising its rights and remedies in respect of a Prohibited Act, the Authority shall:
- 77.12.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the Prohibited Act; and
 - 77.12.2 give all due consideration, where appropriate, to action other than termination of this Contract, including without being limited to:
 - (i) requiring the System Integrator to procure the termination of a Sub-Contract where the Prohibited Act was undertaken by or on behalf of a Sub-Contractor or anyone acting on its or their behalf; or
 - (ii) requiring the System Integrator to procure the re-assignment of an employee, consultant or agent (whether its own or that of a Sub-Contractor or anyone acting on its behalf) from performing this

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Contract where the Prohibited Act is that of such employee, consultant or agent,

and the System Integrator shall (and shall use all reasonable endeavours to procure that its Sub-Contractors shall) give all due consideration to the Authority's proposal under this Clause 77.12.2 (*Termination following a Prohibited Act*).

Termination following withholding of Hazard Data

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

Termination following a Change of Control

- 77.14 If a Change of Control occurs in the circumstances described in Clause 86.5 (*Change of Control*), a System Integrator Default shall be deemed to have occurred and the Authority shall be entitled to terminate the whole or any part of this Contract within twelve (12) months of the date the Authority became aware that the relevant Change of Control has occurred and such termination shall be subject to the provisions of Clause 77.2 (*Right to Terminate*) and shall not be subject to the provisions of Clauses 77.3 to 77.6 (inclusive) (*Rectification*).

Material Breach

- 77.15 In addition to any other rights and remedies, the Authority shall have the right to terminate this Contract (in whole or in part) with immediate effect by giving written notice to the System Integrator where the System Integrator is in material breach of its obligations under this Contract.
- 77.16 Where the Authority has terminated this Contract under Clause 77.15 (*Material Breach*) the Authority shall have the right to claim such damages as may have been sustained as a result of the System Integrator's material breach of this Contract, including but not limited to any costs and expenses incurred by the Authority in:
- 77.16.1 carrying out any work that may be required to make the System Integrator Deliverables comply with this Contract; or
 - 77.16.2 obtaining the System Integrator Deliverable in substitution from another supplier.

78 Termination for Convenience

- 78.1 The Authority shall, in addition to its power under any other of the provisions of this Contract, have the power to determine this Contract at any time by giving to the System Integrator at least twenty (20) Working Days written notice, and upon the expiration of such notice period this Contract shall terminate, without prejudice to the rights of the Parties already accrued as at the Termination Date, but subject to the operation of the following provisions of this Clause 78 (*Termination for Convenience*).

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- 78.2 In the event of such notice being given, the Authority shall, at any time before the expiration of the notice, be entitled to exercise and shall, as soon as may be reasonably practicable within that period, exercise such of the following powers as it considers expedient:
- 78.2.1 to direct the System Integrator, where provision of any element of the System Integrator Deliverables has not been commenced, to refrain from commencing such provision;
 - 78.2.2 to direct the System Integrator to complete the provision of any element of the System Integrator Deliverables and/or to concentrate its efforts on the completion of any elements of the System Integrator Deliverables where provision of the same (or any activities that are integral to such provision) has (or have) already commenced;
 - 78.2.3 to direct the System Integrator to, as soon as may be reasonably practicable after the receipt of such notice, take such steps as will ensure that the rate of provision of the System Integrator Deliverables (or the rate of performance of any activities that are integral to such provision) is reduced as rapidly as possible; and/or
 - 78.2.4 to direct the System Integrator to determine on the best possible terms such Sub-Contracts and orders for materials, parts, components and/or services as have not been completed, observing in connection with this any direction given under Clauses 78.2.1 to 78.2.3 (inclusive) (*Termination for Convenience*) as far as may be possible.

79 Financial consequences of Termination

Termination for System Integrator Default

- 79.1 Where this Contract or any part thereof is terminated pursuant to Clause 77 (*Termination for System Integrator Default*), the provisions of Clauses 79.2 to 79.4 (inclusive) (*Termination for System Integrator Default*) shall apply provided always that where such termination is as a result of an Insolvency Event the System Integrator shall not be entitled to any compensation or any further payment from the Authority.
- 79.2 Where Clause 79.1 (*Termination for System Integrator Default*) applies, and the Authority makes alternative arrangements for the provision of the System Integrator Deliverables (which may, for the avoidance of doubt, include the Authority carrying out the System Integrator Deliverables itself and/or through any Third Party), the Authority shall be entitled to recover from the System Integrator the cost of tendering for and/or making such alternative arrangements, together with any additional expenditure incurred by the Authority as a result of such alternative arrangements throughout the remainder of what would have been (as at the date of the Termination Notice) the term of this Contract had it not been terminated pursuant to Clause 77 (*Termination for System Integrator Default*).
- 79.3 Where Clause 79.1 (*Termination for System Integrator Default*) applies, the System Integrator shall not be entitled to be paid any sums until the Authority has assessed the cost of the alternative arrangements referred to in Clause 79.2 (*Termination for System Integrator Default*). If following such assessment, the amount of such Losses

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

- 79.4 Where the Authority is entitled to terminate this Contract pursuant to Clause 77 (*Termination for System Integrator Default*) as a result of the occurrence of a Prohibited Act (and/or the System Integrator breaches and/or is in default under Clauses 7.1.13, 7.1.14 and/or 7.1.15 (*System Integrator warranties*)), the Authority shall, in addition to its rights set out in Clauses 79.2 and 79.3 (*Termination for System Integrator Default*) (but without any double-counting) be entitled to:

- 79.4.1 recover from the System Integrator the amount of any Losses resulting from such termination;
- 79.4.2 recover from the System Integrator the amount or value of any gift, consideration or commission entailed by such Prohibited Act; and
- 79.4.3 where this Clause 79.4 (*Termination for System Integrator Default*) applies but this Contract has not been terminated, to recover from the System Integrator any other Losses sustained as a result of such Prohibited Act,

and any recovery action taken against any employee of the Authority shall be without prejudice to any recovery action taken against the System Integrator pursuant to this Clause 79.4 (*Termination for System Integrator Default*).

- 79.5 Where the Authority is entitled to terminate this Contract pursuant to Clause 92.5 (*Tax Compliance*), the Authority shall, subject to the provisions of Clause 92.7 (*Tax Compliance*) and in addition to the Authority's rights in Clauses 79.2 and 79.3 (*Termination for System Integrator Default*) (but without double-counting), be entitled to recover from the System Integrator:

- 79.5.1 the amount of any Losses resulting from such termination; and
- 79.5.2 where this Clause 79.5 (*Termination for System Integrator Default*) applies but where this Contract has not been terminated, any other Losses sustained as a result of the breach by the System Integrator giving rise to the Authority's rights in this Clause 79.5 (*Termination for System Integrator Default*).

- 79.6 Where the Authority is entitled to terminate this Contract pursuant to Clause 39.17, 39.18 or 39.19 (*Cyber*), the Authority shall, subject to the provisions of Clause 39.16 (*Cyber*) and in addition to the Authority's rights in Clauses 79.2 and 79.3 (*Termination for System Integrator Default*) (but without double-counting), be entitled to recover from the System Integrator:

- 79.6.1 the amount of any Losses resulting from such termination;

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- 79.6.2 any other Losses sustained in consequence of any breach of Clause 39.16 (*Cyber*); and
- 79.6.3 where this Clause 79.6 (*Termination for System Integrator Default*) applies but where this Contract has not been terminated, any other Losses sustained as a result of the breach by the System Integrator giving rise to the Authority's rights in this Clause 79.6 (*Termination for System Integrator Default*).

Termination for Convenience

- 79.7 Where this Contract is terminated pursuant to Clause 78 (*Termination for Convenience*), the provisions of Clauses 79.8 to 79.10 (inclusive) (*Termination for Convenience*) shall apply.
- 79.8 Where Clause 78 (*Termination for Convenience*) applies (subject always to the System Integrator's compliance with any direction given by the Authority pursuant to Clause 78.2 (*Termination for Convenience*)):
- 79.8.1 the Authority shall take over from the System Integrator at a fair and reasonable price (to the extent the System Integrator has not already been paid) all unused and undamaged materiel and any System Integrator Deliverables which consist of physical items and are in the course of manufacture, that are:
- (i) in the possession of the System Integrator at the Termination Date; and
 - (ii) properly provided by or supplied to the System Integrator for the performance of this Contract,
- except such materiel and System Integrator Deliverables that consist of physical items as the System Integrator shall, with the agreement of the Authority, elect to retain;
- 79.8.2 without prejudice to any other obligations the System Integrator may have in accordance with this Contract, the System Integrator shall, at the Authority's request, grant a licence on the terms set out in Schedule 11 (*IPR*) at a fair and reasonable price (to the extent that the System Integrator has not already been paid) to Use any System Integrator Deliverable (or any elements thereof) that do not consist of physical items that have been provided or partially provided in accordance with this Contract at the Termination Date; and
- 79.8.3 the System Integrator shall prepare and deliver to the Authority within an agreed period, or in default of agreement within such period as the Authority may specify, a list of:
- (i) all such unused and undamaged materiel; and
 - (ii) the System Integrator Deliverables that consist of physical items and are in the course of manufacture,

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and in assessing a fair and reasonable price in Clauses 79.8.1 to 79.8.3 (inclusive) (*Termination for Convenience*) the Parties shall have due regard to the provisions of Schedule 7 (*Pricing and Payment*) and the Parties shall carry out a reconciliation for that purpose in accordance with paragraphs 10.5 to 10.10 of Part 1 (*Calculating the Monthly Payment*) of Schedule 7 (*Pricing and Payment*).

79.9 Where Clause 78 (*Termination for Convenience*) applies, the Authority shall (subject to Clause 79.10 (*Termination for Convenience*) and to the System Integrator's compliance with any direction given by the Authority pursuant to Clause 78.2 (*Termination for Convenience*)) indemnify the System Integrator against any commitments, liabilities or expenditure which represent an unavoidable Loss by the System Integrator by reason of the termination of this Contract, subject to:

79.9.1 the System Integrator taking all reasonable steps to mitigate such Loss; and

79.9.2 the System Integrator submitting a fully itemised and costed list of such Loss, with supporting evidence of Losses reasonably and actually incurred by the System Integrator as a result of termination of this Contract pursuant to Clause 78 (*Termination for Convenience*).

79.10 The Authority shall not be liable under Clause 79.9 (*Termination for Convenience*) to pay any sum which, when added to any sums already paid or due to the System Integrator under this Contract, exceeds an amount equal to the Contract Price.

Termination for Force Majeure

79.11 Where this Contract is terminated pursuant to Clause 28.4 (*Force Majeure*), the provisions of Clauses 79.12 and 79.13 (*Termination for Force Majeure*) shall apply.

79.12 Where this Clause 79.12 (*Termination for Force Majeure*) applies, the System Integrator shall only be entitled to be paid (subject to any other provision of this Contract affecting the level of such payment, including any reduction for sums that the Authority is entitled to deduct under or in connection with this Contract (whether arising under any term of this Contract or under any Legislation or of equity)) for any aspect of the System Integrator Deliverables that it has, as at the Termination Date, delivered to the Authority in accordance with this Contract and without prejudice to the foregoing the Authority may deduct from such payment any charges it has paid to the System Integrator in advance in respect of System Integrator Deliverables not provided as at the Termination Date. Neither Party shall have the right to claim damages as a result of such termination.

79.13 Where Clause 28.4 (*Force Majeure*) applies (subject always to the System Integrator's compliance with Clause 28 (*Force Majeure*)):

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

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- (i) in the possession of the System Integrator at the Termination Date; and
- (ii) properly provided by or supplied to the System Integrator for the performance of this Contract,

except such materiel and System Integrator Deliverables that consist of physical items as the System Integrator shall, with the agreement of the Authority, elect to retain;

79.13.2 without prejudice to any other obligations the System Integrator may have in accordance with this Contract, the System Integrator shall, at the Authority's request, grant a licence on the terms set out in Schedule 11 (*IPR*) at a fair and reasonable price (to the extent that the System Integrator has not already been paid) to Use any System Integrator Deliverable (or any elements thereof) that do not consist of physical items that have been provided or partially provided in accordance with this Contract at the Termination Date; and

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

- (i) all such unused and undamaged materiel; and
- (ii) the System Integrator Deliverables that consist of physical items and are in the course of manufacture,

that are liable to be taken over by, licensed to or previously belonged to the Authority and shall deliver such materiel and the System Integrator Deliverables in accordance with the directions of the Authority,

and in assessing a fair and reasonable price in Clauses 79.13.1 to 79.13.3 (inclusive) (*Termination for Force Majeure*) the Parties shall have due regard to the provisions of Schedule 7 (*Pricing and Payment*) and the Parties shall carry out a reconciliation for that purpose.

Miscellaneous provisions

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

79.14.1 agree all amounts which are due to each other arising under this Contract, each Party shall (subject to the provisions of Clause 19 (*Recovery of Sums Due*)) pay to the other any amounts payable pursuant to this Clause 79 (*Financial Consequences of Termination*) within twenty (20) Working Days of the Termination Date or the Expiry Date (as the case may be) or such other period as agreed between the Parties before the end of the relevant twenty (20) Working Day period; or

79.14.2 do not agree what amounts are due to each other arising under this Contract, the Parties shall carry out a reconciliation within ten (10) Working Days of the Termination Date or the Expiry Date (as the case may be) or

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such other period as agreed between the Parties before the end of the relevant twenty (20) Working Day period.

Exit Requirements

- 79.15 On the expiry or early termination of this Contract, the System Integrator shall comply with the provisions of Clause 80 (*Exit Plan*), Schedule 15 (*Exit Plan*) and Clause 82 (*Continuing Assistance*).
- 79.16 If the System Integrator fails to comply with Clause 80 (*Exit Plan*), Schedule 15 (*Exit Plan*) and/or Clause 82 (*Continuing Assistance*), the Authority reserves the right to withhold any outstanding payments due to the System Integrator under this Contract until full compliance with Clause 80 (*Exit Plan*), Schedule 15 (*Exit Plan*) and/or Clause 82 (*Continuing Assistance*) has been achieved.

80 Exit Plan

- 80.1 The System Integrator shall comply with the provisions of the Exit Plan at Schedule 15 (*Exit Plan*) in connection with the termination or expiry of this Contract and, in relation to partial termination, shall do so as far as is required in the context of the Services that have been terminated.

- 80.2 On the earlier to occur of:

80.2.1 six (6) calendar months before the Expiry Date; and

80.2.2 ten (10) Working Days following receipt of a written notice from the Authority of the termination or partial termination of this Contract;

the System Integrator shall review the Exit Plan in accordance with Clause 80.4 (*Exit Plan*) and issue to the Authority a proposed update and revision of the Exit Plan for approval by the Authority, giving full details of the rationale for any proposed changes.

- 80.3 Within twenty (20) Working Days of the issue of a new CIC Task Order or Ad Hoc Task Order (if issued outside of the periods identified in Clauses 80.2.1 and 80.2.2 (*Exit Plan*) above), the System Integrator shall review the Exit Plan in accordance with Clause 80.4 (*Exit Plan*) and issue to the Authority a proposed update and revision of the Exit Plan for approval by the Authority, giving full details of the rationale for any proposed changes (or if no changes to the Exit Plan are required in the opinion of the System Integrator, full details of the rationale for why no changes are required).

- 80.4 The Exit Plan shall be prepared in accordance with Good Industry Practice, having due regard to the status of the System Integrator Deliverables and any other relevant factors at the time of preparation and shall include, but not be limited to, the following (as applicable):

80.4.1 a detailed programme of how the System Integrator will deliver the orderly transition of Services to the Authority or to a Follow-On System Integrator (as applicable) whilst continuing to provide the Services during the transition period;

80.4.2 a detailed programme of how the System Integrator will deliver the orderly cessation of the Services;

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- 80.4.3 the management structure to be employed during the cessation and/or transition of the Services, identifying any key personnel;
 - 80.4.4 a plan for communication with the Authority's staff, Sub-Contractors and suppliers during the cessation and/or transition of the Services to ensure no disruption to the Service;
 - 80.4.5 a plan for how the System Integrator will manage the return to the Authority of any GFX or Issued Property under this Contract;
 - 80.4.6 a mechanism for dealing with partial termination of this Contract where the System Integrator shall continue to provide the remaining Services under this Contract;
 - 80.4.7 how the System Integrator will carry out the transition of the processes, documentation, data transfer, systems migration and security to the Authority or to a Follow-On System Integrator (as applicable);
 - 80.4.8 a process for transitioning the responsibility for any work in progress including any ongoing Task Orders, Innovation Proposals or Solutions to the Authority or a Follow-On System Integrator (as applicable);
 - 80.4.9 arrangements for the assignment or novation of any Sub-Contracts (where requested by the Authority) to the Authority or to a Follow-On System Integrator (as applicable);
 - 80.4.10 a proposal for how the System Integrator will meet its obligations contained in Clause 82 (*Continuing Assistance*);
 - 80.4.11 procedures to deal promptly with any requests for information from the Authority and/or a Follow-On Integrator in respect of any transfer of staff pursuant to Schedule 12 (*Transfer Regulations (TUPE)*);
 - 80.4.12 a timetable for achieving the requirements in the Exit Plan; and
 - 80.4.13 any other information that the Authority reasonably requires at the time of preparing the Exit Plan.
- 80.5 Following receipt by the Authority of the revised Exit Plan and rationale pursuant to Clause 80.2 and Clause 80.3 (*Exit Plan*), the System Integrator and the Authority shall meet (as soon as reasonably practicable and on such number of occasions as the Authority may reasonably require) to discuss and make any agreed amendments to the revised Exit Plan.
- 80.6 The Parties acknowledge that:
- 80.6.1 the preparation and development of the Exit Plan as contemplated in this Clause 80 (*Exit Plan*) forms part of this Contract and forms part of the Contract Price; and
 - 80.6.2 the System Integrator shall be obliged to carry out those activities described in Clause 82 (*Continuing Assistance*) whether or not such activities are also incorporated or contemplated or referred to in the Exit Plan and the System

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Integrator acknowledges that it has incorporated pricing for the performance of such activities in Clause 82 (*Continuing Assistance*) in the Contract Price.

- 80.7 Except in respect of any transfer of staff pursuant to Schedule 12 (*Transfer Regulations (TUPE)*), the System Integrator shall not (except with the prior written consent of the Authority) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the Authority any person employed or engaged by the Authority in the receipt of the System Integrator Deliverables at any time during the Contract Period or for a further period of twelve (12) months after the Expiry Date other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the Authority.
- 80.8 If the System Integrator commits any breach of Clause 80.7 (*Exit Plan*), the System Integrator shall, on demand, pay to the Authority a sum equal to one (1) year's basic salary or the annual fee that was payable by the System Integrator to that employee, worker or independent System Integrator plus the recruitment costs incurred by the Authority in replacing such person.

81 Continuing Obligations

- 81.1 Save as otherwise expressly provided in this Contract or as already taken into account in the calculation of any payment on termination pursuant to this Contract:
- 81.1.1 termination of this Contract shall be without prejudice to any accrued rights or obligations under this Contract prior to termination; and
- 81.1.2 termination of this Contract shall not affect the continuing rights and obligations of the System Integrator and the Authority under:
- (i) Clause 3 (*The System Integrator's Obligations*);
 - (ii) Clause 7 (*System Integrator Warranties and Undertakings*);
 - (iii) Clause 14 (*Import and Export Licences*);
 - (iv) Clause 25 (*Indemnity and Liabilities*);
 - (v) Clause 32 (*The System Integrator's Records*);
 - (vi) Clause 34 (*Disclosure of Information*);
 - (vii) Clause 38 (*Official-Sensitive Security Requirements*);
 - (viii) Clause 39 (*Cyber*), to the extent contemplated in Clause 39.20 (*Cyber*);
 - (ix) Clause 40 (*Intellectual Property Rights*);
 - (x) Clause 42 (*Security Aspects Letter*);
 - (xi) Clause 43 (*Security- Secret Matters*);

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- (xii) Clause 49 (*Transfer of Undertakings (Protection of Employment) (TUPE)*);
- (xiii) Clause 59 (*Issued Property*);
- (xiv) Clause 60 (*Accounting for property of the Authority*);
- (xv) Clause 79 (*Financial consequences of Termination*);
- (xvi) Clause 80 (*Exit Plan*);
- (xvii) Clause 81 (*Continuing Obligations*);
- (xviii) Clause 82 (*Continuing Assistance*);
- (xix) Clause 92 (*Tax Compliance*);
- (xx) Clause 95 (*Dispute Resolution*);
- (xxi) Clause 100 (*Law*); and
- (xxii) any other provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

PART 14 - GENERAL CONTRACT PROVISIONS

82 Continuing Assistance

Co-operation

82.1 Without prejudice to the provisions of Clause 49 (*Transfer of Undertakings (Protection of Employment) (TUPE)*) and Clause 80 (*Exit Plan*), during the last six (6) months before the Expiry Date or during the period that any Termination Notice is subsisting the System Integrator shall co-operate as far as is reasonably practicable with the transfer of responsibility for the provision of the System Integrator Deliverables (or part of the System Integrator Deliverables) (including co-operation with one or more Other Contractors with responsibility for providing deliverables to the Authority with which the whole or part of such System Integrator Deliverables are intended to interface (including by any technical and/or organisational interface) and/or integrate (including Integrate) and/or be compatible with and/or in respect of which the performance of such deliverables by such Other Contractor is connected with and/or dependent upon and/or for which it is necessary to have an understanding of, in each case, such whole or part of the System Integrator Deliverables) from the System Integrator to any person (a "**Follow-On System Integrator**") or to the Authority as so directed by the Authority, and for the purposes of this Clause 82 (*Continuing Assistance*) the meaning of the term co-operate shall include:

82.1.1 liaising with the Authority and/or any Follow-On System Integrator, and providing reasonable assistance and advice concerning the provision of the whole or the relevant part of the System Integrator Deliverables and their transfer to the Authority or such Follow-On System Integrator;

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- 82.1.2 allowing any such Follow-On System Integrator access (at reasonable times and on reasonable notice) to any assets applicable to the performance of this Contract, but not so as to interfere with or impede the provision of the System Integrator Deliverables; and
 - 82.1.3 providing to the Authority and/or any Follow-On System Integrator any relevant information concerning the Authority Sites and the provision of the System Integrator Deliverables which is reasonably required for the efficient transfer of responsibility for the performance of the System Integrator's obligations under this Contract.
- 82.2 Without prejudice to Clause 59 (*Issued Property*), during the last six (6) months before the Expiry Date or during the period that any Termination Notice is subsisting, the System Integrator shall protect and preserve material, Articles and Issued Property in its possession, custody or control in which the Authority has notified an interest, provided that the System Integrator shall be entitled to use such material, Articles and Issued Property in accordance with the provisions of this Contract where it is agreed that the provision of the System Integrator Deliverables requires the use of that material and/or those Articles and/or Issued Property in part or in its entirety.
- 82.3 For a period of six (6) months after the Expiry Date or, if earlier, the Termination Date, the System Integrator shall, if requested to do so in writing by the Authority, provide all reasonable assistance, guidance and information to the Authority or any Follow-On System Integrator (as the case may be) required by the Authority or any Follow-On System Integrator.
- 82.4 Without prejudice to the provisions of Clauses 82.1, 82.2 and 82.3 (*Co-operation*), the System Integrator shall use all reasonable endeavours to assist the Authority to facilitate the smooth transfer of responsibility for the provision of the System Integrator Deliverables (or any part of the System Integrator Deliverables) to the Authority or Follow-On System Integrator, as the case may be, and the System Integrator shall take no action at any time during the term of this Contract or thereafter which is calculated or intended to prejudice or frustrate or make more difficult any such transfer.
- 82.5 Following the Expiry Date or, if earlier, the Termination Date, the System Integrator shall, with the Authority's consent (not to be unreasonably withheld or delayed) be allowed reasonable access to the Authority Sites by the Authority in order to carry out winding-down activities, provided that in exercising such right of access, the System Integrator shall not interfere with or impede the delivery of goods and/or services equivalent to the System Integrator Deliverables (and/or the provision of any other services and/or the carrying out of any other activities) by or on behalf of the Authority and/or any Follow-On System Integrator.
- 82.6 On expiry or earlier termination of this Contract, the System Integrator shall:
- 82.6.1 upon request by the Authority make arrangements, to be agreed between the Authority and the System Integrator (acting reasonably and in good faith), for the Authority to take over at fair and reasonable prices, where payment has not already been made, the rights, title and interest in such Articles and/or material as are held by the System Integrator and/or any Sub-Contractor and which the Authority requires to maintain continuity of the delivery of goods and services equivalent to the System Integrator

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Deliverables following the Expiry Date or, if earlier, the Termination Date; and

- 82.6.2 provide, procure the provision of, or provide access to, as the Authority may require, all such information, documents and data in the possession or control of the System Integrator, together with a sufficient explanation of such information, documents and data, the full rights to use such information, documents and data, and a formal certificate confirming those rights, as is required to put the Authority in the position it would have been had there been full and proper performance by the System Integrator of the System Integrator Deliverables.
- 82.7 The System Integrator agrees that following the early termination of this Contract, the Authority shall be entitled to continue to purchase (and the System Integrator shall continue to supply) on reasonable terms and conditions at fair and reasonable prices goods and services (which would, but for the expiry or early termination of this Contract, amount to Articles) which are required by the Authority to maintain continuity of the delivery of goods and services equivalent to the System Integrator Deliverables following the Termination Date.

83 Change

- 83.1 Without prejudice to the provisions of Schedule 8 (*Ad Hoc Task Order Approval Process*), the Parties shall comply with the provisions of Schedule 9 (*Change Procedure*) in relation to Changes.

84 Transfer

- 84.1 Subject to Clause 85 (*Novation*), neither Party to this Contract shall give, bargain, sell, assign, or otherwise dispose of this Contract or any part thereof, or the benefit or advantage of this Contract or any part thereof, without the prior consent in writing of the other Party.
- 84.2 Subject to the System Integrator obtaining the prior written consent of the Authority in accordance with Clause 84.1 (*Transfer*) above, the System Integrator may assign to a Third Party (the “**Assignee**”) the right to receive payment of the Contract Price or any part thereof due to the System Integrator under this Contract (including any interest incurred by the Authority in accordance with Clause 17 (*Disputed Amounts*)).
- 84.3 Any assignment of the right to receive payment of the Contract Price (or any part thereof) under Clause 84.2 (*Transfer*) above shall be subject to:
- 84.3.1 reduction of any sums in respect of which the Authority exercises its right of recovery under Clause 19 (*Recovery of Sums Due*) or under any other clause concerning recovery of sums due;
 - 84.3.2 all related rights of the Authority under this Contract in relation to the recovery of sums due but unpaid; and
 - 84.3.3 the Authority receiving notification under both Clause 84.4 and Clause 84.5.2 (*Transfer*) below.

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- 84.4 In the event that the System Integrator obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under Clause 84.2 (*Transfer*) above, the System Integrator shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- 84.5 The System Integrator shall ensure that the Assignee:
- 84.5.1 is made aware of the Authority's continuing rights under Clauses 84.3.1 and 84.3.2 (*Transfer*); and
 - 84.5.2 notifies the Authority of the Assignee's contact information and bank account details, to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with Clauses 84.3.1 and 84.3.2 (*Transfer*) above.
- 84.6 The provisions of this Contract, including any clauses concerning payment, shall continue to apply in all other respects after any assignment in accordance with this Clause 84 (*Transfer*) and shall not be amended without the prior approval of the Authority.

85 Novation

- 85.1 Subject to Clause 85.2 (*Novation*), the rights and obligations of the Authority under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any law or any scheme pursuant to any law or otherwise) other than:
- 85.1.1 in respect of the whole of this Contract to any person who performs any of the functions that previously had been performed by the Authority; or
 - 85.1.2 to any public body (being a single entity) acquiring the whole of this Contract and having the legal capacity, power and authority to become a Party to and to perform the obligations of the Authority under this Contract, being:
 - (i) a Minister of the Crown pursuant to an order under the Ministers of the Crown Act 1975; or
 - (ii) any other public body whose obligations under this Contract are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the System Integrator) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Contract.
- 85.2 The System Integrator agrees that the Authority may at any time on written notice elect to appoint a Third Party to act as its agent to manage the whole or any part of this Contract on the Authority's behalf and/or to perform any or all of the obligations of the Authority under this Contract to the extent set out in such notice.

86 Change of Control

- 86.1 The System Integrator acknowledges that the Authority has a legitimate interest in the ownership and control of the System Integrator and that the System Integrator is

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required to notify the Authority of any Change of Control in accordance with this Clause 86 (*Change of Control*).

- 86.2 Subject to Clause 86.3 (*Change of Control*), the System Integrator shall notify the Authority's Representative in writing (providing a copy to the Mergers & Acquisitions Section, Strategic Supplier Management Team, Spruce 3b #1301, MOD Abbey Wood, Bristol, BS34 8JH and emailing a copy to DefComrcISSM-MergersandAcq@mod.gov.uk), as soon as practicable, of any intended, planned or actual Change of Control, including details of the proposed new ownership structure (legal and beneficial) and/or details of the material asset (including shares held in any company by the System Integrator or any of its Subsidiaries), business or undertaking proposed to be disposed or acquired (as the case may be).
- 86.3 The System Integrator shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the System Integrator in the UK or other jurisdictions where the System Integrator may be subject to legal sanction arising from issuing such a notice.
- 86.4 The Representative of the Authority shall consider the notice of change of control and advise the System Integrator in writing of any concerns the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the System Integrator prior to Contract Award.
- 86.5 Where:
- 86.5.1 the Authority is not informed of a proposed Change of Control for the reasons set out in Clause 86.3 (*Change of Control*) or for any other reason and a Change of Control occurs; and/or
- 86.5.2 the Authority objects to the proposed (or actual) Change of Control, whether or not the Authority is informed of the proposed Change of Control pursuant to Clause 86.2 (*Change of Control*) and whether the Authority becomes aware of such Change of Control prior to or after such Change of Control occurring,
- then the Authority may terminate this Contract at any time within twelve (12) months of the date the Authority becomes aware that the relevant Change of Control has occurred and the provisions of Clause 77.2 (*Termination for System Integrator Default*) and Clause 77.14 (*Termination following a Change of Control*) shall apply.
- 86.6 Notification by the System Integrator of any intended, planned or actual Change of Control shall not prejudice the existing rights of the Authority or the System Integrator under this Contract nor create or imply any rights of either the System Integrator or the Authority additional to the Authority's rights set out in this Clause 86 (*Change of Control*).

87 Disruption

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

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

87.2.1 inspect; and/or

87.2.2 (subject to the Authority giving the System Integrator reasonable advance notice, and subject to the Authority exercising this right a maximum of three (3) times in any one year in respect of the same plan) practically test at any reasonable time,

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

88 Waiver

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

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

89 Discrepancies, Errors and Omissions

89.1 If either Party identifies any discrepancy, error or omission between the provisions of this Contract, it shall notify the other Party in writing of such discrepancy, error or omission as soon as reasonably practical.

89.2 The Parties shall seek to agree such amendments to resolve such discrepancy, error or omission as soon as reasonably practical.

89.3 Where the Parties fail to reach agreement within ten (10) Working Days of the notice under Clause 89.1 (*Discrepancies, Errors and Omissions*) and either Party considers that the discrepancy, error or omission to be material to its rights and obligations under this Contract, then the matter will be referred to the Dispute Resolution Procedure.

90 Severability

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

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

91 Whole Agreement

- 91.1 This Contract constitutes the entire agreement between the Parties relating to the subject matter of this Contract.
- 91.2 This Contract supersedes all prior negotiations, representations and undertakings (whether written or oral), except that this Clause 91 (*Whole Agreement*) shall not exclude liability in respect of any fraudulent misrepresentation.

92 Tax Compliance

- 92.1 The System Integrator represents and warrants that at the date this Contract came into effect, it has notified the Authority in writing of any Occasion Of Tax Non-Compliance ("OOTNC") or any litigation that it is involved in that is in connection with any OOTNC.
- 92.2 If, at any point during the performance of this Contract, an OOTNC occurs, the System Integrator shall:
 - 92.2.1 notify the Authority in writing of such fact within twenty (20) Working Days of its occurrence; and
 - 92.2.2 promptly provide to the Authority:
 - (i) details of the steps which the System Integrator is taking to address the OOTNC and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the OOTNC as the Authority may reasonably require.
- 92.3 For the avoidance of doubt, the obligation at Clause 92.2 (*Tax Compliance*) also applies to OOTNC in non-UK jurisdictions. If the OOTNC occurred in non-UK jurisdictions, the notification must be accompanied by a full explanation of the OOTNC and any relevant tax laws and administrative provisions so the Authority can understand the nature and seriousness of the OOTNC.
- 92.4 The duty to notify does not substitute the System Integrator's other reporting obligations under this Contract.
- 92.5 The Authority shall be entitled to terminate this Contract in the event that:
 - 92.5.1 the warranty given by the System Integrator pursuant to Clause 92.1 (*Tax Compliance*) is materially untrue; or

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- 92.5.2 the System Integrator commits a material breach of its obligation to notify the Authority of any OOTNC as required by Clause 92.2 (*Tax Compliance*); or
- 92.5.3 the System Integrator fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority, are acceptable.
- 92.6 In the event that the Authority is entitled to terminate this Contract under Clause 92.5 (*Tax Compliance*) the provisions of Clause 79.5 (*Termination for System Integrator Default*) and Clause 92.7 (*Tax Compliance*) shall apply.
- 92.7 In exercising its rights or remedies under this Clause 92 (*Tax Compliance*), the Authority shall:
- 92.7.1 act in a reasonable and proportionate manner taking into account, among other things:
- (i) the gravity and duration of the OOTNC and any sanctions imposed by a court or tribunal; and
 - (ii) any remedial action taken by the System Integrator to prevent reoccurrence of the OOTNC; and
- 92.7.2 without prejudice to Clause 92.5 (*Tax Compliance*), seriously consider, where appropriate, action other than termination of this Contract to deal with the failure by the System Integrator to comply with this Clause 92 (*Tax Compliance*).

93 Representatives

References to Authority and the System Integrator

- 93.1 Except as provided otherwise under this Contract, any reference to the Authority and the System Integrator in respect of:
- 93.1.1 the giving of consent;
- 93.1.2 the delivering of any notices; or
- 93.1.3 the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the relevant Party,

shall be deemed to be references to the Authority's Representatives and the System Integrator's Representatives (respectively) in accordance with this Clause 93 (*Representatives*).

The System Integrator's Representatives

- 93.2 The System Integrator shall employ the System Integrator's Representatives to act in connection with the provision of the System Integrator Deliverables and generally in connection with this Contract.

Authority of the System Integrator's Representatives

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- 93.3 The System Integrator's Representative shall have full authority to act on behalf of the System Integrator for all purposes of this Contract.

Appointment of successor

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

Authority's Representatives

- 93.5 The Authority shall employ the Authority's Representatives to act in connection with the provision of the System Integrator Deliverables and generally in connection with this Contract.

Authority of Authority's Representatives

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

Appointment of Successor

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

94 Notices

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

- 94.1.1 be in a form which can be read, copied and recorded;
- 94.1.2 be authenticated by signature or by such other method as agreed between the Parties;
- 94.1.3 be marked for the attention of the appropriate Authority's Representative or the System Integrator's Representative; and
- 94.1.4 be marked in a prominent position with the relevant Contract number.

- 94.2 Notices should be delivered by:

- 94.2.1 hand;
- 94.2.2 prepaid post (or airmail, in the case of Notices to or from overseas);
- 94.2.3 facsimile; or
- 94.2.4 electronic mail.

- 94.3 Notices shall be deemed to have been received:

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- 94.3.1 if delivered by hand, on the day of delivery if it is a Working Day and otherwise on the first Working Day immediately following the day of delivery;
- 94.3.2 if sent by prepaid post (or airmail, if appropriate), on the fifth Working Day (or on the tenth Working Day, in the case of airmail) after the day of posting; and
- 94.3.3 if sent by facsimile, or other electronic means:
- (i) if transmitted between 09.00 and 17.00 hours on a Working Day (recipient's time), on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
 - (ii) if transmitted at any other time, at 09.00 hours on the first Working Day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument.
- 94.4 The addresses (including electronic addresses) of each Party and their Representatives to which all Notices shall be sent are set out in Schedule 20 (*Addresses and Other Information (DEFFORM 111)*), or such other address as either Party may by written Notice specify to the other for the purpose of this Clause 94 (*Notices*).
- 94.5 Where either Party requests written confirmation of any communication which does not constitute a Notice, such request shall not unreasonably be refused.

95 Dispute Resolution

- 95.1 The Parties will attempt in good faith to resolve any Dispute through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any Alternative Dispute Resolution (“**ADR**”) procedure on which the Parties may agree.
- 95.2 In the event that the Dispute is not resolved by negotiation, or where the Parties have agreed to use an ADR procedure, by the use of such procedure, the Dispute shall be referred to arbitration.
- 95.3 The Party initiating the arbitration shall give a written notice (the “**Notice of Arbitration**”) to the other Party. The Notice of Arbitration shall specifically state:
- 95.3.1 that the Dispute is referred to arbitration; and
 - 95.3.2 the particulars of this Contract out of or in relation to which the Dispute arises.
- 95.4 Unless otherwise agreed in writing by the Parties, the arbitration and this Clause 95 (*Dispute Resolution*) shall be governed by the provisions of the Arbitration Act 1996.
- 95.5 It is agreed between the Parties that for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided for in section 39 of the Arbitration Act 1996.

- 95.6 For the avoidance of doubt it is agreed between the Parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the Parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the Parties to the arbitration.

96 System Integrator's Status

- 96.1 Nothing in this Contract shall be construed as creating a partnership or joint venture or as a contract of employment between the Authority and System Integrator.
- 96.2 Save as expressly provided otherwise in this Contract, the System Integrator shall not be, nor be deemed to be, an agent of the Authority and the System Integrator shall not hold itself out as having authority or power to bind the Authority in any way.
- 96.3 Neither Party shall place or cause to be placed any order with suppliers or otherwise incur liabilities in the name of the other Party or any representative of the other Party.

97 Conflicts of Interest and Impartiality

- 97.1 The System Integrator has notified the Authority of its intention to operate a conflicts of interest regime ("**Conflicts Regime**"), the System Integrator acknowledging that its obligations under this Contract and its aspiration to participate to be a provider of goods and/or services in future procurements connected with the TIQUILA Programme will require the careful management of information both internally and externally by the System Integrator and System Integrator Related Parties.
- 97.2 Notwithstanding the full adherence by the System Integrator to the provisions of the Conflicts Regime, the Authority reserves the right to exclude the System Integrator from participation in any future procurements contemplated in Clause 97.1 (*Conflicts of Interest and Impartiality*) (whether to comply with law, as may be permitted in accordance with the regulations applying to any such future procurements or for any reason to ensure fair competition for such procurements).

98 Decoupling

- 98.1 If the System Integrator shall enter into any other contract with the Crown relating in any way to the subject matter of this Contract, then, no breach by the Crown of that other contract nor any other act or omission nor any written or oral statement nor any representation whatsoever of or by the Crown its servants or agents or other contractors relating to or connected with any other contracts as aforesaid shall, regardless of any negligence on its part or their part:
- 98.1.1 give the System Integrator any right under this Contract to an extension of time or additional payment or damages or any other relief or remedy whatsoever against the Authority; or
- 98.1.2 affect, modify, reduce or extinguish either the obligations of the System Integrator or the rights or remedies of the Authority; or

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

99 Rights of Third Parties

- 99.1 Except as provided in Clause 99.2 (*Rights of Third Parties*) and notwithstanding anything to the contrary elsewhere in this Contract, no right is granted to any person who is not a Party to enforce any term of this Contract in his own right and the Parties declare that they have no intention to grant any such right.
- 99.2 Where, and only where, this Contract expressly states that a Third Party shall be entitled to enforce a term of this Contract:
- 99.2.1 the said Third Party shall be entitled to enforce that term in his own right;
- 99.2.2 the System Integrator shall inform the said Third Party as soon as is reasonably practicable of the existence of the relevant right together with any other terms (including the terms of this Clause 99.2 (*Rights of Third Parties*)) relevant to the exercise of that right; and
- 99.2.3 the Third Party's rights shall be subject to:
- (i) the resolution of any Dispute pursuant to the Dispute Resolution Procedure; and
 - (ii) Clause 100 (*Law*).

100 Law

- 100.1 This Contract shall be considered as a contract made in England and subject to English Law.
- 100.2 Subject to and without prejudice to the Dispute Resolution Procedure, each Party hereby irrevocably submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to this Contract or breach thereof.
- 100.3 Other jurisdictions may apply solely for the purpose of giving effect to this Clause 100 (*Law*) and for the enforcement of any judgement, order or award given under English jurisdiction.

101 Not used

102 Counterparts

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

IN WITNESS this document has been duly executed by the Parties on the date which appears at the head of page 1.

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Signed by)
[title])
for and on behalf of **THE SECRETARY OF**)
STATE FOR DEFENCE

Signature

.....
Name

Executed by **LOCKHEED MARTIN** acting by)
[NAME OF DIRECTOR], a director and)
[NAME OF SECOND)
DIRECTOR/SECRETARY], [a director **OR** its
secretary]:

Director's signature

.....
[Director's signature **OR** Secretary's
signature]

Schedule 1

Definitions, Acronyms and Initialisms

- 1 In this Contract the following words and expressions shall be deemed to have the following meanings:

“Adjoining Property” means any land and/or property adjoining the Authority Sites and each and every part of such land and/or property, including all conduits, roads, footpaths, walls, fences, buildings and other erections and all other apparatus on, under or within such land and/or property;

“Ad Hoc Tasking Form” means the form set out in Annex 2 (*Ad Hoc Task Order Template*) of Schedule 8 (*Ad Hoc Task Order Approval Process*);

“Ad Hoc Task Order” means an order by the Authority for any additional services or equipment that do not form part of the System Integrator Deliverables at the time of such instruction in accordance with Schedule 8 (*Ad Hoc Task Order Approval Process*), other than an order submitted pursuant to the provisions of Part 5 (*Capability Integration Cycle*) of Schedule 2 (*Obligations of the System Integrator*);

“Ad Hoc Task Order Proposal” has the meaning given in paragraph 1.6 of Schedule 8 (*Ad hoc Task Order Approval Process*);

“Ad Hoc Task Price” means a price for an Ad Hoc Task Order as set out in the Approved Ad Hoc Task Order;

“Ad Hoc Task Milestone Price” means a milestone price for an Ad Hoc Task Order as set out in the Approved Ad Hoc Task Order;

“Additional Spares” means:

- (a) spares other than Initial Spares; and
- (b) any Spares referred to in a Demand to the extent that such Demand relates to Initial Spares;

“Additional ZODIAC Requirements” has the meaning given in paragraph 4.2 of Part 1 (*General*) of Schedule 2 (*Obligations of the System Integrator*);

“ADR” has the meaning given to it in Clause 95.1 (*Dispute Resolution*);

“Affiliate” means in relation to any person, any Holding Company or Subsidiary of that person or any Subsidiary of such Holding Company;

“Ageing Aircraft Strategy” is as set out in Annex 1 (*Contract Data Deliverables*) of Schedule 6 (*Governance and Reporting*);

“Agile Trade Approval Certificate” means a certificate approving a Proposed Agile Trading Change which shall be substantially in the form set out at Annex 1 to Part 2 (*Agile Trading Change*) to Schedule 9 (*Change Procedure*) and prepared in accordance with Part 2 (*Agile Trading Change*) to Schedule 9 (*Change Procedure*);

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“Agile Trading Change” has the meaning given in paragraph 1.1 of Part 2 (*Agile Trading Change*) of Schedule 9 (*Change Procedure*);

“Agile Trading Requirement” has the meaning given in paragraph 1.1 of Part 2 (*Agile Trading Change*) of Schedule 9 (*Change Procedure*);

“Agreed Safety Target” means the required level of assurance that must be demonstrated to meet specific safety criteria;

“Air Platform” means the base platform that provides the ability to be airborne;

“Air Safety Information Management System” or **“ASIMS”** means the information management system used by the Authority to manage Air Safety Occurrence reporting and investigation;

“Air Safety Occurrence” or **“ASO”** means an event that compromises air safety;

“Air System” means both the MUAS and the GCS and/or the ground-based systems required for their safe operation;

“Air System Document Set” means a set of instructions which describe operating procedures, operating limitations and maintenance procedures;

“Air System Integrity Management Strategy” is as set out in Annex 1 (*Contract Data Deliverables*) of Schedule 6 (*Governance and Reporting*);

“Air System Maintenance Manual” is as set out in Annex 1 (*Contract Data Deliverables*) of Schedule 6 (*Governance and Reporting*);

“Airworthy” means the ability of the Air System to be operated in flight and on the ground without significant hazard to operators, maintainers, or to third parties; it is a technical attribute of materiel;

“Airworthiness Status” means the current reported state of an Air System or MUAS with respect to the ability of it to be operated in flight and on the ground without significant hazard to aircrew, ground crew or to third parties;

“Amber” means the level of performance achieved by the System Integrator for a KPI or PI as set out against the relevant KPI or PI in Annex 1 (*KPIs and PIs*) of Schedule 4 (*System Integrator Performance Mechanism*);

“Annual Performance Review Discussion Period” has the meaning given in paragraph 2.10 of Schedule 4 (*System Integrator Performance Mechanism*);

“Annual Performance Review Meeting” is as set out in Annex 2 (*Meetings*) of Schedule 6 (*Governance and Reporting*);

“Approaching Target” means where the Authority is satisfied (acting reasonably) that the System Integrator is close to meeting a Delivery Objective;

“Approve” means the written approval issued by the Authority’s Representative in accordance with the relevant provisions of this Contract in relation to any proposal

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issued by the System Integrator under this Contract and **“Approved”** and **“Approval”** shall be construed accordingly;

“Approved Ad Hoc Task Order” means an Ad Hoc Task Order Proposal that has been Approved by the Authority;

“Approved Ad Hoc Task Order Payment” means the Approved payment for the Ad Hoc Task Orders in any Contract Month and such payment shall be the sum of all relevant Ad Hoc Task Milestone Prices and other payments included in the relevant Ad Hoc Task Order (if any) that become due and payable that Contract Month for all applicable Approved Ad Hoc Task Orders;

“Approved CIC Task Order” means a proposal for a CIC Task Order that has been Approved by the Authority;

“Approved CIC Task Order Payment” means the Approved payment for the CIC Task Orders in any Contract Month and such payment shall be the sum of all relevant CIC Task Order Prices and other payments included in the relevant CIC Task Order (if any) that that become due and payable that Contract Month for all applicable Approved CIC Task Orders;

“Approved Maintenance” means Maintenance which has been Approved by the Authority;

“Approved Spares List” means the parts required to support the TIQUILA System;

“Approved Task Order” means a Task Order Proposal that has been Approved by the Authority;

“Approved TO1 Payment” means the Approved payment for Task Order 1 in any Contract Month and such payment shall be the sum of all relevant TO1 Milestone Prices that become due and payable that Contract Month;

“Approved TO2 Payment” means the Approved payment for Task Order 2 in any Contract Month and such payment shall be the sum of all relevant TO2 Milestone Prices that become due and payable that Contract Month;

“Approved TO3 Payment” means the Approved payment for Task Order 3 in any Contract Month and such payment shall be the sum of all relevant TO3 Milestone Prices that become due and payable that Contract Month;

“Approved TO4 Payment” means the Approved payment for Task Order 4 in any Contract Month and such payment shall be the sum of the Core Service Fee and the In Service Support Fee and the Training Fee due and payable in that Contract Month;

“Approved TO1 Price” means the Firm Price set out in Task Order 1 and such Firm Price is payable by the Authority to the System Integrator for the System Integrator providing the System Integrator Deliverables for Task Order 1 in accordance with this Contract;

“Approved TO2 Price” means the Firm Price set out in Task Order 2 and such Firm Price is payable by the Authority to the System Integrator for the System Integrator

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providing the System Integrator Deliverables for Task Order 2 in accordance with this Contract;

“Approved TO3 Price” means the Firm Price set out in Task Order 3 and such Firm Price is payable by the Authority to the System Integrator for the System Integrator providing the System Integrator Deliverables for Task Order 3 in accordance with this Contract;

“Article” includes part or the whole of any item, component or process which the System Integrator is required under this Contract to supply or in connection with which it is required under this Contract to carry out any service and any other article or part thereof to the same design as that article and **“Articles”** shall be construed accordingly;

“Asbestos” has the meaning given in Clause 73.1 (*Use Of Asbestos*);

“Assignee” has the meaning given to it in Clause 84.2 (*Transfer*);

“Auditors” has the meaning given in Clause 39.12 (*Cyber*);

“Authority Background IPR” means any IPR subsisting and owned by the Authority (other than any Vesting IPR);

“Authority Data” has the meaning given in Clause 30.1 (*Authority Data*);

“Authority Notice of Change” has the meaning given in paragraph 4.1 of Part 1 (*Change Procedure*) of Schedule 9 (*Change Procedure*);

“Authority Related Party” means an officer, servant or agent of the Authority (other than the System Integrator and/or any System Integrator Related Party);

“Authority Respondent” means any respondent which the Authority notifies the System Integrator is an “Authority Respondent” from time to time including, without limitation, any Sub-Contractor;

“Authority Sites” means those sites which are in the Authority's control or were in the Authority's control immediately prior to the Effective Date and which are to be used by the System Integrator for the purposes of providing the System Integrator Deliverables;

“Authority System” means the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the System Integrator in connection with this Contract which is owned by the Authority or licensed to it by a Third Party and which interfaces with the System Integrator System and/or the Tiquila System or which is necessary for the Authority to receive the System Integrator Deliverables;

“Authority's Anti-Slavery and Human Trafficking Policy” means the Authority's anti-slavery and human trafficking policy from time to time in force;

“Authority's Commercial Officer” means such representative or representatives as is nominated and authorised to conduct commercial negotiations on behalf of the Authority;

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“Authority’s Project Officer” means such representative or representatives of the Authority as the Authority may notify to the System Integrator from time to time;

“Authority’s Representatives” means the persons identified as the Authority’s Representatives in table 1 of Part 2 (*Key Personnel*) of Schedule 6 (*Governance and Reporting*);

“Automatic Test Equipment” or **“ATE”** is a specific type of Test Equipment that is automated, usually a computer-driven approach to testing in which the computer is used to control, via test software or firmware, test instruments to provide stimuli to and measure the response from, a unit under test;

“Background Patents and Designs” means patents or registered designs granted in respect of any patent or registered design applications made before the date of issue of the Authority’s first written Invitation to Negotiate for this Contract and any such applications made after that date in respect of inventions or designs first reduced to writing by the inventor(s) or designer(s) before that date;

“BACS” has the meaning given to it in Clause 18.1 (*Payment of Bills using the Bankers Automated Clearing Service System*);

“Bedding-In Period” means:

- (a) in respect of KPIs 1.1, 1.2 and 1.3, a period commencing on Contract Award and expiring three (3) Contract Months immediately following the date on which Milestone 1.10 and 1.11 under Task Order 1 (as set out in Annex 2 (*Task Orders 1, 2, and 3 Milestone Payment Plan*) to Schedule 7 (*Pricing and Payment*)) is certified by the Authority as satisfied;
- (b) in respect of PI 2, a period commencing on Contract Award and expiring six (6) Contract Months immediately following the Contract Month in which the first Joint Requirements Working Group meeting is held; and
- (c) in respect of all other KPIs and PIs, a period of three (3) Contract Months immediately following Contract Award;

“Capability Requirements” means the requirements of Part 3 (*Capability Requirements*) of Schedule 2 (*Obligations of the System Integrator*);

“Central Government Body” means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

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“Certificate of Conformity” means the certificate of conformity provided by the System Integrator pursuant to Clause 74.4 (*Quality Assurance*) containing the information as set out in Clause 74.6 (*Quality Assurance*);

“Change” means a change which the Authority or the System Integrator shall be entitled to propose in accordance with Part 1 (*Change Procedure*) of Schedule 9 (*Change Procedure*);

“Change of Control” means:

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the System Integrator or a Sub-Contractor (as the case may be) (including the control over exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends):
 - (i) in the case of the System Integrator, from that set out in Clause 7.1.5 (*System Integrator Warranties and Undertakings*); and
 - (ii) In the case of a Sub-Contractor, from the relevant holdings at the date on which the relevant Sub-Contractor became a Sub-Contractor; and/or
- (b) any other arrangements that have or may have or which result in the same effect as limb (a) above; and/or
- (c) any disposal or acquisition by the System Integrator of a material asset (including shares held by the System Integrator or any of its Subsidiaries in any company), business or undertaking;

“Child Labour Legislation” means those International Labour Law Conventions concerning economic exploitation of children through the performance of work which is likely to be hazardous or to interfere with a child's health or development, including but not limited to slavery, trafficking, debt bondage or forced labour, which are ratified and enacted into domestic law and directly applicable to the System Integrator in the jurisdiction(s) in which it performs this Contract;

“CIC Task Order” means an order for the implementation of an Innovation Proposal, which shall be substantially in the form set out at Annex 1 (*CIC Task Order Template*) to Part 5 (*Capability Integration Cycle*) of Schedule 2 (*Obligations of the System Integrator*) and prepared in accordance with paragraph 5.1 (*CIC Task Order*) of Part 5 (*Capability Integration Cycle*) of Schedule 2 (*Obligations of the System Integrator*);

“CIC Task Order Price” means a price for a CIC Task Order as set out in the Approved CIC Task Order;

“Configuration Control Board” or **“CCB”** is as set out in Annex 2 (*Meetings*) of Schedule 6 (*Governance and Reporting*);

“Configuration Management” has the meaning given in Part 4 of Schedule 2 (*Obligations of the System Integrator*);

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“Configuration Management Plan” means the plan detailing how Configuration Management will be applied over the life of an Article, providing control and visibility of the Article’s functional and physical attributes in accordance with RA5311;

“Conflicts Regime” has the meaning given in Clause 97.1 (*Conflicts of Interest and Impartiality*);

“Contingent Operation” means any operation which the Authority notifies the System Integrator is a “Contingent Operation” from time to time including, without limitation, peace enforcement, peace keeping and/or focussed intervention operations;

“Contract” means this contract (including its Schedules, Appendices and Annexes) as may be amended and/or extended from time to time;

“Contract Award” means the Effective Date;

“Contract Data Deliverables” are the deliverables set out in the table at Annex 1 (*Contract Data Deliverables*) of Schedule 6 (*Governance and Reporting*);

“Contract Month” means a calendar month in a Contract Year;

“Contract Period” means the period commencing on and from the Effective Date and ending on the earlier of the Expiry Date and the Termination Date;

“Contract Price” means the price which is payable to the System Integrator by the Authority for the full and proper performance by the System Integrator of the System Integrator Deliverables under this Contract calculated in accordance with the provisions of Schedule 7 (*Pricing and Payment*) and any other relevant provisions of this Contract, as adjusted from time to time in accordance with this Contract;

“Contract Year” means:

- (a) a period of twelve (12) months commencing on the Effective Date; or
- (b) thereafter a period of twelve (12) months commencing on each anniversary of the Effective Date,

provided that the final Contract Year shall end on the Expiry Date or Termination Date;

“Contract Year 1” means the first calendar year from the Effective Date and each of “Contract Year 2” to “Contract Year 10” shall be construed accordingly;

“Control Copy” has the meaning given in paragraph 7.4 (*System Integrator Retention of Records*) of Schedule 11 (*IPR*);

“Controlled Information” means any information in any written or tangible form in any media which is disclosed to the System Integrator by or on behalf of the Authority under or in connection with this Contract, and which is identified by the legend “Controlled Information” or any other approved legend notified to the System Integrator, and which is subject to an export, transfer or transit obligation or any other related technology transfer or disclosure restriction that requires special handling measures or is deemed by the Authority to be especially sensitive commercial information that has been

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obtained from a Third Party, and the term “**Controlled Information**” shall exclude information provided by oral communication;

“**Controller**” has the meaning given in Clause 37.1 (*Protection of Personal Data*);

“**Core Service Fee**” is the fee set out at table 1.01 of the Price List for the relevant Contract Year, payable each Contract Month from the Full Operating Capability Date on a pro rata basis;

“**COTS**” means commercial off the shelf, being a packaged solution which can then be adapted to satisfy the needs of the purchasing organisation;

“**Counterfeit Materiel**” has the meaning given in Clause 70.1 (*Counterfeit Materiel*);

“**CP&F**” has the meaning given in Clause 15 (*Payment under CP&F*);

“**Critical Document**” means the documents, plans and reports as referred to in Schedule 2 (*Obligations of the System Integrator*) and/or Schedule 6 (*Governance and Reporting*);

“**Critical Design Review**” or “**CDR**” is as set out in Annex 2 (*Meetings*) of Schedule 6 (*Governance and Reporting*);

“**Critical Failure**” means any:

- (a) Air System that is not Fully Serviceable for Routine Operations; and/or
- (b) Spare which is unavailable where such unavailability causes or contributes to any Air System not being Fully Serviceable for Routine Operations.

“**Crown**” means His Majesty’s Government of the United Kingdom of Great Britain and Northern Ireland;

“**Crown Use**” means in relation to a patent means the doing of anything by virtue of sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the first schedule to the Registered Designs Act 1949;

“**Customer**” means a customer of the Authority from within the Ministry of Defence;

“**Data Protection Impact Assessment**” has the meaning given in Clause 37.1 (*Protection of Personal Data*);

“**Data Protection Legislation**” has the meaning given in Clause 37.1 (*Protection of Personal Data*);

“**Data Protection Officer**” has the meaning given in Clause 37.1 (*Protection of Personal Data*);

“**Data Subject Request**” has the meaning given in Clause 37.1 (*Protection of Personal Data*);

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“Defence Contracts Online” means Defence Contracts Online accessible at <https://www.contracts.mod.uk/> or any replacement thereof for the government procurement opportunities in the defence sector;

“Defence Exemption Certificate” means the certificate demonstrating that an exemption from REACH Regulations, in specific cases for certain substances, on their own, in a mixture or in an article, has been granted in the interests of defence;

“Defence Logistics Framework” means the defence logistics framework operated and maintained by Defence Equipment and Support for and on behalf of the Authority;

“Defence Sourcing Portal” or **“DSP”** means the e-sourcing system for advertising, tendering, evaluation, and awarding defence contracts in the United Kingdom;

“DEFFORM 111” means the completed DEFFORM 111 set out in Schedule 20 (*Addresses and Other Information (DEFFORM 111)*);

“DEFFORM 532” means the completed DEFFORM 532 set out in Schedule 21 (*Personal Data Particulars (DEFFORM 532)*);

“Deliverable Information” means technical or any other Information whether owned or controlled by the System Integrator or a Third Party which is generated and/or delivered under this Contract, (or which would, if the System Integrator had fully complied with its obligations under this Contract, have been generated and/or delivered) to the Authority;

“Delivery Objective” means a delivery objective identified in the Social Value Plan;

“Delivery Team” means the RPAS team within Defence Equipment and Support with responsibility for the RPAS programmes and projects;

“Demand” means a demand issued by the Authority’s Representative for the System Integrator to provide any Spares and/or carry out any Repairs to any part of Air System;

“design right”, for the purpose of Schedule 11 (*IPR*), shall have the meaning ascribed to it by section 213 of the Copyright, Designs and Patents Act 1988;

“Design Safety Target” means the specific safety criteria set by the MAA that an air system design must achieve;

“Discussion Period” has the meaning given in paragraph 2.5 of Schedule 4 (*System Integrator Performance Mechanism*);

“Dispute” means any dispute, claim or difference of whatever nature arising out of, in connection with, or in relation to this Contract, including a claim based on contract, tort, equity or domestic or international statute;

“Dispute Forum” has the meaning given in Clause 7.2.1(i) (*System Integrator undertakings*);

“Dispute Resolution Procedure” means the procedure set out in Clause 95 (*Dispute Resolution*);

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“Diversion Orders” has the meaning given to it in Clause 24.1 (*Diversion Orders*);

“Disputed Amount” has the meaning given in Clause 17.1 (*Disputed Amounts*);

“DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to:

- (a) tell HM Revenue & Customs of any specified notifiable arrangements or proposals; and
- (b) provide prescribed information on those arrangements or proposals within set time limits as:
 - (i) contained in Part 7 of the Finance Act 2004 and in secondary legislation made under powers contained in Part 7 of the Finance Act 2004; and as
 - (ii) extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;

“DPA 2018” has the meaning given in Clause 37.1 (*Protection of Personal Data*);

“EAN International” means the international organisation used to provide standards on barcode symbology and numbering systems;

“EBC” has the meaning given in limb (c) of the definition of **“Unique Identifiers”**;

“Effective Date” means the date of this Contract;

“Electro-Optical/Infra-Red Payload” or **“EO/IR Payload”** means a modular imaging system which spans both visible and infrared wavelengths;

“Employee” means any person who is an employee, officer or director of the System Integrator and/or any person who is an employee, officer or director of any Sub-Contractor (as the case may be) or who occupies the position of an officer or director of the System Integrator and/or any Sub-Contractor (as the case may be), by whatever title given;

“Employee Liability Information” has the same meaning as in Regulation 11(2) of the Transfer Regulations;

“Employing Sub-Contractor” means any Sub-Contractor providing all or any part of the System Integrator Deliverables who employs or engages any person in providing the System Integrator Deliverables;

“Enabling Contractor” means any sub-contractor to the System Integrator under this Contract who is a member of the SEA;

“Enabling Contracting Plan” means the plan set out in Schedule 14 (*Enabling Contracting Plan*);

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“Enabling Contracts” means the contracts entered into between the System Integrator and the Enabling Contractors and the contracts entered into between any Enabling Contractor and any other Enabling Contractor in respect of participation in the SEA and **“Enabling Contracting”** shall be construed accordingly;

“Engine Evaluation” is as set out in Annex 1 (*Contract Data Deliverables*) of Schedule 6 (*Governance and Reporting*);

“Environmental Regulations” means the Environmental Information Regulations 2004 as amended, extended, re-enacted or replaced from time to time and **“Environmental Regulation”** means any one of them or (as the case may be) any specified provision of the Regulations;

“EO/IR Payload Set” means the relevant EO/IR Payload for each MUAS;

“Equivalent Provisions” has the meaning given to it in Clause 39.3.9 (*Cyber*);

“EU” means the European Union;

“EUPI” has the meaning given in limb (c) of the definition of “Unique Identifiers”;

“Excess Monthly Payment” has the meaning given in paragraph 1.4 of Part 1 (*Calculating the Monthly Payment*) of Schedule 7 (*Pricing and Payment*);

“Exit Costs” means the reasonable and proper costs incurred by the System Integrator in providing the Exit Plan and otherwise complying with its obligations provided that such costs shall not exceed the Exit Price;

“Exit Plan” means the plan set out at Schedule 15 (*Exit Plan*) as may be developed and/or amended in accordance with Clause 80.2 and Clause 80.3 (*Exit Plan*);

“Exit Price” means the price set out at table 9 of the Price List;

“Exit Requirements” means those services and obligations which the System Integrator is required to provide to the Authority in accordance with Clause 80 (*Exit Plan*) on exit, as identified in the Exit Plan, and/or elsewhere in this Contract (as the case may be);

“Expense Policy” means the Ministry of Defence Statement of Civilian Personnel Policy (Business Travel Guide) as amended from time to time or as otherwise notified to the System Integrator by the Authority;

“Expiry Date” means the date ten (10) years from the Effective Date, as such date may be extended in accordance with this Contract;

“Factory Acceptance Plan” is as set out in Annex 1 (*Contract Data Deliverables*) of Schedule 6 (*Governance and Reporting*);

“Fault Reporting, Analysis and Corrective Actions System” of **“FRACAS”** means a system for the reporting of failures, analysis and corrective actions taken in response to failures;

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“FCDG Meeting” is as set out in Annex 2 (*Meetings*) of Schedule 6 (*Governance and Reporting*);

“Field Testing” means the test and evaluation of the Air System in an environment that is representative of the intended end-use case, by operators that are representative of the end-user community and **“Field Test”** shall be construed accordingly;

“Financial Management Information” means the information to be provided by the System Integrator in accordance with Part 4 (*Financial Management Information*) to Schedule 7 (*Pricing and Payment*);

“Financial Transparency Objectives” means the financial transparency objectives set out at paragraph 5 of Part 2 (*The Contract Price*) of Schedule 7 (*Pricing and Payment*);

“Firm Price” means a price not subject to variation in any respect;

“Fixed Price” means a price that is subject to variation;

“FOI Act” means the Freedom of Information Act 2000;

“Follow-On System Integrator” has the meaning given in Clause 82 (*Continuing Assistance*);

“Force Majeure Event” has the meaning given in Clause 28.1 (*Force Majeure*);

“Forward Operating Base Workshops” means any secured forward operational level military position, commonly a military base, that is used to conduct first and some limited second line maintenance;

“Failure Reporting, Analysis and Corrective Action Strategy” or **“FRACAS Strategy”** is as set out in Annex 1 (*Contract Data Deliverables*) of Schedule 6 (*Governance and Reporting*);

“Full Operating Capability Date” or **“FOC”** means the date on which the System Integrator is confirmed by the Authority in accordance with paragraph 8 (*Task Order Milestones*) of Part 1 of Schedule 7 (*Pricing and Payment*) to have satisfied all the Milestones set out in the Milestone Payment Plan in respect of Task Order 3;

“Fully Serviceable” means the Air System is Airworthy (where applicable) and is ready for immediate use for any Routine Operation and is capable of performing the full range of material functions for the relevant Routine Operation;

“Future Capability Development Group” or **“FCDG”** means the group of Authority personnel established to collate and discuss feedback received from the user community on equipment requirements, capability needs and emergent threats and to consider the Innovation activities proposed by the System Integrator in accordance with Part 5 (*Capability Integration Cycle*) of Schedule 2 (*Obligations of the System Integrator*);

“GB CLP” means the Classification, Labelling and Packaging (GB CLP) Regulation;

“General Anti-Abuse Rule” means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

“GFX” means the items listed in Schedule 5 (*GFX*);

“GFX Failure” means the failure of the Authority to provide GFX as set out in Schedule 5 (*GFX*);

“Good” means where the System Integrator is meeting or exceeding a Delivery Objective;

“Good Industry Practice” means that degree of skill, care, prudence and foresight and operating practice, which would reasonably and ordinarily be expected from time to time of a skilled and experienced system integrator and/or contractor engaged in the same type of undertaking as that of the System Integrator and/or any Sub-Contractor under the same or similar circumstances;

“Government Department” means any department of the central government of the United Kingdom whose powers have not been devolved to any other national or regional executive or body, including any central government department with powers to administrate in specific geographical areas only (such as in England and Wales only);

“Government Establishment” means any sites and/or real property owned and/or operated by HMG, including the Authority Sites, any of His Majesty’s ships or vessels and any service stations;

“Green” means the level of performance achieved by the System Integrator for a KPI or PI as set out against the relevant KPI or PI in Annex 1 (*KPIs and PIs*) of Schedule 4 (*System Integrator Performance Mechanism*);

“Ground Control Station” or **“GCS”** means a land-based or sea-based control centre that provides the facilities for human control of MUAS;

“Halifax Abuse Principle” means the principle explained in the CJEU Case C-255/02 Halifax and others;

“HMG” means His Majesty’s Government of the United Kingdom of Great Britain and Northern Ireland;

“HMRC” means His Majesty’s Revenue and Customs;

“Holding Company” has the meaning given in, and shall be construed in accordance with, section 1159 and section 1162 of the Companies Act 2006;

“IIG” has the meaning given in Clause 54.1 (*Codification Requirements for Item Identification*);

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“Immediate Technical Query” means a query submitted to the System Integrator by the Authority where information is required to:

- (a) ensure the availability of an Air System preparing for or currently on, Contingent Operations; or
- (b) inform a service inquiry in accordance with RA1410;

“Inadequate” means where the Authority considers (acting reasonably) that the System Integrator is significantly below a Delivery Objective;

“Index” has the meaning given in paragraph 7.4.3 (*Variation of Price*) of Part 2 (*The Contract Price*) of Schedule 7 (*Pricing and Payment*);

“In-Service Support” means the services set out in Part 4 (*In-Service Support*) of Schedule 2 (*Obligations of the System Integrator*);

“In-Service Support Fee” means the fee set out at table 1.02 of the Price List for the relevant Contract Year, payable each Contract Month from the Full Operating Capability Date on a pro rata basis;

“Integrity Management Working Group” or **“IMWG”** is as set out in Annex 2 (*Meetings*) of Schedule 6 (*Governance and Reporting*);

“Interfaces” means means those tangible or intangible features of any system, equipment, module or application – including those outlined in ISO 7498 (Basic reference Model for Open Systems Interconnection) – forming part of the System Integrator Deliverables, 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 interoperability;

“Information” means:

- (a) for the purpose of Schedule 11 (*IPR*), Clause 7.1.17 (*System Integrator warranties*) and Clause 7.2.5 (*System Integrator undertakings*) (and the definitions used therein), technical data relating to Articles, processes or materials whether in human readable form or in machine readable form, or in any other form (but excluding software subject to Part 2 (*Intellectual Property Rights in Software*) of Schedule 11 (*IPR*) or for which the Authority is otherwise licensed); or
- (b) for any other purpose, information in any form, whether written, oral, electronic, or in a tangible form disclosed to one Party by or on behalf of the other Party under or in connection with this Contract that is identified as being of a confidential or proprietary nature or which ought reasonably to be considered to be confidential, including information provided in the tender or negotiations which preceded Contract Award;

“Initial Operating Capability” or **“IOC”** means the date on which the System Integrator is confirmed by the Authority in accordance with paragraph 8 (*Task Order Milestones*) of Part 1 of Schedule 7 (*Pricing and Payment*) to have satisfied all the Milestones set out in the Milestone Payment Plan in respect of Task Order 2;

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“Initial Provisioning” means from the Effective Date, the System Integrator shall:

- (a) prepare, maintain, update and Upload an Approved Spares List and such Approved Spares List shall include, as a minimum:
 - (i) the type and quantity of the Spares;
 - (ii) the location of the Spares; and
 - (iii) the estimated time required to deliver the Spares to the Purple Gate or such other location identified in this Contract;
- (b) provide an Air System Document Set and all other information, documents, plans and reports referred to in Schedule 2 (*Obligations of the System Integrator*), the relevant Task Orders and/or the Milestone Payment Plan; and
- (c) provide any other service or requirement that is required by the Authority (acting reasonably),

to ensure that the Air System is Airworthy for the period from the Effective Date until the later of:

- (a) IOC; and
- (b) the commencement of Contract Year 3;

“Initial Service Fielding Date” or **“ISF”** means the date on which the System Integrator is confirmed by the Authority in accordance with paragraph 8 (*Task Order Milestones*) of Part 1 of Schedule 7 (*Pricing and Payment*) to have satisfied all the Milestones set out in the Milestone Payment Plan in respect of Task Order 1;

“Initial Spares” means any spare identified or referred to in:

- (a) the Supply Support Plan;
- (b) any other relevant part of Schedule 2 (*Obligations of the System Integrator*);
- (c) Task Order 1;
- (d) Task Order 2;
- (e) Task Order 3;
- (f) Task Order 4; and/or
- (g) the Price List;

“Initial ZODIAC Requirements” has the meaning given in paragraph 4.1 of Part 1 (*General*) of Schedule 2 (*Obligations of the System Integrator*);

“Innovation” means:

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- (a) the emergence of new and evolving relevant technologies which could improve the System Integrator Deliverables, and those technological advances potentially available to the System Integrator and the Authority which the Parties may wish to adopt;
- (b) new or potential improvements to the System Integrator Deliverables including the quality, responsiveness and reliability of such System Integrator Deliverables and any associated processes or procedures;
- (c) new or potential improvements to the interfaces or integration of the System Integrator Deliverables with other Authority assets and/or services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk;
- (d) changes in business processes and ways of working that would enable the System Integrator Deliverables to be delivered at lower cost and/or with greater benefits to the Authority; and/or
- (e) changes to the business processes and ways of working that would enable reductions in the total energy consumed in the delivery of the System Integrator Deliverables;

“Innovation Proposal” means the proposal of a Solution to an Innovation Requirement prepared in accordance with paragraph 2 of Part 5 (*Capability Integration Cycle*) of Schedule 2 (*Obligations of the System Integrator*);

“Innovation Requirement” has the meaning given in paragraph 1.3 (*Future Capability Development Group*) of Part 5 (*Capability Integration Cycle*) of Schedule 2 (*Obligations of the System Integrator*);

“Insolvency Event” occurs in relation to any person (which for the avoidance of doubt shall include an individual, a partnership, whether unlimited, limited, or limited liability, or any other type of entity as applicable and for this purpose “it” or “its” shall refer to such individual or partnership or other entity) when any one or more of the following events occurs to that person:

- (a) a meeting of its partners, shareholders, directors or other officers is convened for the purpose of considering any resolution, to petition, to apply, or to file documents with a court or any registrar, for its winding-up, administration or dissolution, or for it to enter the moratorium procedure under Part A1 of the Insolvency Act 1986 (the **“Moratorium Procedure”**), or any such resolution is passed;
- (b) its partners, shareholders, directors or other officers request the appointment of, or give notice of their intention to appoint, a liquidator, compulsory manager, receiver, administrative receiver, administrator, monitor or similar officer, or a qualifying floating charge holder gives notice of their intention to appoint an administrator;
- (c) any person presents a petition, or makes an application, or files documents with a court or any registrar: for its winding-up, bankruptcy, sequestration, administration or dissolution; or for it to enter the Moratorium Procedure; or,

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without limitation to the foregoing, in the case of a partnership other than a limited liability partnership, for the individual bankruptcy or sequestration of any one or more partners in the partnership, other than any winding-up, bankruptcy or sequestration petition which is contested in good faith and/or shown as frivolous or vexatious and discharged or dismissed within three (3) Working Days after presentation;

- (d) any Security Interest is enforced by a judicial decision over a part or all of its assets;
- (e) an order for its winding-up, bankruptcy, sequestration, provisional liquidation, administration, or dissolution is made, or an order that it is subject to the Moratorium Procedure is made, or it enters winding-up, bankruptcy, sequestration, provisional liquidation, administration, or the Moratorium Procedure, or is dissolved, or, without limitation to the foregoing, in the case of a partnership other than a limited liability partnership, any one or more of the partners is made bankrupt or an order for their sequestration is made;
- (f) any liquidator, provisional liquidator, trustee in bankruptcy, compulsory manager, receiver, administrative receiver, administrator, monitor under the Moratorium Procedure, or similar officer is appointed in respect of it or a part of its assets, or, without limitation to the foregoing, in the case of a partnership other than a limited liability partnership, a trustee in bankruptcy, compulsory manager, receiver or other similar officer is appointed in respect of any one or more of the partners or a part of their assets;
- (g) it commences negotiations for, a formal proposal is made for, any formal step is taken in relation to (including filing documents with the court for or applying for a moratorium under Schedule A1 to the Insolvency Act 1986 or an interim order pursuant to section 252 of the Insolvency Act 1986), or it enters or implements a voluntary arrangement under Part I or Part VIII of the Insolvency Act 1986, a scheme of arrangement under Part 26 of the Companies Act 2006, or a composition, arrangement or reconstruction under Part 26A of the Companies Act 2006, but excluding a scheme of arrangement under Part 26 of the Companies Act 2006 which is a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction;
- (h) without limitation to the foregoing, in the case of a partnership other than a limited liability partnership, any one or more of the partners commences negotiations for, a formal proposal is made for, any formal step is taken in relation to (including filing documents with the court for or applying for an interim order pursuant to section 252 of the Insolvency Act 1986), or that partner or partners enters or implements a voluntary arrangement under Part VIII of the Insolvency Act 1986;
- (i) any one or more persons has become entitled to appoint a receiver, including an administrative receiver, over all or any of its assets, or has become entitled to appoint an administrator to it;
- (j) any creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued

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against, the whole or any part of its assets and such attachment or process is not discharged within three (3) Working Days;

- (k) it suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due, or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership other than a limited liability partnership) has any partner to whom any of the foregoing apply;
- (l) it commences negotiations for, a formal proposal is made for, any formal step is taken in relation to, or it enters into an agreement for the rescheduling, reduction and/or a moratorium of any debts owed by it with all or any one or more of its creditors;
- (m) it commences negotiations for, a formal proposal is made for, any formal step is taken in relation to, or it enters into a composition, scheme or arrangement with or in respect of its creditors or any one or more of them, other than an arrangement as a solvent company for the purposes of amalgamation or reconstruction;
- (n) without limitation to the foregoing, in the case of a partnership other than a limited liability partnership, any one or more of the partners commences negotiations for, a formal proposal is made for, any formal step is taken in relation to, or that partner or partners enter into a composition, scheme or arrangement with or in respect of their creditors or any one or more of their creditors;
- (o) it ceases, suspends or threatens to cease or suspend carrying on its business;
- (p) an "insolvency event" as defined in sections 121(2) to 121(5) inclusive of the Pensions Act 2004 occurs to it; and/or
- (q) any other step, process, procedure and/or event occurs in England and Wales or any other jurisdiction in relation to it that is equivalent, similar and/or analogous to any one or more of those set out in (a) to (p) inclusive above;

"Integrate" means, in respect of:

- (a) the relevant System Integrator Deliverable, that the relevant System Integrator Deliverable interfaces with and operates as part of the MUAS;
- (b) any Article forming part of the relevant System Integrator Deliverable, that any such Article interfaces with and operates as part of the relevant System Integrator Deliverable (including with any other product forming part of the relevant System Integrator Deliverable and the MUAS); or

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- (c) the MUAS, to integrate all Articles (including the relevant System Integrator Deliverable) so that all such Articles interface with and operate as part of the MUAS,

in each case, in such manner as shall ensure that the MUAS operates in all respects in accordance with the relevant technical specification and “**Integrated**” and “**Integration**” shall be construed accordingly;

“**Intellectual Property**” means the subject of any Intellectual Property Rights;

“**Intellectual Property Rights**” or “**IPR**” means:

- (a) all patents, utility models, or rights (registered and unregistered) in any designs;
- (b) applications for any of the foregoing;
- (c) copyright;
- (d) database rights;
- (e) semiconductor chip topography rights;
- (f) rights in confidential information and trade secrets; and
- (g) all rights and forms of protection of a similar nature to these or having equivalent effect anywhere in the world;

“**Interface Control Documents**” or “**ICDs**” means a record of all interface information (such as drawings, diagrams, tables, and textual information) necessary and sufficient to fully describe the physical and electronic interface or interfaces between subsystems;

“**Interface Data**” means Technical Data that describes the overall physical, functional and performance characteristics (for example, “form, fit and function” information) of an Article that is a System Integrator Deliverable and is sufficient to enable physical and functional interchangeability, or replacement with interchangeable items, or to enable the Article to interoperate with other items, components or processes. Interface Data includes Interface Control Documents;

“**Issued Property**” means any item, including any physical items which the System Integrator requires under this Contract in order to provide the System Integrator Deliverables (or any element thereof), issued or otherwise furnished to the System Integrator in connection with this Contract by or on behalf of the Authority;

“**Joint Requirements Working Group**” or “**JRWG**” means the group of Authority personnel established to receive the Innovation Proposals in relation to any proposed Solutions from the System Integrator and to decide on whether to proceed from an Innovation Proposal to a CIC Task Order in accordance with Part 5 (*Capability Integration Cycle*) of Schedule 2 (*Obligations of the System Integrator*);

“**JRWG Meeting**” is as set out in Annex 2 (*Meetings*) of Schedule 6 (*Governance and Reporting*);

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“Key Performance Indicator” means a key performance indicator set out in Annex 1 (*KPIs and PIs*) to Schedule 4 (*System Integrator Performance Mechanism*) and **“KPI”** shall be construed accordingly;

“Key SR” means an SR that is stated to have a priority level of “key” in Annex A (*Service Requirements*) to Part 3 (*Capability Requirements*) of Schedule 2 (*Obligations of the System Integrator*), being those SRs that, if not met, would result in a failure of the TIQUILA programme;

“KPI Failure” means a failure to meet the Performance Criteria in respect of a KPI;

“Law” has the meaning given in Clause 37.1 (*Protection of Personal Data*);

“Legislation” means in relation to the United Kingdom:

- (a) any Act of Parliament;
- (b) any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978; or
- (c) any exercise of the Royal Prerogative;

in each case in the United Kingdom;

“Limited Rights” means rights to copy, use, modify or disclose Technical Data, in whole or in part, only within HMG for any UK Governmental Purpose or as otherwise agreed with the System Integrator;

“Limited Rights Technical Data” means Technical Data in which the Authority has Limited Rights;

“Local Investigation” means an investigation into an Air Safety Occurrence, that does not require a Service Inquiry or OSI, which can be tailored in depth as appropriate to the occurrence;

“Local Technical Committee – Config Control Board” or **“LTC-CCB”** is as set out in Annex 2 (*Meetings*) of Schedule 6 (*Governance and Reporting*);

“Logistic Support Date” or **“LSD”** means the date, as agreed with the Authority, at which the validated support system is in place with the appropriate range and scale to support ISF and a plan is in place to ensure the support system will evolve to meet the requirements of IOC and FOC;

“Losses” means all damage, losses, liabilities, claims, actions, costs, expenses (including legal expenses on a standard basis), proceedings, demands and charges whether arising under statute, contract or at common law (and **“Loss”** or **“loss”** shall have the same meaning as **“Losses”**);

“MAA” means the Military Aviation Authority;

“Maintenance” means all activity associated with retaining any Air System or restoring it to a state which is Fully Serviceable and Airworthy (where applicable) in accordance

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with the SRD and includes, without limitation, inspection, supervision, testing, servicing, classification as to serviceability, repair, rebuilding and reclamation;

“Maintenance Plan” means the Maintenance Plan deliverable, as agreed with the Authority, (verified by agreed system assurance activities) and consisting of two elements:

- (a) the Maintenance Policy; and
- (b) the Maintenance Schedule;

The maintenance policy offered by the System Integrator shall detail what maintenance concept and activities that are to be adopted and identify by who, where and when maintenance is to be delivered. The subsequent maintenance plan shall additionally identify which lines and levels, roles and responsibilities, facilities and equipment are required to provide an optimised maintenance solution.

The maintenance schedule offered by the System Integrator shall provide a definition of the maintenance tasks associated with the system, equipment, training equipment and Support and Test Equipment (S&TE). This shall include all mandated and recommended corrective and preventative maintenance tasks and the periodicity of these latter tasks. It shall identify where in the support infrastructure these tasks are to be performed and the skills and resources necessary to carry out these activities. It shall be optimised through life;

“Malicious Software” means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

“Mandatory SR” means an SR that is stated to have a priority level of “mandatory” in Annex A (*Service Requirements*) to Part 3 (*Capability Requirements*) of Schedule 2 (*Obligations of the System Integrator*), being those SRs that are required pursuant to Legislation;

“Manufacturing Plan” is as set out in Annex 1 (*Contract Data Deliverables*) of Schedule 6 (*Governance and Reporting*);

“Material Failure Event” has the meaning given in paragraph 3.10 of Schedule 4 (*System Integrator Performance Mechanism*);

“Milestone” means one or more milestones identified in a Milestone Payment Plan;

“Milestone Acceptance Certificate” means a certificate issued by the Authority’s Representative when they are satisfied that the System Integrator has achieved the relevant Milestone Acceptance Criteria for a Milestone and the Milestone Acceptance Certificate shall identify the Milestone Completion Date for that Milestone;

“Milestone Acceptance Criteria” means the acceptance criteria for each Milestone set out in the Milestone Payment Plan, the Approved Task Order and/or elsewhere in

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this Contract (as the case may be) that the System Integrator is required to satisfy before certification of completion of each Milestone;

“Milestone Completion Date” means the date or dates identified by the Authority’s Representative as the date or dates on which the System Integrator satisfied the Milestone Acceptance Criteria for that Milestone;

“Milestone Completion Notice” means the notice issued by the System Integrator pursuant to paragraph 8.6 of Part 1 of Schedule 7 (*Pricing and Payment*);

“Milestone Deliverable” means any part of the Services and/or System Integrator Deliverable which the System Integrator is required to provide to the Authority for each Milestone as identified in the Milestone Payment Plan, the Approved Task Order and/or elsewhere in this Contract (as the case may be);

“Milestone Payment Plan” means a milestone plan setting out details of the Milestones and payments due on completion of each Milestone:

- (a) in the case of the Milestones due pursuant to Task Order 1, Task Order 2 and Task Order 3, as set out in Annex 2 (*Task Orders 1, 2 and 3 Milestone Payment Plan*) to Schedule 7 (*Pricing and Payment*); and
- (b) in the case of Milestones due pursuant to a CIC Task Order or an Ad Hoc Task Order, as attached to such Approved Task Order;

“Milestone Task Price” means an Ad Hoc Task Price; a CIC Task Order Price; a TO1 Milestone Price; a TO2 Milestone Price or a TO3 Milestone Price (as the case may be);

“Milestone Task Target Date” means each target date specified in the Milestone Payment Plan relating to the relevant Task Order for completion of the relevant Milestone, subject to adjustment in accordance with paragraph 8.4 (*Task Order Milestones*) of Schedule 7 (*Pricing and Payment*);

“Moderation” has the meaning given in paragraph 7.2 of Schedule 4 (*System Integrator Performance Mechanism*);

“Modified Design Data” has the meaning given in paragraph 2.4.1 (*Modifications*) of Schedule 11 (*IPR*);

“Monitoring Period” means in respect of:

- (a) KPI 1.1, 1.2 and 3 and PI 1 and 3 to 5, each Contract Month;
- (b) KPI 2 and 5 and PI 2, each twelve (12) Contract Month period; and
- (c) KPI 4, the period of an Approved Task Order and/or a relevant Milestone (as the case may be), ending on the date on which the System Integrator achieves completion of an Approved Task Order and/or a relevant Milestone (as the case may be);

“Monthly Payment” means the amount calculated in accordance with paragraph 1 of Schedule 7 (*Pricing and Payment*);

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“Monthly Performance Report” means the monthly performance report identified in Schedule 6 (*Governance and Reporting*);

“Monthly Project Review Meeting” is as set out in Annex 2 (*Meetings*) of Schedule 6 (*Governance and Reporting*);

“MOTS” means modified off the shelf, being a COTS product whose source code can be modified;

“Mini-Uncrewed Air System” or **“MUAS”** means the airborne elements of the Air System including the relevant EO/IR Payload Sets and Air Platforms (as applicable);

“NATO Stock Number” or **“NSN”** means a unique item identifier of 13 digits in length, composed of a 4 digit NATO supply classification code and a 9 digit NATO item identification number (NIIN);

“NCS” has the meaning given to it in Clause 53.3.1 (*Supply of Information for NATO Codification and Defence Inventory Introduction*);

“Necessary Consents” means (as varied from time to time) all permits, licences (including licences required under the USA International Traffic in Arms Regulations (ITAR) and US Export Administration Regulations (EAR)), permissions, clearances, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of any of the System Integrator’s obligations under this Contract, in order to comply with law, as a result of the rights of any Third Party and/or the requirements of any foreign government or organisation;

“Notice of Arbitration” has the meaning given in Clause 95.3 (*Dispute Resolution*);

“Notices” has the meaning given in Clause 94.1 (*Notices*);

“Occasion Of Tax Non-Compliance” or **“OOTNC”** means:

- (a) any tax return of the System Integrator submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
 - (i) a Relevant Tax Authority successfully challenging the System Integrator under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; or
 - (ii) the failure of an avoidance scheme which the System Integrator was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; or
- (b) any tax return of the System Integrator submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;

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“Occurrence Safety Investigation” or **“OSI”** means a non-statutory and flexible investigation that provides a standard defence investigation format within ASIMS that can be used to record an investigation into any Air Safety Occurrence;

“Open Source Software” means computer software which is subject to an open source licence;

“Optional Extension” shall have the meaning given in Clause 6.2.1 (*Contract Period*);

“Other Contractor” means any contractor to the Authority (other than the System Integrator) which is notified to the System Integrator from time to time and/or of which the System Integrator ought reasonably to have been aware;

“Packable” means a MUAS with a maximum take-off weight of less than 4kg;

“Packaging” shall have the meaning given in Clause 52.1 (*Packaging*);

“Parties” means the System Integrator and the Authority unless expressly stated differently;

“Performance Criteria” means the performance criteria set out in Annex 1 (*KPIs and PIs*) of Schedule 4 (*System Integrator Performance Mechanism*) which shall be used to determine the System Integrator’s level of performance;

“Performance Failure” means a KPI Failure or a PI Failure (as the case may be);

“Performance Indicator” means a secondary performance indicator set out in Annex 1 (*KPIs and PIs*) of Schedule 4 (*System Integrator Performance Mechanism*) and **“PI”** shall be construed accordingly;

“Persistent Breach” means three (3) or more breaches (the **“Subsequent Breaches”**) by the System Integrator of one of its obligations under this Contract, provided:

- (a) that the Authority has previously served on the System Integrator a notice (**“Warning Notice”**) correctly stating that the System Integrator has, in any Contract Months prior to the service of such Warning Notice, breached such obligation under this Contract on one or more occasions;
- (b) that the System Integrator's Subsequent Breaches of such obligation take place during the eighteen (18) month period following the service of such Warning Notice; and
- (c) no service of a Warning Notice may be based on any breaches of such obligation that have already been the subject of a Warning Notice;

“Personal Data” has the meaning given in Article 4 of the UK GDPR;

“Personal Data Breach” has the meaning given in Clause 37.1 (*Protection of Personal Data*);

“Permanent Retention” means the retention defined in paragraph 3.6.2 of Schedule 4 (*System Integrator Performance Mechanism*);

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“PI Failure” means a failure to meet the Performance Criteria in respect of a PI;

“Plans” means the documents referred to in Part 8 (*Plans*) of Schedule 2 (*Obligations of the System Integrator*);

“Portable” means a MUAS with a maximum take-off weight of less than 20kg;

“Preliminary Design Review” or **“PDR”** is as set out in Annex 2 (*Meetings*) of Schedule 6 (*Governance and Reporting*);

“Prescribed Rate” means two percent (2%) above the base rate from time to time of the Bank of England;

“Previous Contract Month” means the Contract Month immediately prior to the relevant Contract Month;

“Price List” means the price list attached to Annex 1 (*Price List*) of Schedule 7 (*Pricing and Payment*) and updated by the System Integrator during the Contract Period in accordance with express provisions of this Contract;

“Pricing Information” means the price information identified in the Price List;

“Priority 1 SR” means an SR that is stated to have a priority level of “priority 1” in Annex A (*Service Requirements*) to Part 3 (*Capability Requirements*) of Schedule 2 (*Obligations of the System Integrator*), being those SRs that have a high priority relative to the other SRs;

“Priority 2 SR” means an SR that is stated to have a priority level of “priority 2” in Annex A (*Service Requirements*) to Part 3 (*Capability Requirements*) of Schedule 2 (*Obligations of the System Integrator*), being those SRs that have a medium priority relative to the other SRs;

“Priority 3 SR” means an SR that is stated to have a priority level of “priority 3” in Annex A (*Service Requirements*) to Part 3 (*Capability Requirements*) of Schedule 2 (*Obligations of the System Integrator*), being those SRs that have a low priority relative to the other SRs;

“Processor” has the meaning given in Clause 37.1 (*Protection of Personal Data*);

“Prohibited Act” means any instance of the System Integrator or any of its employees, agents or Sub-Contractors (or anyone acting on behalf of such persons), with or without the knowledge or authority of the System Integrator:

- (a) directly or indirectly offering, promising, giving or agreeing to give to any Crown servant any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Crown;
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Crown; or

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- (iii) for improper performance of a relevant function or activity;
- (b) entering into this Contract or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by the System Integrator or on its behalf, or to its knowledge, unless before such contract is entered into, particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority;
- (c) committing any offence:
 - (i) under the Prevention of Corruption Acts 1889-1916 or under sub-sections 108 to 109 of the Anti-Terrorism, Crime and Security Act 2001 (before those Acts or sub-sections are revoked);
 - (ii) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (iii) under Legislation creating offences in respect of fraudulent acts;
 - (iv) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Crown; or
 - (v) any activity, practice or conduct which would constitute one or more of the offences listed in limbs (i) to (iv) inclusive, if such activity, practice or conduct had been carried out in the United Kingdom; or
- (d) defrauding, attempting to defraud or conspiring to defraud the Crown;

“Project Manager” means the person identified as the Project Manager in Table 1 of Part 2 (Key Personnel) of Schedule 6 (*Governance and Reporting*);

“Project Safety & Environmental Panel” or **“PSEP”** is as set out in Annex 2 (*Meetings*) of Schedule 6 (*Governance and Reporting*);

“Proposed Agile Trading Change” has the meaning given in paragraph 1.4 of Part 2 (*Agile Trading Change*) of Schedule 9 (*Change Procedure*);

“Protective Measures” has the meaning given in Clause 37.1 (*Protection of Personal Data*);

“Public Store Account” or **“PSA”** has the meaning given in Clause 60.1.1 (*Accounting for property of the Authority*);

“Quality Assurance Plan” means the plan prepared in accordance with Clause 74 (*Quality Assurance*), an initial draft of which is set out in Schedule 16 (*Quality Assurance Plan*);

“RA” means a regulatory article issued by the MAA;

“Ratchet Amount” has the meaning given in paragraph 3.10.2 of Schedule 4 (*System Integrator Performance Mechanism*);

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“RCACAR” means a root cause analysis in relation to the relevant failure and the presentation of a curative solution via a corrective action report;

“REACH” has the meaning given in Clause 55.2 (*Supply of Hazard Data*);

“Records” has the meaning given in Clause 32 (*The System Integrator’s Records*);

“Rectification Plan” means a plan to address the impact of, and prevent the recurrence of, a Performance Failure;

“Rectification Plan Notice” means a notice issued by the Authority pursuant to paragraph 8.1 of Schedule 4 (*System Integrator Performance Mechanism*);

“Red” means the level of performance achieved by the System Integrator for a KPI or PI as set out against the relevant KPI or PI in Annex 1 (*KPIs and PIs*) of Schedule 4 (*System Integrator Performance Mechanism*);

“Redundant Materiel” means materiel that is identified as surplus to the requirements of this Contract for whatever reason;

“Regulations” means the Defence and Security Public Contracts Regulations (SI 2011/1848) as amended, extended, re-enacted or replaced from time to time and **“Regulation”** means any one of them or (as the case may be) any specified provision of the Regulations;

“Release To Service” means the document that authorises flying on behalf of the relevant Authority duty holder;

“Relevant Authority” means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;

“Relevant Requirements” means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

“Relevant Tax Authority” means HMRC, or, if applicable, a tax authority in the jurisdiction in which the System Integrator is established;

“Relevant Transfer” means a transfer of the employment of Transferring Employees from the System Integrator or any Employing Sub-Contractor to a Follow-On System Integrator or the Authority under the Transfer Regulations;

“Reliability & Maintainability Plan” means the document, as agreed with the Authority, specifying how the System Integrator will develop and conduct R&M through the life of the programme in accordance with Def Stan 00-040 and Def Stan 00-042. The R&M Plan shall be in accordance with DStan 00-600 Part 03 Issue 02 ILS PD 0004-02 and the requirements of Schedule 2 (*Obligations of the System Integrator*);

“Remotely Piloted Air System” or **“RPAS”** means the sum of the components required to deliver the overall remotely piloted aircraft capability and includes the remote pilot, sensor operators (if applicable), remotely piloted aircraft, ground control

station, associated manpower and support systems, satellite communication links and data links;

“Repair” means a repair identified in:

- (a) a Demand;
- (b) the SRD and/or any other part of this Contract; and/or
- (c) an Approved Task Order, the Milestone Plan and/or an Approved Change (as the case may be),

that is necessary to restore the Air System to a state which is Fully Serviceable and Airworthy (where applicable) in accordance with the SRD;

“Repeat KPI Failure” has the meaning given in paragraph 5.1.1 of Schedule 4 (*System Integrator Performance Mechanism*);

“Repeat PI Failure” has the meaning given in paragraph 5.1.2 of Schedule 4 (*System Integrator Performance Mechanism*);

“Report” means a report listed in paragraph 1.1 of Annex 3 to Schedule 4 (*System Integrator Performance Mechanism*);

“Representatives” means the Authority’s Representatives or the System Integrator’s Representatives (as appropriate);

“Required Action” has the meaning given in Clause 29.3 (*Procedure for Authority Step-In*);

“Required Insurances” has the meaning given in Clause 26.1 (*Insurances*);

“Requires Improvement” means where the Authority considers (acting reasonably) that the System Integrator is below a Delivery Objective;

“Response Time” means:

- (a) for any Spare, the Spare is delivered by or on behalf of the System Integrator to a purple gate within the UK identified in the Demand on or before the relevant Standard Priority Code (as defined in the Defence Logistics Framework) response time as identified in the Defence Logistics Framework;
- (b) for any Repair, the Repair is to be carried out by or on behalf of the System Integrator on or before the relevant response time identified in the Demand;
- (c) for any Immediate Technical Query, within forty-eight (48) hours of receipt by the System Integrator of an Immediate Technical Query;
- (d) for any Urgent Technical Query, within five (5) Working Days of receipt by the System Integrator of an Urgent Technical Query;
- (e) for any Routine Technical Query, within the response time identified in the relevant Routine Technical Query; and/or

(f) such other time notified by the Authority to the System Integrator from time to time;

“Retention” means a Permanent Retention or a Temporary Retention (as the case may be);

“RIDDOR” has the meaning given in Clause 48.5 (*Injuries, disease and dangerous occurrences*);

“Routine Operation” means an operation, other than a Contingent Operation;

“Routine Technical Query” means a technical query raised by the Authority that is not an Immediate Technical Query or an Urgent Technical Query;

“Safety Data Sheet” or **“SDS”** has the meaning given in Clause 55.1.1 (*Supply of Hazard Data*);

“SEA Manager” means the person identified as the SEA Manager in Table 1 of Part 2 (Key Personnel) of Schedule 6 (*Governance and Reporting*);

“SEA Portal” means the online portal for innovation, collaboration and information sharing amongst Enabling Contractors in accordance with Part 2 (*Supplier Enabling Arrangement*) of Schedule 2 (*Obligations of the System Integrator*);

“SEA Relationship Management Plan” means the so named plan provided by the System Integrator to the Authority, as updated from time to time with the Approval of the Authority;

“Secret Matter” has the meaning given in Clause 43.1.2 (*Security – Secret Matters*);

“Security Aspects Letter” means the security aspects letter (reference: UAS/00106 TIQUILA Programme Security Aspects Letter) relating to the designation of security classifications;

“Security Interest” means a mortgage, charge, pledge, lien, assignment, hypothecation or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

“Security Policy” means the HMG Security Policy Framework relating to the Government Security Classification policy as published by the Cabinet Office;

“Service” means all services (excluding the supply of Articles) which the System Integrator is required under this Contract to perform or fulfil and **“Services”** shall be construed accordingly;

“Service Failure Point” means any service failure point awarded to the System Integrator in respect of a KPI Failure and/or PI Failure and such service failure point shall be as set out against the relevant KPI or PI in Annex 1 (*KPIs and PIs*) of Schedule 4 (*System Integrator Performance Mechanism*);

“Single Source Item” has the meaning given in Clause 13.14 (*Security of Supply*);

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“**SME**” means a small or medium sized enterprise being an establishment or service employing less than two hundred and fifty (250) people and with a turnover of less than fifty million Euro (50,000,000 Euro) per annum;

“**SME Engagement Plan**” means the plan so named and provided by the System Integrator as updated from time to time with the Approval of the Authority;

“**Social Value Plan Report**” means the report prepared by the System Integrator for KPI 5;

“**Social Value Plans**” means the plans set out at Schedule 18 (*Social Value Plans*) as may be amended and/or developed in accordance with Clause 75.2 (*Social Value Plans*);

“**Software Assurance Strategy**” means a document articulating the requirements for implement a systematic approach to software assurance, software safety, and independent verification and validation for software created, acquired, provided, or maintained by the System Integrator;

“**Solution**” means the System Integrator’s solution for satisfying an Innovation Requirement;

“**Spare**” means a part required to support the TIQUILA System;

“**Special Jigs, Tools Etc.**” means all special jigs, tools, patterns, moulds, dies, manufacturing gauges and test equipment, together with any associated fixtures, fittings and software necessary for the manufacture of the Articles or for the performance of the System Integrator Deliverables, which are not tools of the trade, as used by the System Integrator in the performance of this Contract;

“**Specialist Advisor**” means a person with the appropriate SQEP able to discuss the agenda items raised at those meetings listed in Annex 2 to Part 2 of Schedule 6 (*Governance and Reporting*);

“**Specification**” has the meaning given in paragraph 2.3.1 of Part 1 (*Change Procedure*) of Schedule 9 (*Change Procedure*);

“**SQEP**” means a suitably qualified and experienced person;

“**SRL 6/7**” means sub-system integration, verification and testing;

“**SRL 8/9**” means system verification and validation;

“**SSTDP**” has the meaning given in Clause 13.19 (*Security of Supply*);

“**Staff**” means any Employee who is employed in the performance of the System Integrator Deliverables and having the job titles and/or roles identified in the Price List;

“**STANAG**” means NATO Standardisation Agreements;

“**Standards Management Plan**” means a document detailing the System Integrator’s approach to standards management planning, including strategies for managing risk

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in standards selection, and for assessing, tailoring and trading standardisation requirements;

“Step-In Notice” has the meaning given in Clause 29.3 (*Procedure for Authority Step-In*);

“Step-Out” has the meaning given in Clause 29.6 (*Authority Step-Out*);

“Step-Out Plan” has the meaning given in Clause 29.7.2 (*Authority Step-Out*);

“Sub-Contract” means each or any contract with a Sub-Contractor;

“Sub-Contractor” means any sub-contractor, including each Enabling Contractor, engaged by the System Integrator or by any other sub-contractor of the System Integrator at any level of sub-contracting to provide the System Integrator Deliverables for the purposes of performing (or contributing to the performance of) the whole or any part of this Contract;

“Subsidiary” has the meaning given in, and shall be construed in accordance with, sections 1159 and 1162 of the Companies Act 2006;

“Sub-processor” has the meaning given in Clause 37.1 (*Protection of Personal Data*);

“Supplier Enabling Arrangement” or **“SEA”** has the meaning given in Part 2 (*Supplier Enabling Arrangement*) of Schedule 2 (*Obligations of the System Integrator*);

“Supply Support Plan” means the document, as agreed with the Authority, that shall consider the approach to, Integrated Logistic Support (ILS) programme management, item maintenance, provision and stockholding, demand process, distribution and consignment tracking, reverse supply chain, disposal and data management;

“System Architecture” means the conceptual model that defines the structure, behaviour, and more views of a system;

“Supported Businesses” means establishments or services where more than fifty percent (50%) of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market;

“Switch Date” is as defined in paragraph 2.1.1 of Part 2 of Schedule 7 (*Pricing and Payment*);

“System Integrator Background IPR” means any IPR and/or Information (as the case may be) subsisting and owned by the System Integrator prior to the date of, or created or generated by or on behalf of the System Integrator outside the scope of, this Contract (other than any System Integrator Foreground IPR);

“System Integrator Behaviours Questionnaire” means the behaviours questionnaire identified at Annex 2 (*KPIs 2.1 to 2.4 (Behaviours)* and System Integrator Behaviours Questionnaire) of Schedule 4 (*System Integrator Performance Mechanism*);

“System Integrator Change Proposal” has the meaning given in paragraph 4.2 of Part 1 (*Change Procedure*) of Schedule 9 (*Change Procedure*);

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“System Integrator Commercially Sensitive Information” means the information listed in a DEFFORM 539A and set out in Schedule 13 (*System Integrator’s Commercially Sensitive Information (DEFFORM 539A)*), being information notified by the System Integrator to the Authority which is acknowledged by the Authority as being commercially sensitive information;

“System Integrator Default” means any one or more of the following:

- (a) a breach by the System Integrator of any of its obligations under this Contract which materially and adversely affects the provision of the System Integrator Deliverables;
- (b) the occurrence of a Persistent Breach;
- (c) the occurrence of an Insolvency Event in relation to the System Integrator;
- (d) the occurrence of a Prohibited Act and/or the System Integrator breaches and/or is in default under Clauses 7.1.13, 7.1.14 and/or 7.1.15 (*System Integrator warranties*);
- (e) a breach by the System Integrator of Clause 84 (*Transfer*);
- (f) a breach by the System Integrator and/or any Sub-Contractor (as the case may be) of Clause 86 (*Change of Control*);
- (g) any withholding of information concerning hazardous Articles, materials or substances as referred to in Clause 55.9 (*Supply of Hazard Data*);
- (h) the occurrence of any of the circumstances referred to in Clause 43.8 (*Termination*);
- (i) the occurrence of any of the circumstances referred to in Clause 92.5 (*Tax Compliance*);
- (j) the System Integrator and/or any Sub-Contractor (as the case may be) commits a breach of this Contract which results in the criminal investigation, prosecution and conviction of the System Integrator and/or any Sub-Contractor under health and safety legislation;
- (k) the occurrence of the circumstances referred to in Clause 14.17 (*Import and Export Licences*);
- (l) the occurrence of the circumstances referred to in Clauses 39.17, 39.18 or 39.19 (*Cyber*);
- (m) the attainment of any of the financial limitations on the liability of the System Integrator under Clauses 25.4.1 and 25.4.2 (*Financial Limits*);
- (n) a breach of the undertaking set out in Clause 7.2.11 (*System Integrator Undertakings*); and/or
- (o) a breach by the System Integrator of any of its obligations set out in Part 8 (*Security Provisions*) of this Contract;

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“System Integrator Default Termination Date” has the meaning given in Clause 77.2.4 (*Right to Terminate*);

“System Integrator Deliverables” means the services and/or Articles which the System Integrator is required to deliver under this Contract;

“System Integrator Equipment” means the hardware, computer and telecoms devices and equipment used by the System Integrator or its Sub-Contractors (but not hired, leased or loaned from the Authority) for the provision of the System Integrator Deliverables;

“System Integrator Foreground IPR” means, subject to Schedule 11 (*IPR*), IPR in any Intellectual Property funded by the Authority or created or generated by the System Integrator and/or any Sub-Contractor in the course of the performance of this Contract, including Intellectual Property arising in:

- (a) any System Integrator Deliverable created by the System Integrator and/or any Sub-Contractor under this Contract;
- (b) modifications, updates or developments to Authority Background IPR and/or Third Party IPR supplied by the Authority to the System Integrator for the purpose of this Contract;
- (c) training material (including training syllabuses, lessons, records, course training plans and courseware);
- (d) records relating to Authority and Authority-sponsored personnel;
- (e) databases; and
- (f) Information relating to the operation, repair and maintenance of GFX;

“System Integrator Key Personnel” means those persons appointed by the System Integrator to fulfil the System Integrator Key Roles, being the persons listed in:

- (a) Table 2 of Part 2 (*Key Personnel*) of Schedule 6 (*Governance and Reporting*) against each System Integrator Key Role as at the Effective Date or as amended from time to time in accordance with Clauses 11.4 to 11.6 (inclusive) (*System Integrator Related Parties*); or
- (b) the relevant Task Order Proposal or as amended from time to time in accordance with Clauses 11.4 to 11.6 (inclusive) (*System Integrator Related Parties*);

“System Integrator Key Role” means a role listed in the first column of table 2 in Part 2 (*Key Personnel*) of Schedule 6 (*Governance and Reporting*) and any additional roles added from time to time in accordance with Clause 11.5 (*System Integrator Related Parties*);

“System Integrator Personnel” means the System Integrator’s employees and agents and employees and agents of the Sub-Contractors;

“System Integrator Related Party” means:

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- (a) an officer, servant, agent or employee of the System Integrator or any Affiliate of the System Integrator;
- (b) any Sub-Contractor; and/or
- (c) any person on or at any of the Authority Sites or other Government Establishment (as the case may be) at the express or implied invitation of the System Integrator (other than an Authority Related Party),

save to the extent such person is acting under the instruction or control of the Authority;

“System Integrator System” means the information and communications technology system used by the System Integrator in implementing and performing the System Integrator Deliverables including software, the System Integrator Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System);

“System Integrator’s Commercial Officer” means such representative or representatives as is nominated and authorised to conduct commercial negotiations on behalf of the System Integrator;

“System Integrator’s Premises” means those premises or parts of premises which are not Authority Sites but which are used by the System Integrator and/or System Integrator Related Parties for the purpose of providing the System Integrator Deliverables;

“System Integrator’s Proposals” means the System Integrator’s proposals set out in Schedule 3 (*System Integrator’s Proposals*);

“System Integrator’s Representatives” means the persons identified as the System Integrator’s Representatives in table 2 of Part 2 (*Key Personnel*) of Schedule 6 (*Governance and Reporting*);

“System Requirement” or **“SR”** means a required function or constraint of the Air System;

“System Requirements Document” or **“SRD”** means the structured and live definition of the optimal System Requirements, bounding contracting and verification activities;

“System Specification” is as set out in Annex 1 (*Contract Data Deliverables*) of Schedule 6 (*Governance and Reporting*);

“Systems Readiness Level” or **“SRL”** means a score between 1 (one) and 9 (nine) that communicates a project’s system maturity against the systems engineering V diagram;

“S&R Plan Failure” means a failure by the System Integrator to:

- (a) comply fully with; and/or
- (b) provide the Authority’s Representative with;

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a Rectification Plan (or part of a Rectification Plan) where such Rectification Plan (or part of such Rectification Plan) relates to a Red score for KPI 1.1 and/or 1.2 (as the case may be);

“**Task**” is a Milestone Deliverable and/or any proposed System Integrator Deliverables included in a Task Order Proposal;

“**Task Order**” means each of:

- (a) Task Order 1, Task Order 2, Task Order 3 and/or Task Order 4; and
- (b) an Ad Hoc Task Order and/or a CIC Task Order which forms part of the System Integrator Deliverables after Approval by the Authority pursuant to Schedule 8 (*Ad Hoc Task Order Approval Process*) or Part 5 (*Capability Integration Cycle*) of Schedule 2 (*Obligations of the System Integrator*) respectively;

“**Task Order 1**” means the Task Order and its supporting documents which specify the Authority’s requirements in respect of System Integrator Deliverables and the associated Milestones during the period commencing on Contract Award and expiring on the Initial Service Fielding Date, as set out at Part 7 (*Task Orders*) of Schedule 2 (*Obligations of the System Integrator*);

“**Task Order 2**” means the Task Order and its supporting documents which specify the Authority’s requirements in respect of System Integrator Deliverables and the associated Milestones during the period commencing on the day immediately following the Initial Service Fielding Date and expiring on Initial Operating Capability, as set out at Part 7 (*Task Orders*) of Schedule 2 (*Obligations of the System Integrator*);

“**Task Order 3**” means the Task Order and its supporting documents which specify the Authority’s requirements in respect of System Integrator Deliverables and the associated Milestones during the period commencing on the day immediately following Initial Operating Capability and expiring on the Full Operating Capability Date, as set out at Part 7 (*Task Orders*) of Schedule 2 (*Obligations of the System Integrator*);

“**Task Order 4**” means the Task Order and its supporting documents which specify the Authority’s requirements in respect of System Integrator Deliverables during the period commencing on the day immediately following the Full Operating Capability Date and expiring on termination or expiry of this Contract, as set out at Part 7 (*Task Orders*) of Schedule 2 (*Obligations of the System Integrator*);

“**Task Order Proposal**” means an Innovation Proposal and/or a proposal issued by the System Integrator to the Authority following issue by the Authority of a Tasking Form for an Ad Hoc Task Order (as the case may be), as more particularly referred to in Part 5 (*Capability Integration Cycle*) of Schedule 2 (*Obligations of the System Integrator*) and/or Schedule 8 (*Ad Hoc Task Order Approval Process*);

“**Tasking Form**” means the form set out in Annex 2 (*Ad Hoc Task Order Template*) of Schedule 8 (*Ad Hoc Task Order Approval Process*);

“**Technical Data**” means information of a scientific, or technical or programme/project management nature which is recorded or documented in any medium and whether or not in human readable format, but excluding unrecorded information communicated

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solely by oral communications and excluding computer software that is subject to other licensing arrangements as agreed with the Authority;

“Technical Documentation Management Plan” means a plan produced in accordance with Def Stan 00-600 Part 03 Issue 02 ILS PD 2001-03 and the requirements of Part 4 of Schedule 2 (*Obligations of the System Integrator*), detailing how technical documents and information will be managed during the Contract Period;

“Technical Query” means an Immediate Technical Query, an Urgent Technical Query or a Routine Technical Query (as the case may be);

“Technology Readiness Level” or **“TRL”** means a tool that provides an indication of the technical maturity of a project by identifying risk associated with technology and system integration;

“Technology Roadmap” is as set out in Annex 1 (*Contract Data Deliverables*) of Schedule 6 (*Governance and Reporting*);

“Temporary Retention” means the retention defined in paragraph 3.6.1 of Schedule 4 (*System Integrator Performance Mechanism*);

“Tender Manager” means means the person identified as the Tender Manager in Table 1 of Part 2 (Key Personnel) of Schedule 6 (*Governance and Reporting*);

“Termination Date” means the date of any early termination of the whole or part of this Contract pursuant to Clauses 77 (*Termination for System Integrator Default*) or 78 (*Termination for Convenience*);

“Termination Notice” has the meaning given in Clause 77.2 (*Termination for System Integrator Default*), or as relevant, means any notice to terminate this Contract pursuant to Clause 78 (*Termination for Convenience*);

“Test Equipment” means an electronic or mechanical instrument recognised by the Authority to test the operational performance of the Air System;

“Third Party” any person other than the Parties including any Sub-Contractors;

“Third Party IPR” means any IPR owned by a Third Party (excluding any IPR owned by the Third Party subsisting in any Third Party Licensed Software);

“Third Party Licensed Software” means any software which is proprietary to any Third Party (other than an Affiliate of the System Integrator) or any Open Source Software which in any case is, will be or is proposed to be used by the System Integrator for the purposes of providing the System Integrator Deliverables;

“TIQUILA Programme” means the procurement by the Authority for the provision and support of the MUAS, including the designing, building, assembling, maintaining, repairing, operating, modifying, developing, implementing, interfacing with, adapting, proving, integrating, updating, configuring, conforming, analysing, instantiating, supplementing, enhancing, training in relation to and/or evolving and/or installation of such MUAS;

“TIQUILA System” means the hardware and software providing mission effect;

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“TO1 Milestone Price” means a milestone price for Task Order 1 as set out in the relevant Milestone Payment Plan;

“TO2 Milestone Price” means a milestone price for Task Order 2 as set out in the relevant Milestone Payment Plan;

“TO3 Milestone Price” means a milestone price for Task Order 3 as set out in the relevant Milestone Payment Plan;

“TO4 Service Fee” has the meaning given in paragraph 5.1 (*TO4 Service Fee*) of Part 1 (*Calculating the Monthly Payment*) of Schedule 7 (*Pricing and Payment*);

“Training Fee” is the fee set out at table 8 of the Price List for the relevant Contract Year, payable each Contract Month from the Full Operating Capability Date on a pro rate basis;

“Training Needs Analysis” or **“TNA”** means a structured scoping and analysis of training need arising as a result of new equipment acquisition, doctrinal change, organisational change, or changes to policy/Legislation. It includes a comparison of different training methods and technologies, with a view to recommending the optimum training solution for maximum cost-effectiveness, it is an output based, iterative process that provides an audit trail for all decisions made;

“Training Requirement” means the number of personnel trained to operate the Air System in a safe, effective and efficient manner;

“Transfer Date” means the date on which the transfer of a Transferring Employee takes place under the Transfer Regulations;

“Transfer Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate;

“Transferring Employee” means an employee wholly or mainly employed or otherwise assigned to provide the System Integrator Deliverables (or in respect of partial termination, the relevant part of the System Integrator Deliverables) whose employment transfers under the Transfer Regulations from the System Integrator or any Employing Sub-Contractor to a Follow-On System Integrator or the Authority;

“Transparency Information” means the content of this Contract in its entirety, including from time to time agreed changes to this Contract, and details of any payments made by the Authority to the System Integrator under this Contract;

“Trials Readiness Review” or **“TRR”** is as set out in Annex 2 (*Meetings*) of Schedule 6 (*Governance and Reporting*);

“TRL 5” means means that the technology components and/or basic technology subsystem has/have undergone validation in an operationally relevant environment;

“TRL 8” means the the actual technology system has completed qualification through test and demonstration;

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“Type Airworthiness Safety Assessment” or **“TASA”** means a document detailing the evidence and arguments used to justify the safety of an Air System so that agreement can be reached on the validity of the conclusions that underpin the Release To Service;

“UK GDPR” has the meaning given in Clause 37.1 (*Protection of Personal Data*);

“UK Governmental Purposes” means anything done by or for HMG under the authority of a Minister of the Crown;

“Unexpected Transferring Employee” has the meaning given in paragraph 1.3.1 of Schedule 12 (*Transfer Regulations (TUPE)*);

“Unique Identifiers” comprise the following:

- (a) Unique Order Identifier (**“UOI”**) generated by the Contracting, Purchasing & Finance (**“CP&F”**) electronic procurement tool for non inventory purchase orders;
- (b) Unique Receipt Reference Identifier (**“URRI”**), generated by CP&F for inventory purchase orders; or
- (c) Electronic Business Capability (**“EBC”**) Unique Package Identifier (**“EUPI”**) generated for EBC System Integrator logistic support contracts. EUPIs comprise two parts, the first part being the identifier allocated by the Authority and the second part being the identifier generated by the System Integrator;

“Unique Order Identifier” or **“UOI”** has the meaning given in limb (a) of the definition “Unique Identifiers” in Schedule 1 (*Definitions, Acronyms and Initialisms*);

“Unique Receipt Reference Identifier” or **“URRI”** has the meaning given in limb (b) of the definition “Unique Identifiers” in Schedule 1 (*Definitions, Acronyms and Initialisms*);

“Unlimited Rights” means rights to copy, use, modify, reproduce, or disclose Technical Data in whole or in part, and to authorise third parties to do so, in any manner, and for any UK Governmental Purpose. For the avoidance of doubt, such purposes shall not extend to commercial sales of Articles except for the disposal of outworn or surplus items, nor to licensing of System Integrator-owned IPR for revenue generation;

“Unlimited Rights Technical Data” means Technical Data in which the Authority has Unlimited Rights;

“Upload” and **“Uploaded”** to successfully upload any list, report or other documentation to the Authority System, the System Integrator System and/or the Tiquila System (or such other system as may be set out in this Contract):

- (a) in a format specified in this Contract and in any event in a format that shall enable the Authority to access, use, read, write, amend, search, file, save and/or carry out any other reasonable function with such list, report or document; and/or

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- (b) by the applicable timescale set out in this Contract, provided that if within two (2) Working Days of receipt of written notice from the Authority that the System Integrator has not Uploaded successfully or at all a report or document the System Integrator Uploads such report or document and/or a revised report or document (as the case may be) which addresses the issues set out such notice, the System Integrator shall be deemed to have Uploaded the report or document by the applicable timescale, provided further that the Parties agree that the Authority is not required to issue such a notice and if the Authority chooses not to issue such notice, this shall not affect the Authority's rights under this Contract;

"Urgent Technical Query" means a query submitted to the System Integrator by the Authority where information is required to:

- (a) inform the Authority in relation to an issue that threatens the Airworthiness Status of the Air System; or
- (b) inform an Occurrence Safety Investigation or Local Investigation in accordance with RA1410;

"Use" means the right to use for UK Government Purposes;

"VAT" means value added tax and is the tax charged on supplies of goods and services in the UK pursuant to the Value Added Tax Act 1994;

"Vesting IPR" means the Intellectual Property Rights specified in paragraph 1.1 of Part 3 (*Intellectual Property Rights Vesting in the Authority*) of Schedule 11 (*IPR*), or in any System Integrator Deliverable or part of a System Integrator Deliverable specified in paragraph 1.1 of Part 3 (*Intellectual Property Rights Vesting in the Authority*) of Schedule 11 (*IPR*);

"Verification and Validation Requirements Matrix" or "VVRM" means the matrix set out at Part 2 (*VVRM*) of Schedule 3 (*System Integrator's Proposals*), as updated from time to time;

"Volumetric Data" are the details set out in Clause 54.3.4 (*Codification Requirements for Item Identification*);

"Warning Notice" has the meaning given in limb (a) of the definition of Persistent Breach;

"Working Day" means any day excluding:

- (a) Saturdays, Sundays and public and statutory holidays in the jurisdiction of either Party; and
- (b) privilege days notified in writing by the Authority to the System Integrator at least ten (10) business days in advance;

"WORM" means the process carried out by the Workshop for Operational Requirement Management, as set out in paragraph 2 (*WORM*) of Part 5 (*Capability Integration Cycle*) of Schedule 2 (*Obligations of the System Integrator*); and

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“ZODIAC” has the meaning given in paragraph 4.1 of Part 1 (*General*) of Schedule 2 (*Obligations of the System Integrator*)

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Schedule 2

Obligations of the System Integrator

[see document entitled "Schedule 2 to 23 relating to Tiquila Programme Mini-Uncrewed Air Systems (MUAS) Contract UAS/00106"]

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Schedule 3

System Integrator's Proposals

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Schedule 4

System Integrator Performance Mechanism

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Schedule 5

GFX

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Schedule 6

Governance and Reporting

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Schedule 7

Pricing and Payment

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Schedule 8

Ad Hoc Task Order Approval Process

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Schedule 9

Change Procedure

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Schedule 10

Required Insurances

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Schedule 11

IPR

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Schedule 12

Transfer Regulations (TUPE)

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Schedule 13

System Integrator's Commercially Sensitive Information (DEFFORM 539A)

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Schedule 14

Enabling Contracting Plan

Schedule 15

Exit Plan

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Schedule 16

Quality Assurance Plan

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Schedule 17

Cyber Implementation Plan

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Schedule 18

Social Value Plans

Part 1 – Tackling Economic Inequality

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Part 2 – Fighting Climate Change

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Part 3 – Equal Opportunity

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Schedule 19

Hazardous Materials (DEFFORM 68)

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Schedule 20

Addresses and Other Information (DEFFORM 111)

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Schedule 21

Personal Data Particulars (DEFFORM 532)

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Schedule 22

Notifications of Intellectual Property Rights (IPR) Restrictions

Schedule 23

Not used.