

**Dated**

**2025**

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**THE SECRETARY OF STATE FOR DEFENCE**

**(1)**

**AND**

**SERCO LIMITED**

**(2)**

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**DEFENCE MARINE SERVICES: CONTRACT 4  
(OFF-SHORE SUPPORT TO MILITARY  
TRAINING AND EXERCISES)**

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**THIS CONTRACT** is dated

2025

## **PARTIES**

- (1) **THE SECRETARY OF STATE FOR DEFENCE** at Ministry of Defence, Whitehall, London SW1A 2HB (the "**Authority**").
- (2) **SERCO LIMITED**, a company registered in England with number 00242246, whose registered office is at Serco House, 16 Bartley Wood Business Park, Hook, Hampshire, RG27 9UT (the "**Contractor**").

## **BACKGROUND**

- (A) The Authority advertised the Contract (as defined in Schedule 1) in the Find a Tender Service (national registration number: 2022/703249461), and on the Defence Sourcing Portal, on 8 June 2022 and issued an Invitation to Negotiate (as defined in Schedule 1) in connection with the Contract on 25<sup>th</sup> November 2022.
- (B) Following a competitive procurement under the Defence and Security Public Contracts Regulations 2011, the Authority now wishes to engage the Contractor to provide certain marine services (including the provision of offshore support to military training and exercises in UK waters and select overseas territories), and the Contractor wishes, to deliver and perform such services in accordance with, and subject to, the terms of this Contract.

## **AGREED TERMS**

### **SECTION A – PRELIMINARIES**

#### **1 INTERPRETATION**

- 1.1 In this Contract, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this Contract, unless the context otherwise requires:
  - (a) the singular includes the plural and vice versa;
  - (b) reference to a gender includes the other gender and the neuter;
  - (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
  - (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;

- (e) any reference in this Contract which immediately before Exit Day was a reference to (as it has effect from time to time):
    - (i) any EU regulation, EU decision, EU tertiary legislation or provision of the European Economic Area (“**EEA**”) agreement (“**EU References**”) which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
    - (ii) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred;
  - (f) the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
  - (g) references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
  - (h) the headings are for ease of reference only and shall not affect the interpretation or construction of this Contract;
  - (i) unless otherwise provided and save for references in Schedule 26 (Guarantees), references to Clauses and Schedules are references to the clauses and schedules of this Contract and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear; and
  - (j) references to this Contract are references to this Contract as amended from time to time.
- 1.3 Where a standard, policy or document is referred to in this Contract by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Contractor shall notify the Authority and the Parties shall update this Contract with a reference to the replacement hyperlink.
- 1.4 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the Clauses and Schedule 1 (Definitions);
  - (b) Schedules 2 (Statement of Requirement), 4 (Payment, Performance and Incentivisation Mechanism), 6 (Governance, Management Information, Reports, Records and Audit) and 9 (Standards) and their Annexes;



- (c) Schedule 10 (Bareboat Charter Agreement);
- (d) any other Schedules and their Annexes (other than Schedule 3 (Service Delivery Plan) and its Annexes); and
- (e) Schedule 3 (Service Delivery Plan) and its Annexes (if any).

1.5 The Schedules and their Annexes form part of this Contract.

1.6 In entering into this Contract the Authority is acting as part of the Crown.

## 2 DUE DILIGENCE

2.1 The Contractor acknowledges that:

- (a) the Authority has made available to the Contractor prior to the date of this Contract certain materials, documents, plans and data related to the Contract (the "**Disclosed Data**"). The Disclosed Data includes all such materials, documents, plans and data, which were provided to the Contractor in connection with the Invitation to Negotiate (and the procurement more generally) in respect of the Contract (including all data contained in the data room, and in clarification responses, made available in respect of such Invitation to Negotiate and during the course of the procurement more generally);
- (b) the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Disclosed Data;
- (c) neither the Authority nor any of its agents or servants shall be liable to the Contractor or the Shareholders in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of any inaccuracy, omission, unfitness for any purpose, defect or inadequacy of any kind whatsoever in the Disclosed Data;
- (d) subject to Clauses 16.4 to 16.7 (Assets), the Authority gives no warranty or undertaking that the Disclosed Data represents all of the information in its possession or power (either during the tender for the Contract or at the execution of this Contract) relevant or material to the Contract or the obligations undertaken by the Contractor under this Contract. The Authority shall not be liable to the Contractor in respect of any failure to disclose or make available (whether before or after the execution of this Contract) to the Contractor any information, documents, plans or data, nor to keep the Disclosed Data up to date, nor to inform the Contractor (whether before or after execution of this Contract) of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy in the Disclosed Data;
- (e) the Contractor warrants and represents to the Authority that it has conducted its own analysis and review of the Disclosed Data that it has satisfied itself as to the accuracy, completeness and fitness for purpose of any Disclosed Data on which it places reliance;
- (f) the Contractor acknowledges and confirms that, save as expressly provided for in the terms of this Contract, it shall not be entitled to make any claim against the Authority whether in damages or for extensions of time or additional payments under this

Contract on the grounds of any misunderstanding or misapprehension in respect of the Disclosed Data or the matters referred to in Clause 2.1(e) or on the grounds that incorrect or insufficient information relating thereto was given to it by any person, whether or not in the employment of the Authority. Nor shall the Contractor be relieved from any risks or obligations imposed on or undertaken by it under this Contract on any such ground;

- (g) without limitation to any other provision of this Contract (including Clauses 2.1(a) to (g)), the Contractor shall be deemed to have, and warrants that it has:
  - (i) in respect of any assets made available under Clause 16 (Assets), taken all necessary steps to satisfy itself that these assets are fully suitable so as to allow the Contractor to provide the Services;
  - (ii) satisfied itself of the waters encompassed within the Project Area (including climatic, environmental, tidal, sea bed, currents, Sea State and other general conditions of the waters of the Project Area) so as to allow the Contractor to provide the Services;
  - (iii) satisfied itself of any waters that Vessels may be required to transit from time to time so as to provide the Services within the Project Area (including climatic, environmental, tidal, sea bed, currents, Sea State and other general conditions of these waters); and
  - (iv) in respect of any waterfront infrastructure (including jetties, wharfs, basins and berths) within the Project Area, satisfied itself that it can provide the Services within the physical constraints that these may impose.

2.2 The Charges have been negotiated to take account of the matters referred to in this Clause 2.

### **3 WARRANTIES**

3.1 The Contractor represents and warrants that:

- (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (b) it has full capacity and authority to enter into and to perform this Contract, the Project Documents to which it is a party, and the Ancillary Documents to which it is a party;
- (c) this Contract is executed by its duly authorised representative;
- (d) all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under the Project Documents and Ancillary Documents has been taken or, in the case of any such document executed after the Effective Date, shall be taken before such execution;

- (e) the legal and beneficial ownership as at the Effective Date of the Contractor, Guarantor and each other Associated Company of the Contractor that is, or that the Contractor proposes to appoint as, a Key Sub-Contractor is as set out in Schedule 15 (Warranted Data) and that no arrangements are in place that have or may have or result in any sale, transfer or disposal of any legal beneficial, equitable or other interest in any or all of the shares in the Contractor, the Guarantor or any other Associated Company of the Contractor that is, or that the Contractor proposes to appoint as, a Key Sub-Contractor;
- (f) it has all Necessary Consents and regulatory approvals to enter into this Contract;
- (g) no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor (having made all due enquiry), pending or threatened against it or any of its assets which shall or might have a material adverse effect on the ability of the Contractor to perform its obligations under the Project Documents or Ancillary Documents;
- (h) its execution, delivery and performance of its obligations under this Contract, Project Documents and Ancillary Documents will not constitute a breach of any Law or obligation applicable to it, the memorandum and articles of association of the Contractor, any order or decree of any court or arbitrator which is binding on the Contractor or any obligation which is binding upon the Contractor or upon any of its assets or revenues and will not cause or result in a default under any contract by which it is bound;
- (i) its obligations under this Contract, Project Documents and Ancillary Documents constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws 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);
- (j) the Contractor's Warranted Data is true and accurate in all respects;
- (k) all written statements and representations in any written submissions made by the Contractor as part of the procurement process, including without limitation its response to the DPQQ and ITN (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Contractor has otherwise disclosed to the Authority in writing prior to the date of this Contract;
- (l) it has notified the Authority in writing of any Occasion of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- (m) it has all necessary rights in and to the Third Party IPRs, the Contractor Background IPRs and any other materials made available by the Contractor (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Contractor's obligations under this Contract and/or the receipt of the Services by the Authority;

- (n) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract, the Project Documents or the Ancillary Documents;
  - (o) the copies of the Ancillary Documents which the Contractor has delivered or, when executed, shall deliver to the Authority Representative are, or (as the case may be) shall be, true and complete copies of such documents, and there are not in existence any other agreements or documents replacing or relating to any of the Project Documents or Ancillary Documents which would materially affect the interpretation or application of any such document;
  - (p) in entering into this Contract it has not committed any Prohibited Act;
  - (q) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
  - (r) within the previous 12 months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Contract had this Contract been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist; and
  - (s) all personnel engaged by the Contractor in the provision of the Services are vetted in accordance with Good Industry Practice and the Security Requirements.
- 3.2 The representations and warranties set out in Clause 3.1 shall be deemed to be repeated by the Contractor on the Effective Date (if later than the date of signature of this Contract) and the Service Commencement Date by reference to the facts then existing.
- 3.3 Each of the representations and warranties set out in Clause 3.1 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.
- 3.4 If at any time the Contractor becomes aware that a representation or warranty given by it under Clause 3.1 has been breached, is untrue or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.
- 3.5 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Contractor.
- 3.6 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

## SECTION B – THE SERVICES

### 4 TERM

4.1 This Contract shall:

- (a) come into force on the Effective Date, save for Clauses 1 (Interpretation), 3 (Warranties), 4 (Term), 38 (Security Measures), 41 (Confidentiality), 42 (Transparency and Freedom of Information), 44 (Publicity), 46 (Limitations on Liability), 63 (Waiver and Cumulative Remedies), 64 (Relationship of the Parties), 65 (Severance), 67 (Entire Agreement), 68 (Third Party Rights), 69 (Notices), 70 (Disputes) and 74 (Governing Law and Jurisdiction), which shall be binding and enforceable as between the Parties from the date of this Contract; and
- (b) unless terminated at an earlier date by operation of Law or in accordance with Clauses 56 to 59, terminate at the end of the Contract Term.

#### **Condition Precedent**

4.2 Save for Clauses 1 (Interpretation), 3 (Warranties), 4 (Term), 38 (Security Measures), 41 (Confidentiality), 42 (Transparency and Freedom of Information), 44 (Publicity), 46 (Limitations on Liability), 63 (Waiver and Cumulative Remedies), 64 (Relationship of the Parties), 65 (Severance), 67 (Entire Agreement), 68 (Third Party Rights), 69 (Notices), 70 (Disputes) and 74 (Governing Law and Jurisdiction), this Contract is conditional upon:

- (a) the valid execution and delivery to the Authority of the Guarantee;
- (b) the Contractor's written acknowledgement of the Security Aspects Letter;
- (c) the agreement and finalisation of the Baseline Financial Model to the Authority's satisfaction, as confirmed in writing by the Authority's Representative;
- (d) certified copies of the Key Sub-Contracts and Direct Agreements executed by all the parties to such contracts being provided to the Authority;
- (e) in respect of any Contractor Personnel required for the delivery of the Transition Services in accordance with Clause 6.1 (Services) evidence of security clearance for such Contractor Personnel; and
- (f) entry by the Contractor and any Employing Sub-Contractor into an Admission Agreement in the form set out in Annex A to Schedule 22 (Staff Transfer),

(the "**Conditions Precedent**").

4.3 The Authority may in its sole discretion at any time agree to waive compliance with, or extend the deadline by which the Contractor must achieve compliance with, any or all the Conditions Precedent by giving the Contractor notice in writing.

- 4.4 The Contractor shall satisfy, or procure the satisfaction of, the Conditions Precedent as soon as reasonably practicable. In the event that the Conditions Precedent are not satisfied within twenty (20) Business Days after the date of this Contract (being "**Conditions Failure**"), then unless the Conditions Precedent are waived by the Authority in accordance with Clause 4.3:
- (a) this Contract shall automatically cease and shall not come into effect; and
  - (b) neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.
- 4.5 The Contractor shall consult with the Authority in relation to the steps it takes to satisfy the Conditions Precedent set out in Clause 4.2 and shall keep the Authority fully informed of its progress in satisfying the condition and of any circumstances which are likely to result in the condition not being satisfied by the date set out in Clause 4.4.

## **5 GUARANTEE**

- 5.1 If during the Contract Term the Guarantor shall cease to meet the Guarantee Criteria (a "**Failing Guarantor**"), the Contractor shall immediately notify the Authority in writing and procure that an Associated Company of the Contractor, which at the relevant time and thereafter shall meet the Guarantee Criteria, shall replace the Failing Guarantor and become a Guarantor, and shall immediately provide a Guarantee substantially in the form in Schedule 26 (Guarantees) (any amendment to such form must be agreed in writing by the Authority beforehand) against provision of which the Failing Guarantor's Guarantee shall be released by the Authority.
- 5.2 The Guarantee Criteria for the purposes of Clause 5.1 shall be that the Guarantor:
- (a) has a scoring rating of at least the Scoring Rating Level (as set out for the Guarantor in Schedule 25 (Financial Distress)); and
  - (b) meets the required Financial Target Threshold for each of the Financial Indicators set out for the Guarantor in paragraph 5 of Schedule 25 (Financial Distress).
- 5.3 In the event that the Contractor shall have failed to comply with Clause 5.1 within one (1) month of a written notice to do so, the Contractor shall provide to the Authority within ten (10) Business Days such alternative form of security to a value equal to the limit of liability of the Failing Guarantor pursuant to its Guarantee (which may take the form (without limitation) of an alternative guarantee, the provision of funds or reserves by a third party (under guarantee, performance bond, cash deposit or escrow account) as the Authority may approve (such approval not to be unreasonably withheld or delayed)) against provision of which the Failing Guarantor's Guarantee shall be released by the Authority.
- 5.4 Any Dispute under this Clause 5 may be referred to by either Party to determination under Clause 70 (Disputes).

## 6 SERVICES

### Commencement and Provision of Services

- 6.1 The Contractor shall provide the Transition Services from (and including) the Transition Service Commencement Date until the Service Commencement Date.
- 6.2 The Contractor shall provide the Services from (and including) the date on which the Parties agree that the Services shall commence, provided that:
- (a) on such date the Contractor evidences that it possesses:
    - (i) a valid Document of Compliance for the provision of the Services (and the Authority may, at its discretion, accept an interim Document of Compliance for these purposes); and
    - (ii) a valid Safety Management Certificate for all the Vessels to be used in the delivery of the Services as at such date;
  - (b) such date shall not occur before the Contractor has provided evidence of security clearance to the Authority in respect of all Contractor Personnel for which evidence of security clearance has not already been provided in accordance with Clause 4.2(e) (unless the Authority in its sole discretion agrees to waive compliance with, or extend the deadline by which the Contractor must achieve compliance with, this requirement by giving the Contractor notice in writing); and
  - (c) such date shall be no earlier than the Planned Service Commencement Date,

(and such date shall be the "**Service Commencement Date**") and the Contractor shall continue to provide the Services until the expiry or earlier termination of the Contract.

### Standard of Services

- 6.3 The Contractor shall:
- (a) ensure that the Transition Services and the Services comply in all respects with Schedule 5 (Transition) and the Statement of Requirement and are provided in accordance with the Service Delivery Plan and the provisions of this Contract;
  - (b) perform its obligations under this Contract in accordance with the following (without limitation):
    - (i) all applicable Law, including Health and Safety Legislation and IMO and MCA regulations;
    - (ii) the Defence Maritime Regulations;
    - (iii) Good Industry Practice;

- (iv) the Standards; and
- (v) all Necessary Consents.

6.4 In the event that the Contractor becomes aware of any inconsistency between the requirements of Clauses 6.3(b)(i) to 6.3(b)(v), the Contractor shall notify the Authority Representative in writing within twenty-four (24) hours of becoming aware of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Contractor with which requirement the Contractor shall comply.

6.5 NOT USED

6.6 NOT USED

#### **Contractor undertakings**

6.7 The Contractor shall:

- (a) allocate sufficient resources at all times in compliance with Clause 31 (Contractor Personnel) and to satisfy the requirements of Schedule 2 (Statement of Requirement);
- (b) perform the Services in a manner that is not injurious to health and does not cause a nuisance or damage to property or the Environment;
- (c) ensure that it acts at all times in such a manner as not to detract from or damage the image and reputation of the Authority;
- (d) save to the extent that obtaining and maintaining the same are Authority Dependencies and subject to Clause 28 (Change), obtain, and maintain throughout the duration of this Contract, all Necessary Consents;
- (e) ensure that the Contractor's assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing by the Authority);
- (f) minimise any disruption to the Services and/or the Authority's operations when carrying out its obligations under this Contract;
- (g) ensure that any documentation and training provided by the Contractor to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice; and
- (h) notify the Authority in writing immediately, but in any event within five (5) Business Days, of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract.



6.8 Without prejudice to any other rights and remedies of the Authority howsoever arising, the Contractor shall:

- (a) remedy any breach of its obligations in Clause 6.7(d), 6.7(e) and 6.7(f) within five (5) Business Days of becoming aware of the breach or being notified of the breach by the Authority or within such other time period as may be agreed with the Authority (acting reasonably, taking into account the nature of the breach that has occurred); and
- (b) meet all the costs of, and incidental to, the performance of any such remedial work,

and any failure of the Contractor to comply with its obligations under this Clause 6.8(a) within the specified or agreed timeframe shall constitute a Default.

6.9 The Contractor shall ensure on a continuing basis that, at all times, its maintenance and operating procedures are sufficient to ensure that:

- (a) the Services are continuously available in accordance with the requirements of Schedule 2 (Statement of Requirement); and
- (b) the Vessels are kept in good structural order, are and remain safe and fit for the purpose of performing this Contract in accordance with Good Industry Practice and (as a minimum) meet the relevant standards laid down in Flag State and classification society requirements.

6.10 The Contractor shall continue to perform all of its obligations under this Contract and shall not suspend the supply of the Services, notwithstanding:

- (a) the existence of an unresolved Dispute; and/or
- (b) any failure by the Authority to pay any Charges,

unless the Contractor is entitled to terminate this Contract under Clause 57 (Termination for Authority Default) for failure to pay undisputed Charges.

#### **Affected Services**

6.11 The Contractor shall provide the Affected Services in accordance with:

- (a) the requirements listed in Clause 6.3(b); and
- (b) the Memorandum of Understanding,

and any Vessels used to deliver the Affected Services shall be identified as Affected Vessels for the purposes of the Memorandum of Understanding.

6.12 Not used.

#### **Notification of non-compliance with Law**

- 6.13 The Contractor shall immediately notify the Authority in writing if the Contractor becomes aware of any allegation of non-compliance with any Law from time to time by itself or any Sub-Contractor in relation to this Contract.

#### **Entitled Vessels and Entitled Customers**

- 6.14 The Entitled Customers are entitled to the provision of the Services as specified by the Authority from time to time and in accordance with Schedule 2 (Statement of Requirement), and the Charges have been negotiated to take account of such provision.

### **7 ADDITIONAL SERVICES**

- 7.1 The Authority may require the Contractor to provide Additional Services from time to time in accordance with Schedule 2 (Statement of Requirement) and the Change Control Procedure.

### **8 PERFORMANCE**

- 8.1 The Contractor's performance shall be measured and managed in accordance with Schedule 4 (Payment, Performance and Incentivisation Mechanism).

### **9 CONTINUOUS IMPROVEMENT**

- 9.1 The Contractor shall implement the Continuous Improvement Plan (which shall form part of Schedule 3 (Service Delivery Plan)) and shall conduct an annual review of the Continuous Improvement Plan and propose any updates in accordance with Clause 28.5 (Change).

### **10 SOCIAL VALUE**

- 10.1 The Contractor shall implement the Social Value Plan (which shall form part of Schedule 3 (Service Delivery Plan)) and shall conduct an annual review of the Social Value Plan and propose any updates in accordance with Clause 28.5 (Change).
- 10.2 The Contractor shall report progress against its Social Value Plan and the social value KPIs in accordance with Schedule 6 (Governance, Management Information, Reports, Records and Audit).

### **11 NOT USED**

### **12 AUTHORITY VESSELS**

- 12.1 The Authority shall let and the Contractor shall take on hire the Authority Vessels for its Charter Period on the terms and conditions of the Contract and Schedule 10 (Bareboat Charter Agreement).
- 12.2 Title to the Authority Vessels shall remain vested in the Authority. The Contractor shall have no right, title or interest in or to the Authority Vessels or any part thereof (or any Vessel Equipment) except the right to use the same upon the terms and conditions set out in Schedule 10 (Bareboat Charter Agreement). It is hereby expressly declared that the Contractor shall not

have any option or right to acquire title to or any proprietary interest in the Authority Vessels or any part thereof (or equipment on board such vessels) from the Authority.

12.3 The Contractor shall throughout the Contract Term promptly institute and maintain all such legal and other proceedings as may be necessary or expedient to preserve and protect the interest of the Authority in the Authority Vessels and the Required Insurances in relation to any risk arising in connection with such vessels and/or assets.

12.4 The Contractor shall not do nor permit to be done any act or thing which might jeopardise the title, rights and interest of the Authority in the Authority Vessels and shall take (or ensure that there is taken) such action as may be necessary to prevent that title and those rights and interest from being jeopardised.

12.5 The Contractor undertakes with the Authority:

- (a) not to sell nor attempt to hold itself out as having any power to sell, agree to sell, transfer or otherwise dispose of or (save with the prior written consent of the Authority) abandon any of the Authority Vessels;
- (b) not to create or agree nor purport to create any Maritime Encumbrance over any of the Authority Vessels, any share or interest therein or in the Required Insurances or any part thereof;
- (c) not to pledge the credit of the Authority for any maintenance, service, repairs or modifications to, or changes or alterations in, the Authority Vessels or for any other purpose whatsoever.

12.6 The Contractor shall:

- (a) observe the terms and conditions set out in Schedule 10 (Bareboat Charter Agreement); and
- (b) without prejudice to the Contractor's obligations and liabilities provided in Clauses 45 (Indemnities) and 46 (Limitations on Liability) and Schedule 10 (Bareboat Charter Agreement), be responsible for the safe custody and due return of the Authority Vessels.

**13 NOT USED**

**14 NOT USED**

**15 NOT USED**

**16 ASSETS**

16.1 This Clause 16 (Assets) sets out provisions relating to:

- (a) Government Furnished Equipment in Clauses 16.2 to 16.15 (inclusive); and

- (b) Government Furnished Information in Clauses 16.16 and 16.17.

#### **Government Furnished Equipment**

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

#### **Receipt of GFE**

- 16.4 Subject to Clauses 16.5 and 16.6 below, within three (3) months of receipt of GFE, the Contractor shall:
- (a) check the GFE to verify that it corresponds with the GFE specified in the Contract;
  - (b) conduct a reasonable visual inspection; and
  - (c) conduct any additional inspection and testing as may be necessary and practicable to check that the GFE 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.

- 16.5 Where GFE is packaged it shall not be unpacked earlier than is necessary. The period identified at Clause 16.4 above shall count from the date on which packages are opened.
- 16.6 The Authority shall within a reasonable time after receipt of any notice under Clause 16.4 replace, re-issue or authorise repair of GFE agreed to be defective or deficient and, if appropriate, the Authority shall revise the Charges, delivery schedule or both. If appropriate, it shall also issue written instructions for the return or disposal of the defective or deficient GFE.
- 16.7 In the event that the Authority fails to provide, replace, or authorise repair of defective or deficient GFE within a reasonable time of receipt of a notice in accordance with Clause 16.4, fair and reasonable revisions of the Charges, delivery schedule or both shall be made as may be appropriate provided that the Contractor has taken all reasonable measures to mitigate the consequences of any such delay.

#### **Custody of GFE**

- 16.8 Subject to Clause 16.13, and any other limitation or exclusion of liability as may be specified in the Contract, the Contractor shall be responsible for the safe custody and due return of GFE, and shall be responsible for all loss or damage thereto, until re-delivered in accordance with the Authority's instructions or until the expiry of the period specified in Clause 16.15.

- 16.9 The Contractor shall be responsible for calibration and maintenance of the GFE.
- 16.10 The Contractor shall return any GFE that is no longer required in the performance of the Services to the Authority for disposal.
- 16.11 Where the Contractor wishes to dispose of any GFE during the Contract Term, it shall notify the Authority and comply with the disposal instructions issued by the Authority.
- 16.12 If requested, the Authority, within a reasonable time, and where practicable before delivery of the GFE, shall notify the Contractor of the value of the GFE.
- 16.13 The Contractor shall not be liable in respect of:
- (a) defects or deficiencies notified to the Authority in accordance with Clause 16.4 of this Clause or latent defects which the Contractor can show could not reasonably have been discovered by means of the activities described at Clause 16.4;
  - (b) fair wear and tear in GFE resulting from its normal and proper use in the execution of the Contract (except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance by the Contractor);
  - (c) GFE rendered unserviceable as a direct result of ordinary performance of the Contract; or
  - (d) any loss or damage to GFE 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;
    - (iv) riot, civil commotion, civil war, rebellion, revolution, insurrection, military or usurped power or acts of the King's enemies.

#### **Accounting for GFE**

- 16.14 The Contractor shall comply with its obligations set out in Clause 17 (Accounting for GFE).

#### **Return of GFE**

- 16.15 Upon the Expiry Date or (if earlier) the Termination Date, the Contractor shall return or dispose of GFE in accordance with the requirements of Schedule 21 (Exit Management) or as otherwise directed in writing by the Authority.

## **Government Furnished Information**

- 16.16 Subject to Clause 35 (Intellectual Property Rights), the Authority shall make available GFI to the Contractor at the Service Commencement Date and issue all necessary books of reference on the Service Commencement Date.
- 16.17 The Contractor agrees to maintain up-to-date copies of such books of reference to the extent that they are available to be provided by the Ministry of Defence and in accordance with Clause 35 (Intellectual Property Rights).

## **Maintenance of Asset Lists**

- 16.18 The Contractor shall manage and maintain the Asset lists in Schedule 12 (Assets) in accordance with Clause 28.5 (Change) and Schedule 6 (Governance, Management Information, Reports, Records and Audit).

## **17 ACCOUNTING FOR GFE**

- 17.1 The Contractor shall:

- (a) open and maintain a Public Store Account ("**PSA**"), as defined in DEFSTAN 05-099, which shall include a complete list of all GFE and record for the GFE all transactions or other accounting information specified at Annex A to Schedule 12 (Assets);
- (b) supply to the Authority quarterly reports on the current PSA holdings. At least one report in any twelve-month accounting period or part thereof shall be a reconciled report. This reconciled report shall be submitted with the Annual Certificate Form AAC 32 as required in DEFSTAN 05-099. The other three reports submitted in the period may be un-reconciled advisory reports. The submission by the Contractor and receipt by the Authority of these reports shall not prejudice any rights or obligations of the Authority or the Contractor under the Contract;
- (c) ensure that the PSA, and the property of the Authority recorded in the PSA (including but not limited to GFE), is available for inspection by the Authority at any reasonable time;
- (d) on being given two months' notice or as any such other period as has been stated in the Contract permits, co-operate with, the Authority to conduct audits of the PSA , and the property of the Authority recorded in the PSA, in a manner to be determined by the Authority; where the Authority has reasonable grounds to either doubt the integrity of the PSA and/or 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;
- (e) retain the PSA for a period of three years after disposal of the last item of GFE, or for any other period as may be specified in the Contract;
- (f) if the Authority agrees that a Sub-Contractor at whatever level of sub-contracting shall have responsibility in the Sub-Contractor's PSA for GFE issued in aid of the Contract, the Contractor shall include in any Sub-Contract with those Sub-Contractors only the

provisions corresponding to those set out in this Clause that apply to GFE issued in aid of the Sub-Contract, in particular Clause 17.1, 17.2 and 17.3; and

- (g) manage the PSA in accordance with the provisions of DEFSTAN 05-099; and implement any new edition of or amendment to DEFSTAN 05-099 subject to any Changes within three months of the publication date of the new edition. These amendments shall not have retrospective effect.
- 17.2 The obligations of the Contractor arising under this Clause in respect of GFE issued in aid of the Contract shall survive completion of the Contract and shall not be completed until all such obligations are fulfilled including the provisions of Clause 17.1(e).
- 17.3 The Authority reserves the right to amend Annex A to Schedule 12 (Assets) without further consultation where the amendments arise from the Authority's proper and reasonable accounting requirements. If the Authority exercises this right:
- (a) the Contractor shall implement the amendment to Annex A to Schedule 12 (Assets) at the commencement of the Authority's next accounting year provided that a notice of six (6) months or such other period as may expressly be agreed between the Authority and Contractor is given to the Contractor. These amendments shall not have retrospective effect; and
  - (b) the Contractor shall inform the Authority as soon as practicable, but in any event within three (3) months of notice having been given, if the Contractor cannot comply with the amendment to Annex A to Schedule 12 (Assets).

## **SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS**

### **18 CHARGES**

- 18.1 The Authority shall pay the Contractor the Charges, calculated in accordance with Schedule 4 (Payment, Performance and Incentivisation Mechanism) and in accordance with Clause 20 (Payment and Recovery of Sums Due).

#### **Adjustment to Charges as a result of updates to Employee Information**

- 18.2 The Parties agree that certain elements of the Charges may be subject to adjustment (up or down) as set out in Schedule 22 (Staff Transfer).

### **19 FINANCIAL MODEL**

- 19.1 The Contractor shall comply with the provisions of Schedule 31 (Transparency and Financial Models).

### **20 PAYMENT AND RECOVERY OF SUMS DUE**

- 20.1 Payment for the Services will be made by electronic transfer and prior to submitting any claims for payment under Clause 20.2, the Contractor will be required to register its details on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool (or such other replacement tool or facility as notified to the Contractor by the Authority from time to time).
- 20.2 Subject to the agreement of the Total Monthly Payment (or part thereof) for a Contract month in accordance with Schedule 4 (Payment, Performance and Incentivisation Mechanism) and Schedule 6 (Governance, Management Information, Reports, Records and Audit), the Contractor may submit its invoice for such payment and, provided that the Contractor submits the invoice to the Authority in accordance with Clause 20.1, the Authority will consider and verify that invoice in a timely fashion.
- 20.3 The Authority shall pay the Contractor any sums due under such an invoice no later than a period of thirty (30) calendar days from the date on which the Authority has determined that the invoice is valid and undisputed.
- 20.4 Where the Authority fails to comply with Clause 20.2 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Clause 20.3 after a reasonable time has passed.
- 20.5 The approval for payment of a valid and undisputed claim for payment by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under this Contract.
- 20.6 Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under the Contract or under any other contract with the Authority, or with any other Government Department.



## **21 VALUE ADDED TAX AND OTHER TAXES**

- 21.1 The Charges exclude any UK output VAT and any similar EU (or non-EU) taxes chargeable on the supply of the Services by the Contractor to the Authority.
- 21.2 If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of its business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HMRC, the Authority shall pay to the Contractor in addition to the Charges (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supply of the Services, and all other payments under the Contract according to the law at the relevant tax point.
- 21.3 The Contractor is responsible for the determination of VAT liability. The Contractor shall consult its Customer Compliance Manager or the HMRC enquiries desk (and not the Authority's Representative) in cases of doubt. The Contractor shall notify the Authority's Representative of the Authority's VAT liability under the Contract, and any changes to it, within twenty (20) Business 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 may require the Contractor to obtain, and pass to the Authority, a formal opinion from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains an opinion from HMRC, it shall supply a copy to the Authority within three (3) Business Days of receiving that opinion unless it proposes to challenge the opinion. Where the Contractor challenges the opinion, it shall supply to the Authority a copy of any final opinions issued by HMRC on completion of the challenge within three (3) Business Days of receiving the opinion.
- 21.4 Where supply of the Services comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Services. The Contractor shall be responsible for ensuring it takes into account any changes in VAT law regarding registration.
- 21.5 Where the Services are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non- EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Charges (and any other sum due to the Contractor under the Contract) a sum equal to the tax that the Contractor is liable to pay to the tax authorities of the country in question in relation to the Services within thirty (30) calendar days of a written request for payment of any such sum by the Contractor.
- 21.6 In relation to the Services supplied under the Contract, the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (or similar EU or non-EU or both input taxes). However, these input taxes will be allowed where it is established that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement the matter shall be resolved under the Dispute Resolution Procedure.
- 21.7 Should HMRC assess that the Contractor has incorrectly determined the VAT liability, in accordance with this Clause 21, the Authority will pay the VAT assessed by HMRC or the Contractor shall credit any VAT paid by the Authority over and above the HMRC assessment

(as applicable). In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under this Contract or any other contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three (3) Business Days of a written request from the Authority for such correspondence.

- 21.8 Where the Contractor is a qualifying company or qualifying partnership for the purposes of any UK tax legislation, the Contractor shall notify the Authority's Representative, in writing, where it has notified HMRC that a return it has delivered to HMRC includes an uncertain amount that relates to a contract it has entered into with the Authority. The Contractor shall notify the Authority within twenty (20) Business Days of the notification it has provided to HMRC and provide the Authority with a copy of the notification. The Contractor shall continue to keep the Authority informed of any correspondence and/or discussions with HMRC in relation to the uncertain tax treatment within a reasonable time frame or upon request by the Authority.
- 21.9 In the event that HMRC notifies the Contractor of any change to the tax treatment of a previously notified uncertain amount, the Contractor shall notify the Authority and provide a copy of HMRC's notification and assessment within twenty (20) Business Days of receiving such notification and assessment.
- 21.10 The Authority shall not be liable for any interest and/or penalty that the Contractor is required to pay to HMRC for a failure to notify HMRC of an uncertain amount.

#### **Plastic Packaging Tax**

- 21.11 The Contractor shall ensure that any PPT due in relation to this Contract is paid in accordance with the PPT Legislation.
- 21.12 The Charges includes any PPT that may be payable by the Contractor in relation to the Contract.
- 21.13 On reasonable notice being provided by the Authority, the Contractor shall provide and make available to the Authority details of any PPT it has paid that relates to the Contract.
- 21.14 The Contractor shall notify the Authority, in writing, in the event that there is any adjustment required to the Charges in accordance with section 70 of the Finance Act 2021 and, on reasonable notice being provided by the Authority, the Contractor shall provide any such information that the Authority requires in relation to any such adjustment.
- 21.15 In accordance with Schedule 6 (Governance, Management Information, Reports, Records and Audit), the Contractor (and its Sub-Contractors) shall maintain all records relating to PPT and make them available to the Authority when requested on reasonable notice for reasons related to the Contract.
- 21.16 Where the Contractor manufactures, purchases or imports into the UK any Plastic Packaging Component in relation to the Contract the Contractor shall, on reasonable notice being given, provide the Authority with such information and documentation that it requires to enable the Authority to carry out due diligence checks and satisfy itself that the

Contractor has complied with the requirements of the PPT Legislation. This shall include, but is not limited to the Contractor providing:

- (a) confirmation of the tax status of any Plastic Packaging Component;
- (b) documents to confirm that PPT has been properly accounted for;
- (c) product specifications for the Plastic Packaging Components, including, but not limited to, the weight and composition of the products and any other product specifications that may be required; and
- (d) copies of any certifications or audits that have been obtained or conducted in relation to the provision of Plastic Packaging Components.

21.17 The Authority shall have the right, on providing reasonable notice, to physically inspect or conduct an audit on the Contractor, to ensure any information provided in accordance with Clause 21.16 above is accurate.

21.18 In the event the Contractor is not required to register for PPT, it (and to the extent applicable, its Sub-Contractors) shall provide the Authority with a statement to this effect and, to the extent reasonably required by the Authority on reasonable notice, supporting evidence for that statement.

21.19 The Contractor shall provide, on the Authority providing reasonable notice, any information that the Authority may require from the Contractor for the Authority to comply with any obligations it may have under the PPT Legislation.

## **22 FINANCIAL DISTRESS**

22.1 The Parties shall comply with the provisions of Schedule 25 (Financial Distress) in relation to the assessment of the financial standing of the Contractor, Guarantor and other specified entities and the consequences of a change to that financial standing.

## **23 OTHER ATTRIBUTABLE COSTS**

23.1 Without prejudice to any other provision of the Contract, the Contractor shall be responsible for and shall indemnify the Authority in respect of any costs, charges, fees, taxes and expenses incurred by the Contractor in providing the Services including (but not limited to):

- (a) all demurrage costs incurred by the Contractor save to the extent that the Contractor can demonstrate that the cause was directly and solely attributable to the Authority; and
- (b) payment of all light dues, pilotage costs, conservancy and harbour dues which become payable in respect of any Vessels.

## 24 TAX COMPLIANCE

- 24.1 The Contractor represents and warrants that at the date this Contract came into effect, it has notified the Authority in writing of any OOTNC or any litigation that it is involved in that is in connection with any OOTNC.
- 24.2 If, at any point during the performance of this Contract, an OOTNC occurs, the Contractor shall:
- (a) notify the Authority in writing of such fact within twenty (20) Business Days of its occurrence; and
  - (b) promptly provide to the Authority:
    - (i) details of the steps which the Contractor is taking to address the OOTNC and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
    - (ii) such other information in relation to the OOTNC as the Authority may reasonably require.
- 24.3 For the avoidance of doubt, the obligation at Clause 24.2 also applies to any 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.
- 24.4 The duty to notify does not substitute the Contractor's obligations under Schedule 6 (Governance, Management Information, Reports, Records and Audit).
- 24.5 The Authority shall be entitled to terminate the Contract in the event that:
- (a) the warranty given by the Contractor pursuant to Clause 24.1 is materially untrue; or
  - (b) the Contractor commits a material breach of its obligation to notify the Authority of any OOTNC as required by Clause 24.2; or
  - (c) the Contractor fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable.
- 24.6 In the event that the Authority terminates the Contract under Clause 24.5, the Authority shall be entitled to recover from the Contractor:
- (a) the amount of any loss resulting from the termination; and
  - (b) any other loss sustained in consequence of any breach of these Clauses 24.1 to 24.7, where the Contract has not been terminated.

24.7 In exercising its rights or remedies under these Clauses 24.1 to 24.7, the Authority shall:

- (a) act in a reasonable and proportionate manner taking into account, among other things:
  - (i) the gravity and duration of the OOTNC and any sanctions imposed by a court or tribunal; and
  - (ii) any remedial action taken by the Contractor to prevent reoccurrence of the OOTNC.
- (b) without prejudice to Clause 24.6, seriously consider, where appropriate, action other than termination of the Contract to deal with the failure by the Contractor to comply with these Clauses 24.1 to 24.7.

## **25 FUEL AND UTILITIES**

### **Fuel**

25.1 The Contractor shall use its best efforts to obtain fuel at the best possible price, taking into account:

- (a) local availability of fuel of the quality and in the quantity required; and
- (b) the requirement to have sufficient fuel at all times aboard craft operated by the Contractor in order to provide Services.

25.2 All fuel required to be procured by the Contractor shall be purchased by the Contractor in its own name. The Contractor shall ensure the efficient management and use of fuel in accordance with Good Industry Practice and shall demonstrate (via the Fuel Usage Report) to the Authority's satisfaction that best value for money is being achieved.

25.3 Subject to Clauses 25.1 to 25.2, all fuel purchased by the Contractor (other than fuel procured from the Authority or fuel used for purposes other than the provision of the Services or as a consequence of a reasonably avoidable breakdown) shall be charged by the Contractor monthly at cost in Sterling to the Authority and shall be paid in accordance with Schedule 4 (Payment, Performance and Incentivisation Mechanism) on the production to the Authority by the Contractor of proof of purchase satisfactory to the Authority.

25.4 The Contractor shall comply with the requirements set out in Schedule 6 (Governance, Management Information, Reports, Records and Audit) in respect of fuel reporting.

### **Utilities**

25.5 The Contractor shall ensure the efficient management and use of utilities in accordance with Good Industry Practice and shall demonstrate to the Authority's reasonable satisfaction that best value for money is being achieved.

## **SECTION D – CONTRACT GOVERNANCE**

### **26 GOVERNANCE AND MANAGEMENT INFORMATION**

- 26.1 The Parties shall comply with the provisions of Schedule 6 (Governance, Management Information, Reports, Records and Audit) in relation to the management and governance of this Contract. The Contractor acknowledges and accepts that the requirements set out in Schedule 6 (Governance, Management Information, Reports, Records and Audit) in respect of reporting and the provision of Management Information are in addition to any other reporting obligations in this Contract.

#### **Representatives**

- 26.2 Each Party shall have a representative for the duration of this Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Contract.
- 26.3 The initial Contractor Representative shall be the person named as such in Schedule 28 (Key Personnel). Any change to the Contractor Representative shall be agreed in accordance with Clause 31 (Contractor Personnel).
- 26.4 The Authority shall notify the Contractor of the identity of the initial Authority Representative within five (5) Business Days of the Effective Date. The Authority may, by written notice to the Contractor, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

### **27 RECORDS, AUDITS AND OPEN BOOK DATA**

- 27.1 The Contractor shall comply with the provisions of Schedule 6 (Governance, Management Information, Reports, Records and Audit).

#### **Shared Data Environment**

- 27.2 The Contractor acknowledges that data (including Management Information and Records) relating to this Contract and the Services shall be uploaded, stored and (where applicable) maintained on the Shared Data Environment. The Shared Data Environment shall be used and managed in accordance with Schedule 6 (Governance, Management Information, Reports, Records and Audit).

#### **Open Book Data**

- 27.3 The Contractor acknowledges the importance to the Authority of the Transparency Objectives and the Authority's need for complete transparency in the way in which the Charges are calculated.
- 27.4 During the Contract Term, and for a period of seven (7) years following the end of the Contract Term, the Contractor shall:

- (a) maintain and retain the open book data covering the length of Contract Term (and any extensions), including sufficient evidence to support any Charges and underlying costs such as, but not restricted to, trial balances, general ledgers, third party invoices, payroll records, allocation calculations, asset registers, journals and other supporting files (that would meet the requirements of the generally accepted accounting principles within the United Kingdom); and
- (b) disclose and allow the Authority and/or the Audit Agents access to the open book data in a timely manner.

### **Onerous Contracts**

- 27.5 If the Contractor publicly designates the Contract as an Onerous Contract (including where the Contractor has identified the Contract as such in any published accounts or public reports and announcements), the Contractor shall promptly notify the Authority of the designation and shall prepare and deliver to the Authority within the timescales agreed by the Parties (and in any event, no later than two (2) months following the publication of the designation) a draft Onerous Contract Report which includes the following:
- (a) an initial root cause analysis of the issues and circumstances which may have contributed to the Contract being designated as an Onerous Contract;
  - (b) an initial risk analysis and impact assessment on the provision of the Services as a result of the Contractor's designation of the Contract as an Onerous Contract;
  - (c) the measures which the Contractor intends to put in place to minimise and mitigate any adverse impact of such designation as an Onerous Contract on the provision on the Services; and
  - (d) details of any other options which could be put in place to remove the designation of the Contract as an Onerous Contract and/or which could minimise and mitigate any adverse impact on the provision of the Services.
- 27.6 Following receipt of the Onerous Contract Report, the Authority shall review and comment on the report as soon as reasonably practicable and the Parties shall cooperate in good faith to agree the final form of the report, such final form report to be agreed, and provided to the Authority's Representative, no later than one (1) month following the Authority's receipt of the draft Onerous Contract Report.
- 27.7 The Parties shall meet within fourteen (14) Business Days of the final Onerous Contract Report being agreed by the Parties to discuss the contents of the report, and the Parties shall procure the attendance at the meeting of any key participants where reasonably required (including where the Contractor is a Strategic Supplier, the Cabinet Office Markets and Suppliers team, and representatives from any Key Sub-Contractors/Monitored Contractors; and the project's senior responsible officers (or equivalent) for each Party).
- 27.8 The Contractor acknowledges and agrees that the report is submitted to the Authority on an information only basis and the Authority's receipt of and comments in relation to the report shall not be deemed to be an acceptance or rejection of the report nor shall it relieve the Contractor

of any liability under this Contract. Any Changes to be agreed by the Parties pursuant to the report shall be subject to Schedule 19 (Change Control Procedure).

## **28 CHANGE**

### **Change Control Procedure**

28.1 Any requirement for a Change shall be subject to the Change Control Procedure.

### **Change in Law**

28.2 The Contractor shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Charges as the result of:

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.

28.3 If a Specific Change in Law occurs or will occur during the Contract Term (other than as referred to in Clause 28.2(b)), the Contractor shall:

- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
  - (i) whether any Change is required to the Services, the Charges or this Contract; and
  - (ii) whether any relief from compliance with the Contractor's obligations is required, including any obligation to meet the Key Performance Indicators; and
- (b) provide the Authority with evidence:
  - (i) that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors; and
  - (ii) as to how the Specific Change in Law has affected the cost of providing the Services.

28.4 Any variation in the Charges or relief from the Contractor's obligations resulting from a Specific Change in Law (other than as referred to in Clause 28.2(b)) shall be implemented in accordance with the Change Control Procedure.

### **Updates to the Service Delivery Plan**

28.5 The Contractor shall conduct an annual review of all aspects of its Service Delivery Plan and shall propose any updates it deems necessary as part of the Monthly Performance and Activity Report (as set out in Part B (Management Information of Schedule 6 (Governance,



Management Information, Reports, Records and Audit) to the Monthly Performance Review Board for its consideration. The Contractor acknowledges and accepts that the implementation of any such updates shall be at the Authority's sole discretion.

- 28.6 Any updates to the Service Delivery Plan proposed by the Contractor pursuant to Clause 28.5 and subsequently agreed by the Monthly Performance Review Board shall be managed in accordance with the Change Control Procedure. No such update shall be considered a Change to the Contract unless and until it is formally deemed to be effective in accordance with the terms of the Change Control Procedure.

## **29 RIGHTS OF ACCESS**

- 29.1 In addition to its rights provided in Schedule 6 (Governance, Management Information, Reports, Records and Audit), the Authority or a representative of the Authority may, upon reasonable notice, enter upon any property (including any Vessel(s)) used by the Contractor to perform the Services or any property used as training or workshop facilities or places where work is being prepared or materials being obtained for the Services by the Contractor, in order to:

- (a) inspect any works being undertaken to deliver or in connection with the delivery of the Services;
- (b) examine or audit any procedures or documentation used in connection with the delivery of the Services; or
- (c) monitor compliance by the Contractor with its obligations (including in relation to the Vessels) under this Contract

provided that the Authority shall be entitled to exercise its rights under this Clause 29.1 no more frequently than once every three (3) months except where the Authority reasonably believes that:

- i. the Contractor is or may be in breach of any of its obligations under this Contract; or
  - ii. there may be or is a risk to health or safety of persons, property or to the Environment in connection with the Services.
- 29.2 The Contractor shall procure that satisfactory facilities are made available to the Authority and any representative of the Authority and that reasonable assistance is given for the purposes of Clauses 29.1 and 29.2, subject to the Contractor's and Sub-Contractors' operational requirements not being adversely affected.
- 29.3 The Authority and its representative shall at all times comply with any health and safety and reasonable security requirements when exercising its rights under this Clause 29.
- 29.4 The Contractor shall at all times comply with any access requests from independent external auditors. Where possible and where the Authority has such notice, the Authority shall give the Contractor (or shall procure that the Contractor is given) five (5) Business Days' written notice of such audit and a brief description of the purpose of such audit. The Contractor acknowledges

and accepts that the Authority may not have any knowledge and/or prior awareness of independent external audits.

- 29.5 Nothing in this Clause 29 shall in any way limit or affect the Contractor's obligations and liabilities under or in connection with this Contract.

### **30 CHANGE OF CONTROL OF CONTRACTOR**

- 30.1 The Contractor shall notify the Representative of the Authority at the address given in Clause 30.2, as soon as practicable, in writing of any:

- (a) planned, actual or intended change in control of the Contractor;
- (b) planned, actual or (to the extent the Contractor has knowledge) intended change in control of any Key Sub-Contractor; and
- (c) (to the extent the Contractor has knowledge) planned, actual or intended change in control of any Sub-Contractor,

and the Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanction arising from issuing such a notice.

- 30.2 Each notice of Change of Control shall be taken to apply to all contracts with the Authority. Notices shall be submitted to:

Mergers & Acquisitions Section  
Strategic Supplier Management Team  
Spruce 3b #1301  
MOD Abbey Wood  
Bristol  
BS34 8JH

- 30.3 The Representative of the Authority shall consider the notice of Change of Control and advise the Contractor in writing of any concerns the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations, or matters covered by the declarations made by the Contractor prior to Effective Date.
- 30.4 The Authority may terminate the Contract by giving written notice to the Contractor within six (6) months of the Authority being notified in accordance with Clause 30.1. The Authority shall act reasonably in exercising its right of termination under this Clause 30.
- 30.5 Notification by the Contractor of any intended, planned or actual Change of Control shall not prejudice the existing rights of the Authority or the Contractor under the Contract nor create or imply any rights of either the Contractor or the Authority additional to the Authority's rights set out in this Clause 30.



## **SECTION E – CONTRACTOR PERSONNEL AND SUPPLY CHAIN**

### **31 CONTRACTOR PERSONNEL**

31.1 The Contractor shall:

- (a) comply at all times with its undertaking in Clause 6.7(a) (Services);
- (b) ensure that all Contractor Personnel:
  - (i) provide the Services with all reasonable skill, care and diligence;
  - (ii) are vetted in accordance with the Security Requirements set out in Clause 38 (Security Measures), Schedule 2 (Statement of Requirement) and Schedule 8 (Security and Information Management); and
  - (iii) comply with all reasonable requirements of the Authority concerning conduct at any Government Establishment, including the Security Requirements as set out in Schedule 8 (Security and Information Management);
- (c) subject to Schedule 22 (Staff Transfer), retain overall control of the Contractor Personnel at all times so that the Contractor Personnel shall not be deemed to be employees, agents or contractors of the Authority;
- (d) be liable at all times for all acts or omissions of Contractor Personnel, so that any act or omission of a member of any Contractor Personnel which results in a Default under this Contract shall be a Default by the Contractor;
- (e) use all reasonable endeavours to minimise the number of changes in Contractor Personnel;
- (f) replace (temporarily or permanently, as appropriate) any Contractor Personnel as soon as practicable if any Contractor Personnel have been removed or are unavailable for any reason other than Short Term Absence;
- (g) bear the programme familiarisation and other costs associated with any replacement of any Contractor Personnel; and
- (h) procure that the Contractor Personnel shall vacate all Government Establishments immediately upon the termination or expiry of this Contract.

31.2 If the Authority reasonably believes that any of the Contractor Personnel are unsuitable to undertake work in respect of this Contract, it may:

- (a) refuse admission to the relevant person(s) to any Government Establishment; and/or
- (b) direct the Contractor to end the involvement in the provision of the Services of the relevant person(s).

## **Retention of Legal Obligations**

- 31.3 In respect of any element of the Services delivered by Contractor Personnel, an obligation on the Contractor to do or to refrain from doing any act or thing under this Contract shall include an obligation on the Contractor to procure that the Contractor Personnel also do or refrain from doing such act or thing in their delivery of those elements of the Services.

## **Key Personnel**

- 31.4 The Contractor shall ensure that the Key Personnel fulfil the Key Roles at all times during the Contract Term. Schedule 28 (Key Personnel) lists the Key Roles and names of the persons whom the Contractor shall appoint to fill those Key Roles at the Effective Date.
- 31.5 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Contractor, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 31.6 The Contractor shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- (a) requested to do so by the Authority;
  - (b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
  - (c) the person's employment or contractual arrangement with the Contractor or a Sub-Contractor is terminated for material breach of contract by the employee; or
  - (d) the Contractor obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- 31.7 The Contractor shall:
- (a) notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Contractor shall ensure appropriate temporary cover for that Key Role);
  - (b) ensure that any Key Role is not vacant for any longer than ten (10) Business Days;
  - (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least sixty (60) Business Days' notice;
  - (d) ensure that all arrangements for planned changes in 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 Services; and
  - (e) ensure that any replacement for a Key Role:

- (i) has a level of qualifications and experience appropriate to the relevant Key Role; and
- (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

#### **Income Tax and National Insurance Contributions**

31.8 Where the Contractor or any Contractor Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Contractor shall:

- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- (b) indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Contractor or any Contractor Personnel.

#### **Staff Transfer**

31.9 The Parties agree that the provisions of Schedule 22 (Staff Transfer) shall apply.

#### **Pensions**

31.10 The Parties agree that the provisions of Schedule 22 (Staff Transfer) shall apply.

### **32 CONTRACTOR PERSONNEL AT GOVERNMENT ESTABLISHMENTS**

32.1 Reference in this Clause to:

- (a) "**site**" shall be construed as a reference to a Government Establishment;
- (b) "**Officer in Charge**" shall be deemed to include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Heads of Government Establishments; and
- (c) "**Contractor's Representative(s)**" shall be deemed to include the Contractor's employees, agents and sub-contractors.

32.2 The following general provisions apply:

- (a) the Officer in Charge shall provide such available administrative and technical Government Furnished Facilities for the Contractor's Representatives employed at Government Establishments for the purpose of the Contract as may be necessary for the effective and economical discharge of work under the Contract. These facilities will be provided free of charge unless otherwise stated in the Contract. The status to be

accorded to the Contractor's Representatives for messing purposes will be at the discretion of the Officer in Charge;

- (b) land or premises (including temporary buildings) made available to the Contractor by the Authority shall be used by the Contractor solely for the purposes of performing the Contract; and
- (c) the Contractor shall have no claim against the Authority for any additional cost or delay occasioned by the closure for holidays of Government Establishments, where this is made known to it prior to entering into the Contract.

#### **Liability In Respect of Damage to Government Establishments**

- 32.3 Without prejudice to the provisions of Clause 16 (Assets), the Contractor shall, except as otherwise provided for in the Contract, make good or, at the option of the Authority, pay compensation for all damage including environmental damage, occurring to any Government Establishment, which includes land or buildings, occasioned by the Contractor, or by any of its Representatives, arising from its or their presence on a Government Establishment in connection with the Contract, provided that this Clause shall not apply to the extent that the Contractor is able to show that any such damage was not caused or contributed to by any circumstances within its reasonable control.
- 32.4 The total liability of the Contractor under Clause 32.3 herein shall be subject to any limitation specified in Clause 46 (Limitations on Liability).

#### **Contractor's Property**

- 32.5 All property of the Contractor and its Representatives shall be at the risk of the Contractor whilst it is on any Government Establishment, and the Authority shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby, except as follows:
- (a) where any such loss or damage was caused or contributed to by any act, neglect or default of any Government servant, agent or contractor then the Authority shall accept liability therefor to the extent to which such loss or damage is so caused or contributed to as aforesaid; and
  - (b) where any property of the Contractor has been taken on charge by the Officer in Charge, and a proper receipt has been given therefor, then the Authority shall be liable for any loss or damage occurring to that property while held on such charge as aforesaid.

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

- 32.6 The Contractor shall submit in writing to the Authority for approval, initially and as necessary from time to time, a list of those of its Representatives who may need to enter a Government Establishment for the purpose of, or in connection with, work under the Contract, giving such

particulars as the Authority may require, including full details of birthplace and parentage of any such Representative who:

- (a) was not born in the United Kingdom; or
- (b) if born in the United Kingdom, was born of parents of whom either or both were not born in the United Kingdom.

32.7 The Authority shall issue passes for those Representatives who are approved by it in accordance with Clause 32.6 herein for admission to a Government Establishment and a Representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Authority and shall be surrendered on demand or on completion of the work.

32.8 Notwithstanding the provisions of Clauses 32.6 and 32.7 hereof, if, in the opinion of the Authority, any Representative of the Contractor shall misconduct himself, or it shall not be in the public interest for any person to be employed or engaged by the Contractor, the Contractor shall remove such person without delay on being required to do so and shall cause the work to be performed by such other person as may be necessary.

32.9 The decision of the Authority upon any matter arising under Clauses 32.6 to 32.8 inclusive shall be final and conclusive.

#### **Observance of Regulations**

32.10 The following provisions apply:

- (a) The Contractor shall ensure that its Representatives have the necessary probity and, where applicable, are cleared to the appropriate level of security when employed within the boundaries of a Government Establishment.
- (b) Where the Contractor requires information about the Government's security clearance requirements (the "Security Standard" for the purposes of this Clause 32.10) for its Representatives, or is not in possession of the relevant rules and regulations, or requires guidance in relation to the Security Standard and/or such requirements, they shall apply in the first instance to the Authority's Representative.
- (c) On request, the Contractor shall be able to demonstrate to the Authority that the Contractor's processes to assure compliance with the Security Standard have been carried out satisfactorily. Where that assurance is not already in place, the Contractor shall permit the Authority to inspect the processes being applied by the Contractor to comply with the Security Standard.
- (d) The Contractor shall comply and shall ensure that its Representatives comply with the rules, regulations, policies and requirements that are in force whilst at that Government Establishment which shall be provided by the Authority on request.
- (e) When on board ship, compliance with the rules, regulations, policies and requirements shall be in accordance with the Ship's Regulations as interpreted by the Officer in



Charge. Details of those rules, regulations, policies and requirements shall be provided on request by the Officer in Charge.

### **Injuries, Disease and Dangerous Occurrences**

- 32.11 The Contractor shall report any injury, disease or dangerous occurrence at any Government Establishment arising out of the performance of this Contract, that must be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR) to the Officer in Charge of the relevant Government Establishment. Such obligation to report is additional to any report that the Contractor may be required to submit under RIDDOR to the relevant enforcing authority (e.g. Health and Safety Executive or local authority).

### **Health and Safety Hazard Control**

- 32.12 Where the Contractor enters a Government Establishment for the purpose of performing work under the Contract:

- (a) The Contractor shall notify the Officer in Charge or the site project liaison officer or overseeing officer nominated in the Contract of:
  - (i) any health and safety hazards associated with the work to be performed by the Contractor or any of its Representatives;
  - (ii) any foreseeable risks to the health and safety of all persons associated with such hazards; and
  - (iii) any precautions to be taken by him as well as any precautions which, in his opinion, ought to be taken by the Authority, in order to control such risks.
- (b) The Authority shall notify the Contractor of:
  - (i) any health and safety hazards which may be encountered by the Contractor or any of its Representatives on the Government Establishment;
  - (ii) any foreseeable risks to the health and safety of the Contractor or any of its Representatives, associated with such hazards; and
  - (iii) any precautions to be taken by the Authority as well as any precautions which, in its opinion, ought to be taken by the Contractor, in order to control such risks.
- (c) The Contractor shall notify its Representatives of and, where appropriate, provide adequate instruction in relation to:
  - (i) the hazards, risks and precautions notified by him to the Authority under sub-Clause 32.12(a);
  - (ii) the hazards, risks and precautions notified by the Authority to the Contractor under Clause 32.12(b); and

- (iii) the precautions which, in its opinion, ought to be taken by its Representatives in order to control those risks.
- (d) The Contractor shall provide the Officer in Charge or the site project liaison officer or overseeing officer nominated in the Contract with:
  - (i) copies of those sections of its own and, where appropriate, the safety policies which are relevant to the risks notified under Clause 32.12(a);
  - (ii) copies of any related risk assessments; and
  - (iii) copies of any notifications and instructions issued by it to its Representatives under Clause 32.12(c).
- (e) The Authority shall provide the Contractor with:
  - (i) copies of those sections of its own safety policies which are relevant to the risks notified under Clause 32.12(b);
  - (ii) copies of any related risk assessments; and
  - (iii) copies of any notifications and instructions issued by it to its employees similar to those called for from the Contractor under Clause 32.12(c).

### **33 SUB-CONTRACTING**

#### **Advertising Sub-Contracts**

- 33.1 The Authority may issue guidance to the Contractor on how to advertise Sub-Contract opportunities on the Defence Sourcing Portal from time to time and (where the Contractor 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) the Contractor shall comply with such guidance so issued in relation to the advertisement of any Sub-Contract opportunity.
- 33.2 Where the Contractor, 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):
- (a) promptly notify the Authority, if the Contractor intends to advertise a Sub-Contract; and
  - (b) publish an advertisement on (and provide all information required by) the Defence Sourcing Portal in respect of each and any Sub-Contract opportunity;
  - (c) provide reports to the Authority, if so requested, on the number, type and value of Sub-Contract opportunities placed on the Defence Sourcing Portal and awarded in its supply chain during the Contract Term; and

- (d) promote the Defence Sourcing Portal to all Sub-Contractors and encourage those operators to register on it.

#### **Appointment of Sub-Contractors**

- 33.3 The Contractor shall exercise due skill and care in the selection and appointment of any Sub-Contractors to ensure that the Contractor is able to:
- (a) manage any Sub-Contractors in accordance with Good Industry Practice;
  - (b) comply with its obligations under this Contract in the delivery of the Services; and
  - (c) assign, novate or otherwise transfer to the Authority or any Replacement Contractor any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Contract.
- 33.4 Prior to sub-contracting any of its obligations under this Contract, the Contractor shall notify the Authority in writing of:
- (a) the proposed Sub-Contractor's name, registered office and company registration number;
  - (b) the scope of any Services to be provided by the proposed Sub-Contractor; and
  - (c) where the proposed Sub-Contractor is an Affiliate of the Contractor, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-Contract has been agreed on "arm's-length" terms.
- 33.5 If requested by the Authority within ten (10) Business Days of receipt of the Contractor's notice issued pursuant to Clause 33.4, the Contractor shall also provide:
- (a) a copy of the proposed Sub-Contract; and
  - (b) any further information reasonably requested by the Authority.
- 33.6 The Authority may, within ten (10) Business Days of receipt of the Contractor's notice issued pursuant to Clause 33.4 (or, if later, receipt of any further information requested pursuant to Clause 33.5), object to the appointment of the relevant Sub-Contractor if it considers that:
- (a) the appointment of a proposed Sub-Contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;
  - (b) the proposed Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers;
  - (c) the proposed Sub-Contractor employs unfit persons; and/or
  - (d) the proposed Sub-Contractor should be excluded in accordance with Clause 33.21,

in which case, the Contractor shall not proceed with the proposed appointment.

33.7 If:

- (a) the Authority has not notified the Contractor that it objects to the proposed Sub-Contractor's appointment by the later of ten (10) Business Days of receipt of:
  - (i) the Contractor's notice issued pursuant to Clause 33.4; and
  - (ii) any further information requested by the Authority pursuant to Clause 33.5; and
- (b) the proposed Sub-Contract is not a Key Sub-Contract (which shall require the written consent of the Authority in accordance with Clause 34.6 (Key Sub-Contracts)),

the Contractor may proceed with the proposed appointment and, where the Sub-Contract is entered into exclusively for the purpose of delivery of the Services, may notify the Authority that the relevant Sub-Contract shall constitute a Third Party Contract.

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

33.8 The Contractor shall ensure that, unless otherwise agreed in writing with the Authority, all Sub-Contracts (which in this sub-clause includes any contract in the Contractor's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract) contain provisions:

- (a) giving the Contractor a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour Law;
- (b) requiring the Contractor or other party receiving goods or services under the Sub-Contract to consider and verify invoices under that contract in a timely fashion;
- (c) that if the Contractor or other party fails to consider and verify an invoice in accordance with Clause 33.8(b), the invoice shall be regarded as valid and undisputed for the purpose of Clause 33.8(d) after a reasonable time has passed;
- (d) requiring the Contractor or other party to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
- (e) giving the Authority a right to publish the Contractor's compliance with its obligation to pay undisputed invoices within the specified payment period;
- (f) requiring the parties to the Sub-Contract to comply with any security requirements as the Authority may specify from time to time;
- (g) requiring the Sub-Contractor to participate in, and if required by the Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-Contractors in, the Multi-Party Dispute Resolution Procedure;

- (h) (if the Contractor proposes a Sub-Contract which will involve the disclosure of Secret Matter to the Sub-Contractor) following the requirements in Clause 38.6 (Security Measures);
- (i) placing the Sub-Contractor under obligations in relation to secrecy and security corresponding to those placed on the Contractor by Clause 38 (Security Measures) if such Sub-Contractor will have access to any Government Establishments and/or Secret Matters;
- (j) obliging the Sub-Contractor to comply with the security requirements in relation to sub-contracting as set out in Annex C of Schedule 8 (Security and Information Management);
- (k) complying with the requirements of Clause 37 (Cyber);
- (l) requiring the Sub-Contractor to provide any such information which the Contractor requires in order to comply with its obligations under Clause 33.10(c); and
- (m) requiring the Sub-Contractor to include a clause to the same effect as this Clause 33.8 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract,

and the Contractor shall, and shall procure that its Sub-Contractors who will have access to any Government Establishments and/or Secret Matters shall, give such notices, directions, requirements and decisions to any Sub-Contractors as may be necessary to bring the provisions relating to secrecy and security which are included in Sub-Contracts pursuant to this Clause 33.8 into operation in such cases and to such extent as the Authority Representative may direct.

- 33.9 All Sub-Contracts which may result in the employment of any Former Authority Employee being transferred to a Sub-Contractor pursuant to the Transfer Regulations shall include those provisions required under paragraph 2.2 of Part 3 (Pensions Matters) to Schedule 22 (Staff Transfer) of this Contract in respect of such Sub-Contracts.

### **Supply chain protection**

- 33.10 The Contractor shall:

- (a) pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) calendar days of verifying that the invoice is valid and undisputed;
- (b) provide a summary of its compliance with Clause 33.10(a), such data to be certified each Quarter by a director of the Contractor as being accurate and not misleading; and
- (c) complete the Supply Chain Resilience and Risk Awareness Mapping Template (and shall notify the Authority as soon as reasonably practicable of changes to the accuracy of the information by providing an updated template) so as to provide:
  - (i) a list of each First-Tier Sub-Contractor; and

- (ii) to the extent they have the right to do so, a list of Second-Tier Sub-Contractors which they are aware of or ought reasonably to be aware of,

and the information listed in (i) and (ii) shall be provided to the Authority:

- (iii) in relation to First-Tier Sub-Contractors, within ninety (90) days of the Effective Date; and
- (iv) in relation to the Second-Tier Sub-Contractors, within ninety (90) days of the Effective Date or a timeframe to be agreed by the Authority and the Contractor; and
- (v) for the purpose of undertaking supply chain and risk resilience management activities by the Authority only.

33.11 Notwithstanding any provision of Clauses 41 (Confidentiality) and 44 (Publicity), if the Contractor notifies the Authority that the Contractor has failed to pay a Sub-Contractor's undisputed invoice within thirty (30) calendar days of receipt, 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).

#### **Sub-Contractor IPR**

33.12 To the extent relevant to the scope of supply of the Sub-Contractor, all Sub-Contracts shall include:

- (a) provisions which enable the vesting of all Results and Foreground IPR in the Authority in accordance with Clause 35.2 (Intellectual Property Rights);
- (b) a licence for the Authority under Sub-Contractor Background IPR in the same terms as the licence the Authority receives in relation to Contractor Background IPR as set out in Clause 35.6;
- (c) provisions which oblige the Sub-Contractor to comply with the obligations imposed on the Contractor (and Sub-Contractor where specified) under:
  - (i) Clause 35.4;
  - (ii) Clauses 35.9 to 35.12 (inclusive);
  - (iii) Clauses 35.13 to 35.16 (inclusive); and
  - (iv) Clause 35.18;
- (d) provisions to ensure that the provisions of Clause 35 (Intellectual Property Rights) are, additionally flowed down to Sub-Contractors of the Contractor;

- (e) provisions such that the Sub-Contract shall not be rescinded, or varied in such a way as to alter or extinguish any rights granted to the Authority without the prior written consent of the Authority Representative; and
  - (f) provisions that the Authority and the Contractor may register any licence of registered Third Party IPR against that IPR.
- 33.13 Prior to entering into any Sub-Contract relating to IPR, the Contractor shall notify the proposed Sub-Contractor that the Contractor is not entitled to place a contract with the Sub-Contractor which does not comply with the conditions of Clause 33.12.
- 33.14 The Contractor shall retain, for three (3) years from the earlier of the Termination Date or the Expiry Date as the case may be, a copy of all Sub-Contracts (or the relevant parts thereof) sufficient to demonstrate the Authority's rights with respect to Clause 33.12 (Sub-Contractor IPR) including rights in respect of Sub-Contractor IPR and shall provide certified copies of such records to the Authority Representative upon request.

#### **Termination of Sub-Contracts**

- 33.15 The Authority may require the Contractor to terminate a Sub-Contract where:
- (a) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 56 (Termination for Contractor Default);
  - (b) the relevant Sub-Contractor has failed to comply in the performance of its Sub-Contract with legal obligations in the fields of environmental, social or labour Law;
  - (c) the relevant Sub-Contractor has caused reputational damage to the Authority, in the Authority's sole opinion;
  - (d) the Authority has found grounds for exclusion of the Sub-Contractor in accordance with Clause 33.21; and/or
  - (e) there is a breach of any of the security requirements specified in Clauses 33.8(f) and 33.8(h).

#### **Termination of this Contract**

- 33.16 Where this Contract expires or is terminated, the Contractor shall, at the request of the Authority, transfer any of its rights and obligations under the Sub-Contracts to the Authority or Replacement Contractor.

#### **Competitive Terms**

- 33.17 If the Authority is able to obtain from any Sub-Contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software

or services used by the Contractor or the Contractor Personnel in the supply of the Services, then the Authority may:

- (a) require the Contractor to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
- (b) enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.

33.18 If the Authority exercises either of its options pursuant to Clause 33.17, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.

33.19 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:

- (a) the Authority making the relevant item available to the Contractor where this is necessary for the Contractor to provide the Services; and
- (b) any reduction in the Charges taking into account any unavoidable costs payable by the Contractor in respect of the substituted item, including in respect of any licence fees or early termination charges.

#### **Retention of Legal Obligations**

33.20 Notwithstanding the Contractor's right to Sub-Contract pursuant to this Clause 33, the Contractor shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own. In respect of any element of the Services delivered by Contractor Personnel and/or which are sub-contracted by the Contractor, an obligation on the Contractor to do or to refrain from doing any act or thing under this Contract, shall include an obligation on the Contractor to procure that the Sub-Contractor also do or refrain from doing such act or thing in its delivery of those elements of the Services.

#### **Exclusion of Sub-Contractors**

33.21 Where the Authority considers whether there are grounds for the exclusion of a Sub-Contractor under Regulation 23(1) of the Regulations, then:

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



## **34 KEY SUB-CONTRACTS**

### **General**

- 34.1 Clauses 33.3 and 33.8 to 33.21 (Sub-Contracting) are applicable to all Key Sub-Contracts.
- 34.2 The Contractor shall perform its obligations under and observe all the terms of any Key Sub-Contract which it has entered into with a Key Sub-Contractor.
- 34.3 Nothing in this Contract shall prohibit or prevent any Key Sub-Contractor employed by the Contractor from being employed by the Authority at any establishments of the Authority.

### **Approval of Key Sub-Contractors and Terms of Key Sub-Contracts**

- 34.4 By entering into this Contract, the Authority approves the Key Sub-Contractors appointed by the Contractor as at the Effective Date.
- 34.5 If the Contractor wishes to replace a Key Sub-Contractor or add an additional Key Sub-Contractor then, prior to sub-contracting any of its obligations under this Contract to a new/additional entity, the Contractor shall submit the following in writing to the Authority's Representative for the Authority's approval:
  - (a) the information required pursuant to Clause 33.4;
  - (b) a copy of the safety and security policies of the proposed Key Sub-Contractor;
  - (c) a copy of the proposed Key Sub-Contract which shall include the matters required pursuant to Clause 34.10; and
  - (d) any further information reasonably requested by the Authority.
- 34.6 The Authority Representative shall (acting reasonably) confirm or reject in writing:
  - (a) the identity of the proposed Key Sub-Contractor; and/or
  - (b) the terms of the proposed Key Sub-Contract,

within thirty (30) Business Days of the Contractor's submission pursuant to Clause 34.5 (or such time as agreed between the Parties), provided that it shall be reasonable for the Authority Representative to reject any proposed Key Sub-Contractor who is not a Suitable Substitute Key Sub-Contractor and/or who will not be appointed under a Sub-Contract including the matters required pursuant to Clause 34.10.
- 34.7 The Authority may, at its sole discretion, seek to enter into a direct agreement with a proposed Key Sub-Contractor and the Contractor may not place a Key Sub-Contract until the Authority Representative has confirmed in writing either that it has entered into such a direct agreement or that it does not wish to do so. Should the Authority opt for such a direct agreement, the

Authority Representative shall inform the Contractor provided always that the Authority shall be responsible for its own costs in procuring and negotiating any such direct agreements.

34.8 The Contractor shall not, in respect of the Contract, employ a proposed new Key Sub-Contractor and/or use a proposed Key Sub-Contract and shall procure that a Key Sub-Contractor does not, in respect of the Project, employ a Key Sub-Contractor and/or use a proposed Key Sub-Contract rejected by the Authority pursuant to Clause 34.6.

34.9 Following:

- (a) the Authority Representative's approval pursuant to Clauses 34.6; and
- (b) the Authority Representative's confirmation in writing either that it has entered into a direct agreement with a proposed Key Sub-Contractor, or that it does not wish to do so, pursuant to Clause 34.7,

the Contractor may proceed to enter into the relevant Sub-Contract documentation by the parties to it, and upon such date the proposed new Key Sub-Contractor and Key Sub-Contract shall become a Sub-Contractor and Sub-Contract respectively for the purposes of this Contract and, where the Sub-Contract is entered into exclusively for the purpose of delivery of the Services, the Contractor must notify the Authority that the relevant Sub-Contract shall constitute a Third Party Contract.

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

34.10 Except where the Authority has given its prior written consent, the Contractor shall ensure that each Key Sub-Contract shall include (in addition to provisions of Clause 33.8 (Sub-Contracting):

- (a) provisions which will enable the Contractor to discharge its obligations under this Contract;
- (b) a right under CRTPA for the Authority to enforce any provisions under the Key Sub-Contract which are capable of conferring a benefit upon the Authority;
- (c) a provision enabling the Authority to enforce the Key Sub-Contract as if it were the Contractor;
- (d) a provision enabling the Contractor to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Authority or any Replacement Contractor without restriction (including any need to obtain any consent or approval) or payment by the Authority;
- (e) obligations no less onerous on the Key Sub-Contractor than those imposed on the Contractor under this Contract in respect of:
  - (i) data protection requirements set out in Clause 43 (Protection of Personal Data);

- (ii) FOIA requirements set out in Clause 42 (Transparency and Freedom of Information);
  - (iii) the obligation not to embarrass the Authority or detract from or damage the image and reputation of the Authority as set out in Clause 6.7(c) (Services);
  - (iv) the keeping of records in respect of the services being provided under the Key Sub-Contract, including the maintenance of open book data; and
  - (v) the conduct of audits as set out in Clause 16 (Assets), Clause 17 (Accounting for GFE) and Schedule 6 (Governance, Management Information, Reports, Records and Audit);
- (f) provisions requiring the provision of data and/or inputs required (as applicable) by the Contractor to enable the Contractor to satisfy its obligations pursuant to Schedule 6 (Governance, Management Information, Reports, Records and Audit);
- (g) provisions enabling the Contractor to terminate the Key Sub-Contract on notice on terms no more onerous on the Contractor than those imposed on the Authority under Clause 56 (Termination for Contractor Default) and Schedule 20 (Compensation on Termination) of this Contract;
- (h) a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the services provided to the Contractor under the Key Sub-Contract without first seeking the written consent of the Authority;
- (i) a provision enabling the Contractor, 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 50 (Step-in Rights);
- (j) a provision restricting the variation or removal of any right or obligation of the Key Sub-Contract relating to the Authority without the Authority's prior written consent;
- (k) a provision requiring the Key Sub-Contractor to comply with the requirements set out in the Security Aspects Letter;
- (l) provisions on the same terms as Clauses 61.3 to 61.6 (Compliance) regarding equality and diversity, 61.7 to 61.9 (Compliance) regarding child labour and employment law and 38 (Security Measures);
- (m) provisions to ensure the provision of a report or reports including the level of information set out in the Financial Reports in relation to the costs and expenses to be incurred by any of its Key Sub-Contractors, as set out in paragraph 4 of Part B to Schedule 31 (Transparency and Financial Models); and

- (n) a provision requiring the Key Sub-Contractor to:
  - (i) promptly notify the Contractor and the Authority in writing of any of the following of which it is, or ought to be, aware:
    - (A) the occurrence of a Financial Distress Event in relation to the Key Sub-Contractor; or
    - (B) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-Contractor,and in any event, provide such notification within ten (10) Business Days of the date on which the Key Sub-Contractor first becomes aware of such; and
  - (ii) co-operate with the Contractor and the Authority in order to give full effect to the provisions of Schedule 25 (Financial Distress), including meeting with the Contractor and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, contributing to and complying with the Financial Distress Remediation Plan, and providing the information specified at paragraph 4.3(b)(ii) of Schedule 25 (Financial Distress).

- 34.11 The Contractor shall not terminate or materially amend the terms of any Key Sub-Contract without the Authority's prior written consent, which shall not be unreasonably withheld or delayed.
- 34.12 The Contractor Representative shall give the Authority Representative such information and particulars as the Authority Representative may from time to time require for the purposes of satisfying the Authority that the obligations imposed by or under the provisions of Clause 34.10 have been and are being observed and as to what the Contractor has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof.
- 34.13 Nothing in Clause 34.12 shall be construed as intended to prevent any person from giving any information or doing anything on any occasion when it is, by virtue of any applicable Law, the duty of that person to give that information or do that thing.

### **Termination of Key Sub-Contracts**

- 34.14 In addition to provisions of Clause 33.15 (Sub-Contracting), the Authority may require the Contractor to terminate a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-Contractor, unless:
- (a) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
  - (b) the Authority has not served its notice of objection within ninety (90) days 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.

## **SECTION F – INTELLECTUAL PROPERTY, DATA, CONFIDENTIALITY AND SECURITY**

### **35 INTELLECTUAL PROPERTY RIGHTS**

#### **Background IPR**

- 35.1 Nothing in this Clause 35 impacts the ownership of rights in either Party's Background IPR.

#### **Foreground IPR**

- 35.2 All Results and Foreground IPR shall vest in and be the property of the Authority from creation. The Contractor shall take all necessary measures to secure that vesting. On request, the Contractor shall demonstrate to the Authority's reasonable satisfaction that, where it has sub-contracted work under the Contract, they have secured that vesting in the work performed by its Sub-Contractors.
- 35.3 The Authority may use, have used, copy and disclose the Results and/or Foreground IPR by itself or through third parties for any purpose whatsoever subject to the Contractor's rights in its Background IPR and to the rights of third parties not employed in the performance of work under the Contract.
- 35.4 The Authority shall determine whether any of the Results or Foreground IPR should be protected by patent or other protection. The costs of patent or like protection shall be borne by the Authority. The Contractor shall assist the Authority (at the Authority's cost, provided the Contractor's costs are reasonable and are agreed with the Authority in advance) in filing and executing documents necessary to secure that protection. The Contractor shall use all commercially reasonable endeavours to secure similar assistance from Sub-Contractors as appropriate.

#### **Licences**

- 35.5 The Authority hereby grants to the Contractor a non-exclusive, royalty-free licence for the Contract Term to use the Authority's Background IPR, the Results and the Foreground IPR solely for the purpose of performing work under this Contract. This licence is non-assignable and non-transferrable. This licence is sub-licensable to Sub-Contractors appointed by the Contractor in accordance with Clause 33 (Sub-Contracting) solely to such extent as may be necessary for the performance of the Contract or any Sub-Contract under it and provided that the Contractor remains liable for the acts and omissions of any sub-licensee as if they were the acts or omissions of the Contractor.
- 35.6 The Contractor hereby grants to the Authority a non-exclusive, royalty-free, worldwide, irrevocable and perpetual licence to use the Contractor Background IPR for the sole purposes of (i) receiving the benefit of work performed by or on behalf of the Contractor under this Contract, (ii) interfacing with other assets, systems and processes used by the Authority and (iii) using and exploiting the Results and the Foreground IPR during the Contract Term and after termination or expiry of the Contract Term. This licence is freely assignable, transferrable and sub-licensable (i) to any Central Government Body, and (ii) to the extent necessary for the Authority to receive the benefit of work performed by the Contractor under this Contract. On request, the Contractor shall demonstrate to the Authority's satisfaction that, where the

Contractor has Sub-Contracted work under this Contract, the Contractor has secured equivalent rights in the work performed by its Sub-Contractors.

- 35.7 The Contractor shall be entitled to request consent from the Authority to re-use (under licence or otherwise) the Results and the Foreground IPR for other purposes including, but not limited to, tendering for other work for the Authority or work for another UK Government Department. Such consent shall be properly considered by the Authority taking into account matters such as national security and the rights of third parties.
- 35.8 The Contractor may not assign, or otherwise transfer or sell any of the Contractor Background IPR to any third party during or after the Contract Term unless it preserves for the Authority the rights granted to the Authority under this Clause 35.

### **Marking and Records**

- 35.9 The Contractor shall mark any copyright work comprising Results or Foreground IPR with the legend: '© Crown-owned copyright [insert the year of generation of the work]'. The Contractor may not mark any Results or Foreground IPR with its own (or any third party) trade marks or copyright marking and shall not seek to assert any trade mark rights or copyright over the Results or Foreground IPR.
- 35.10 Promptly following creation, the Contractor shall upload copies of all Results and Foreground IPR together with records of all work done for the purposes of the Contract to the Shared Data Environment in a format specified by the Authority as set out in Schedule 6 (Governance, Management Information, Reports, Records and Audit).
- 35.11 The Contractor shall retain a copy of the Results and Foreground IPR together with records of all work done for the purposes of the Contract for six years after the completion of the Contract.
- 35.12 The Authority shall have the right to require the Contractor to furnish to the Authority copies of any and all of the Results, Foreground IPR and such records, in each case free of charge for the Authority:
- (a) on expiry or termination of this Contract; and/or
  - (b) following expiry or termination of this Contract for so long as they are retained by the Contractor under Clause 35.11.

### **Confidentiality of the Authority's Background IPR, the Results and the Foreground IPR**

- 35.13 The Contractor shall treat the Authority's Background IPR, the Results and the Foreground IPR as if received in confidence from the Authority and:
- (a) shall not copy, use or disclose to a third party any of the Authority's Background IPR, the Results or the Foreground IPR without the prior written consent of the Authority, except that the Contractor may without prior consent, copy and use the Authority's Background IPR, the Results and the Foreground IPR, and disclose the Authority's Background IPR, the Results and the Foreground IPR in confidence to its officers, employees and Sub-Contractors, to such extent as may be necessary for the

performance of the Contract or any Sub-Contract under it or in the exercise of any right granted pursuant to Clause 35.7 of this Contract; and

- (b) shall take all reasonable precautions necessary to ensure that the Authority's Background IPR, the Results and the Foreground IPR are treated in confidence by those of its officers, employees and Sub-Contractors who receive them and are not further disclosed or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any Sub-Contract under it.

- 35.14 The Contractor shall ensure that its employees are aware of the arrangements for discharging the obligations at Clause 35.13 and shall take such steps as may be reasonably practicable to enforce such arrangements.
- 35.15 The confidentiality provisions of Clause 35.13 shall not apply to the Authority Background IPR, the Results or the Foreground IPR any part thereof to the extent that the Contractor can show that they were or have become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the parties.
- 35.16 The Contractor shall not be in breach of the confidentiality obligations contained in this Clause 35 where it can show that any disclosure of the Authority's Background IPR, the Results, or the Foreground IPR was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Contractor shall ensure that the recipient of the Authority's Background IPR, the Results or the Foreground IPR is made aware of and asked to respect its confidentiality and, wherever possible and permitted by law, shall notify the Authority as soon as practicable after becoming aware that such disclosure is required. Such disclosure shall in no way diminish the obligations of the Contractor under this Clause 35.

#### **IPR Register**

- 35.17 The IPR Register in Schedule 17 (Intellectual Property Rights) sets out the Background IPRs that, as of the Effective Date, each Party will make available for the performance of the work under this Contract.
- 35.18 During the Contract Term, the Contractor shall conduct a review of the IPR Register every six (6) months and shall propose any updates it deems necessary to include details of:
  - (a) any further Background IPR made available by either Party for the performance of the work under this Contract; and/or
  - (b) new Foreground IPR,

in each case as part of the Monthly Performance and Activity Report (as set out in Part B (Management Information) of Schedule 6 (Governance, Management Information, Reports, Records and Audit)) for the Monthly Performance Review Board for its consideration. The Authority may also propose updates to the IPR Register to include details of such further Background IPR and/or new Foreground IPR to the Monthly Performance Review Board for its consideration.



- 35.19 Any updates to the IPR Register proposed by the Parties pursuant to Clause 35.18 and subsequently agreed by the Monthly Performance Review Board shall then be managed in accordance with the Change Control Procedure. No such update shall be considered a Change to the Contract unless and until it is formally deemed to be effective in accordance with the terms of the Change Control Procedure.
- 35.20 Promptly following approval of any Changes to the IPR Register in accordance with the Change Control Procedure, the Contractor will upload the updated version of the IPR Register to the Shared Data Environment in a format specified by the Authority.

#### **COTS Items**

- 35.21 Where the Contractor has, consistent with its obligations under this Contract, utilised one of its own COTS Items, or a COTS Item supplied by a third party, in the performance of work under this Contract, the Contractor shall not be required to transfer any rights to the Authority in relation to such COTS Item, provided that the Contractor notifies the Authority, at the time the Contract is entered into or during the course of the Contract but prior to the delivery of the COTS Item, of the source of the COTS Item (including Original Manufacturer Part Numbers, NATO Stock Numbers or NCAGE Codes, as appropriate) and provides a product specification for the COTS Item that includes sufficient information to enable its identification and replacement and satisfy any applicable requirements of Schedule 2 (Statement of Requirement). The Contractor shall secure for the Authority any standard licence rights that the supplier of the COTS Item provides in relation to such COTS Item. Where only implied rights are provided as standard in relation to a COTS Item, the Contractor is not required to secure express rights unless otherwise specified under the Contract.

### **36 THIRD PARTY INTELLECTUAL PROPERTY – RIGHTS AND RESTRICTIONS**

#### **General**

- 36.1 In this Clause 36:

- (a) 'design right' has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;
- (b) 'Crown Use' 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.

- 36.2 Nothing in this Clause 36 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and 1988.

#### **Notifications**

- 36.3 As they become aware, the Contractor shall promptly notify the Authority of:

- (a) any invention or design the subject of patent or registered design rights (or application therefor) owned by a third party which appears to be relevant to the performance of the

Contract or to use by the Authority of anything required to be done or delivered under the Contract;

- (b) any restriction as to disclosure or use, or obligation to make payments in respect of any other Intellectual Property Rights (including technical information) required for the purposes of the Contract or subsequent use by the Authority of anything delivered under the Contract and, where appropriate, the notification shall include such information as is required by Section 2 of the Defence Contracts Act 1958; and
- (c) any allegation of infringement of Intellectual Property Rights made against the Contractor and which pertains to the performance of the Contract or subsequent use by the Authority of anything required to be done or delivered under the Contract.

36.4 Clause 36.3 does not apply in respect of Articles or Services normally available from the Contractor as a commercial off the shelf (COTS) item or service.

36.5 If the information required under this Clause 36 has been notified previously, the Contractor may meet its obligations by giving details of the previous notification.

#### **Patents and Registered Designs in the UK – COTS Articles or Services**

36.6 In respect of any question arising (by way of an allegation made to the Authority or Contractor, or otherwise) that the manufacture or supply under the Contract of any Article or Service normally available from the Contractor as a COTS item or service is an infringement of a United Kingdom patent or registered design not owned or controlled by the Contractor or the Authority, the Contractor shall, subject to the agreement of the third party owning such patent or registered design, be given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The Contractor shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation. This Clause 36.6 will not apply if:

- (a) the Authority has made or makes an admission of any sort relevant to such question;
- (b) the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;
- (c) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949;
- (d) legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.

- 36.7 The indemnity in Clause 36.6 does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.
- 36.8 In the event that the Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall forthwith authorise the Contractor for the purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.

#### **Patents and Registered Designs in the UK – all other Articles or Services**

- 36.9 If a relevant invention or design has been notified to the Authority by the Contractor prior to the date of the Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a United Kingdom patent or United Kingdom registered design, for the purpose of performing the Contract.
- 36.10 If, under Clause 36.3, a relevant invention or design is notified to the Authority by the Contractor after the date of Contract, then:
- (a) if the owner (or their exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and
  - (b) in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.

#### **Patents, Utility Models and Registered Designs Outside the UK**

- 36.11 The Authority shall assume all liability and shall indemnify the Contractor, its officers, agents and employees against liability, including the Contractor's costs, as a result of infringement by the Contractor or its suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.
- 36.12 The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Contractor or its suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of the Contract when

such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

#### **Royalties and Other Licence Fees**

- 36.13 The Contractor shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the Contract, where:
- (a) a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any Intellectual Property Rights, or
  - (b) any obligation to make payments for Intellectual Property Rights has not been promptly notified to the Authority under Clause 36.3.
- 36.14 Where an authorisation is given by the Authority under Clause 36.8, Clause 36.9 or Clause 36.10, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:
- (a) released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the Contract, and
  - (b) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.

#### **Copyright, Design Rights etc.**

- 36.15 The Contractor shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:
- (a) infringement or alleged infringement by the Contractor or its suppliers of any copyright, database right, design right or the like protection in any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;
  - (b) misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;
  - (c) provision to the Authority of any information or material which the Contractor does not have the right to provide for the purpose of the Contract.

- 36.16 The Authority shall assume all liability and indemnify the Contractor, its officers, agents and employees against liability, including costs as a result of:
- (a) infringement or alleged infringement by the Contractor or its suppliers of any copyright, database right, design right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract;
  - (b) alleged misuse of any confidential information, trade secret or the like by the Contractor as a result of use of information provided by the Authority for the purposes of the Contract, but only to the extent that Contractor's use of that information is for the purposes intended when it was disclosed by the Authority.

#### **Authorisation and Indemnity - General**

- 36.17 The above represents the total liability of each Party to the other under the Contract in respect of any infringement or alleged infringement of patent or other Intellectual Property Rights owned by a third party.
- 36.18 Neither Party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any patent or other Intellectual Property Rights owned by a third party.
- 36.19 A Party against whom a claim is made or action brought, shall promptly notify the other Party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Clause 36 by such other Party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying Party has notice.
- 36.20 The Party benefiting from the indemnity or authorisation shall allow the other Party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other Party may reasonably require.
- 36.21 Following a notification under Clause 36.19, the Party notified shall advise the other Party in writing within thirty (30) days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party.
- 36.22 The Party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other Party fully informed of the conduct and progress of such negotiations.
- 36.23 If at any time a claim or allegation of infringement arises in respect of copyright, database right, design right or breach of confidence as a result of the provision of any item by the

Contractor to the Authority, the Contractor may at its own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach.

- 36.24 The Parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party intellectual property rights.

#### **Sub-Contracts**

- 36.25 The Contractor shall secure from any Sub-Contractor, the prompt notification to the Authority of the information required by Clause 36.3. On receipt of any such notification the Authority will issue a written authorisation to the Sub-Contractor in accordance with Clause 36.10 of this Clause 36. Any such authorisation will be subject always to Clauses 36.13, 36.14 and 36.17 to 36.22 as though the Sub-Contractor was the Contractor. If any claim or action relevant to such authorisation arises, it shall be promptly notified to the Authority. The Contractor is not authorised to enter into any substantive correspondence in such matter nor in any way to act on behalf of the Authority in such claim or action. Any arrangement between the Contractor and Sub-Contractor to enable the Contractor to underwrite its indemnities to the Authority under this Clause 36 is a matter between the Contractor and the Sub-Contractor.

### **37 CYBER**

#### **Authority Obligations**

- 37.1 The Authority shall:
- (a) determine the Cyber Risk Level appropriate to this Contract and, where the Contractor has not already been notified of the Cyber Risk Level prior to the date of this Contract, shall provide notification of the relevant Cyber Risk Level and the appropriate Cyber Security Instructions to the Contractor as soon as is reasonably practicable; and
  - (b) notify the Contractor as soon as reasonably practicable where the Authority reassesses the Cyber Risk Level relating to this Contract.

#### **Contractor Obligations**

- 37.2 The Contractor shall, and shall procure that its Sub-Contractors shall:
- (a) comply with DEFSTAN 05-138 or, where applicable, the Cyber Implementation Plan and for the avoidance of doubt any Cyber Implementation Plan shall be prepared and implemented in accordance with Good Industry Practice taking account of any risk-balance case and any mitigation measures required by the Authority and shall ensure that any measures taken to protect MOD Identifiable Information are no less stringent than those taken to protect its own proprietary information;
  - (b) 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 the Authority and any affected Sub-Contractor, and complete a further CSM Risk Assessment Process or CSM Contractor Assurance Questionnaire where a change is proposed to

the Contractor's supply chain which has or may have an impact on the Cyber Risk Level of this Contract or on receipt of any reasonable request by the Authority;

- (c) carry out the CSM Contractor Assurance Questionnaire no less than once in each year of this Contract commencing on the first anniversary of completion of the CSM Contractor Assurance Questionnaire to demonstrate continued compliance with the Cyber Security Instructions;
- (d) having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge its obligations under this Clause 37 in accordance with Good Industry Practice provided always that where there is a conflict between the Contractor's obligations under Clause 37.2(a) above and this Clause 37.2(d) the Contractor shall notify the Authority in accordance with the notification provisions in DEFSTAN 05-138 as soon as it becomes aware of the conflict and the Authority shall determine which standard or measure shall take precedence;
- (e) comply with all Cyber Security Instructions notified to it by the Authority as soon as reasonably practicable;
- (f) notify the JSyCC WARP in accordance with ISN 2017/03 as amended or updated from time to time and the Contractors NSA/DSA, and in the case of a Sub-Contractor also notify the Contractor, immediately in writing as soon as they know or believe that a Cyber Security Incident has or may have taken place providing full details of the circumstances of the incident and any mitigation measures already taken or intended to be taken, and providing further information in phases, as full details become available;
- (g) 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 Authority and the Contractor's NSA/DSA in the circumstances and taking into account the Cyber Risk Level; and
- (h) consent to the Authority recording and using information obtained in relation to the Contract for the purposes of the Cyber Security Model whether on the Contractor Cyber Protection Service or elsewhere, which shall include any agreed Cyber Implementation Plan. For the avoidance of doubt such information shall include the cyber security accreditation of the Contractor and / or Sub-Contractor as appropriate; and

- (i) include provisions equivalent to set out in Schedule 32 (Cyber Provisions to be Included in Relevant Sub-Contracts) in all relevant Sub-Contracts.

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

- 37.3 Provided that it is reasonable in all the circumstances to do so, the Authority agrees that the Contractor shall be entitled to rely upon the self-certification by a Sub-Contractor of its compliance with its obligations pursuant to Clause 37.2.
- 37.4 Where a Sub-Contractor notifies the Contractor that it cannot comply with the requirements of DEFSTAN 05-138, the Contractor shall require the Sub-Contractor to prepare and implement a Cyber Implementation Plan in accordance with Good Industry Practice taking account of any risk-balance case and any mitigation measures required by the Contractor and shall ensure that any measures taken to protect MOD Identifiable Information are no less stringent than those taken to protect the proprietary information of the Sub-Contractor. Where the Contractor has reasonably relied on the Sub-Contractor's self-certification and the Sub-Contractor is subsequently found to be in breach of its obligations, the Contractor shall not be in breach of this Clause 37.4.
- 37.5 The Contractor shall, and shall require its Sub-Contractors to, include provisions equivalent to those set out in Schedule 32 (Cyber Provisions to be Included in Relevant Sub-Contracts) in all relevant Sub-Contracts and shall notify the Authority in the event that it becomes aware of any material breach of the provisions equivalent to those set out in Schedule 32 (Cyber Provisions to be Included in Relevant Sub-Contracts) by any of their Sub-Contractors.

### **Records**

- 37.6 The Contractor shall keep and maintain, and shall ensure that any Sub-Contractor shall keep and maintain, until 6 years after termination or expiry of this Contract, or as long a period as may be agreed between the Parties, full and accurate records including but not limited to:
  - (a) copies of all documents required to demonstrate compliance with DEFSTAN 05-138 and this Clause 37, including but not limited to any information used to inform the CSM Risk Assessment Process and to carry out the CSM Contractor Assurance Questionnaire, together with any certificates issued to the Contractor and/or Sub-Contractor; and
  - (b) copies of all documents demonstrating compliance with Clause 37.2(e) and in relation to any notifications made under Clause 37.2(f) and/or investigation under Clause 37.2(g).
- 37.7 The Contractor shall, and shall ensure that any Sub-Contractor shall on request provide the Authority, the Authority's representatives and/or the Contractors NSA/DSA such access to those records as may be required in connection with this Contract.

### **Audit**

- 37.8 In the event of a Cyber Security Incident the Contractor agrees, and shall procure that its Sub-Contractors agree, that the Authority and its representatives, in coordination with the



Contractor's NSA/DSA, may conduct such audits as are required to establish (i) the cause of the Cyber Security Incident, (ii) the impact of the Cyber Security Incident, (iii) the MOD Identifiable Information affected, and (iv) the work to be carried out by the Contractor and Sub-Contractor to resolve the Cyber Security Incident and to mitigate the effects, to ensure that the Cyber Security Incident is resolved to the reasonable satisfaction of the Authority and the NSA/DSA taking into account the circumstances and the Cyber Risk Level.

37.9 In addition to the rights in Clause 37.8 above, the Contractor agrees, and shall procure that its Sub-Contractors agree, that the Authority, its representatives and/or the Contractors NSA/DSA, either solely or in any combination, may at any time during the Contract and for a period of six (6) years after termination of this Contract, but not more than once in any calendar year, conduct an audit for the following purposes where the Contractor continues to hold MOD Identifiable Information:

- (a) to review and verify the integrity, confidentiality and security of any MOD Identifiable Information;
- (b) to review the Contractor's and/or any Sub-Contractor's compliance with their respective obligations under DEFSTAN 05-138 or a Cyber Implementation Plan; and
- (c) to review any records created during the provision of the Services, including but not limited to any documents, reports and minutes which refer or relate to the Services for the purposes of 37.6 above.

37.10 The Authority, acting reasonably and having regard to the confidentiality and security obligations owed by the Contractor to third parties, shall propose the scope of each audit in writing with a view to seeking the agreement of the Contractor but shall make the ultimate decision on the scope. For the avoidance of doubt the scope of the audit shall not grant the Authority any unsupervised access to any of the Contractor's information systems or electronic communications networks. The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor and/or Sub-Contractor or delay the provision of the Services and supplier information received by the Authority in connection with the audit shall be treated as confidential information.

37.11 The Contractor shall, and shall ensure that any Sub-Contractor shall on demand provide the Authority and any relevant regulatory body, including the Contractor's NSA/DSA, (and/or their agents or representatives), together the "**Auditors**", with all reasonable co-operation and assistance in relation to each audit, including but not limited to:

- (a) all information requested by the Authority within the permitted scope of the audit;
- (b) reasonable access to any Sites controlled by the Contractor or any Associated Company used in the performance of the Contract to the extent required within the permitted scope of the audit and, where such Sites are outwith the control of the Contractor, shall secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and
- (c) access to any relevant staff.

- 37.12 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.
- 37.13 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 37, unless the audit identifies a material breach of the terms of Clause 37 by the Contractor in which case the Contractor shall reimburse the Authority for all the Authority's reasonable costs incurred (which shall be evidenced to the Contractor) in the course of the audit.
- 37.14 The Contractor shall in its Sub-Contracts procure rights for the Authority to enforce the terms of Clauses 37.8 to 37.13 in accordance with the Contracts (Rights of Third Parties) Act 1999.

#### **General**

- 37.15 On termination or expiry of this Contract the provisions of this Clause 37 excepting Clauses 37.2(b) and 37.2(c) above shall continue in force so long as the Contractor and/or and Sub-Contractor holds any MOD Identifiable Information relating to this Contract.
- 37.16 Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Clause 37 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 the Contract which existed at or before the date of termination or expiry.
- 37.17 The Contractor agrees that the Authority has absolute discretion to determine changes to DEFSTAN 05-138 and/or the Cyber Risk Level and issue new or updated Cyber Security Instructions. In the event that there is such a change to DEFSTAN 05-138 and/or the Cyber Risk Level, then either Party may seek an adjustment to the Charges for any associated increase or decrease in costs and the Contractor may request an extension of time for compliance with such revised or amended DEFSTAN 05-138 or Cyber Risk Level *provided always* that the Contractor shall seek to mitigate the impact on time and cost to the extent which it is reasonably practicable to do so and *further provided* that such costs shall not be allowed unless they are considered to be appropriate, attributable to the Contract and reasonable in all the circumstances
- 37.18 Subject to Clause 37.17 above, where the Contractor seeks such adjustment or extension, the Authority will proceed in accordance with the Change Control Procedure to determine the request for adjustment or extension. The Contractor must deliver a Change Proposal to the Authority within eight (8) weeks (or other period agreed by the Parties) of the occurrence of the change in DEFSTAN 05-138 or Cyber Risk Level or both, identifying the impact of that change and accompanied by full details of the request for adjustment as set out in the Change Control Procedure. For the avoidance of doubt, the Authority shall not be required to withdraw any Change Request which may have been issued insofar as it relates to DEFSTAN 05-138 or the Cyber Risk Level or both whether or not the Contractor's Change Proposal is rejected. If the Contractor does not agree with the Authority's determination, then the provisions of the Dispute Resolution Procedure shall apply.
- 37.19 The Contractor shall not recover any costs and/or other losses under or in connection with this Clause 37 where such costs and/or other losses are recoverable or have been recovered by the Contractor elsewhere in this Contract or otherwise. For the avoidance of doubt this shall

include but not be limited to the cost of implementing any upgrades or changes to any information system or electronic communications network whether in response to a Cyber Security Incident or otherwise, where the Contractor is able to or has recovered such sums in any other provision of this Contract or has recovered such costs and/or losses in other contracts between the Contractor and the Authority or with other bodies.

## **38 SECURITY MEASURES**

### **The Official Secrets Acts**

38.1 The Contractor shall:

- (a) take all reasonable steps to ensure that all Employees engaged on any work in connection with the 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 the Contract; and
- (b) if directed by the Authority, ensure that any Employee shall sign a statement acknowledging that, both during the term of the Contract and after its completion or termination, he is bound by the Official Secrets Acts 1911-1989 (and where applicable any other legislation).

### **Security Measures**

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

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

38.3 Unless it has the written authorisation of the Authority to do otherwise, the Contractor and its Employees shall, both before and after the completion or termination of the Contract, take all reasonable steps to ensure that:

- (a) no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of the Contract; and

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

and a decision of the Authority on the question of whether the Contractor has taken or is taking reasonable steps as required by this Clause 38.3, shall be final and conclusive.

**38.4 The Contractor shall:**

- (a) 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 38.3(b);
  - (ii) upon request, such information as the Authority may from time to time require so as to be satisfied that the Contractor and its Employees are complying with its obligations under this Clause 38, including the measures taken or proposed by the Contractor so as to comply with its obligations and to prevent any breach of them;
  - (iii) full particulars of any failure by the Contractor and its Employees to comply with any obligations relating to Secret Matter arising under this Clause 38 immediately upon such failure becoming apparent;
- (b) ensure that, for the purpose of checking the Contractor's compliance with the obligation in Clause 38.3(b), a representative of the Authority shall be entitled, at any time, to enter and inspect any premises used by the Contractor, which are in any way connected with the Contract, and inspect any document or thing in any such premises which is being used, or made for the purposes of the Contract. Such representative shall be entitled to all such information as he may reasonably require.

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

**Sub-Contracts**

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

- (a) submit for approval of the Authority the name of the proposed Sub-Contractor, a statement of the work to be carried out and any other details known to the Contractor which the Authority shall reasonably require;
- (b) incorporate into the Sub-Contract the terms of Clause 39 (Security Measures Provisions to be Included in Relevant Sub-Contracts) and such secrecy and security obligations as the Authority shall direct; and

- (c) inform the Authority immediately he 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**

38.7 The Authority shall be entitled to terminate the Contract immediately if:

- (a) the Contractor is in breach of any obligation under this Clause 38; or
- (b) the Contractor is in breach of any secrecy or security obligation imposed by any other contract with the Crown,

where the Authority consider the circumstances of the breach jeopardise the secrecy or security of the Secret Matter and claim such damages as may have been sustained as a result of the Contractor's breach of this Clause 38.

### **39 SECURITY MEASURES PROVISIONS TO BE INCLUDED IN RELEVANT SUB-CONTRACTS**

#### **The Official Secrets Act**

39.1 The Sub-Contractor shall:

- (a) take all reasonable steps to ensure that all Employees engaged on any work in connection with the 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 the Contract; and
- (b) if directed by the Contractor or the Authority, ensure that any Employee shall sign a statement acknowledging that, both during the term of the Contract and after its completion or termination, he is bound by the Official Secrets Acts 1911-1989 (and where applicable any other legislation).

#### **Security Measures**

39.2 Unless he has the written authorisation of the Authority to do otherwise, neither the Sub-Contractor nor any of its Employees shall, either before or after the completion or termination of the Contract, do or permit to be done anything which it knows or ought reasonably to know

may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:

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

39.3 Unless he has the written permission of the Authority to do otherwise, the Sub-Contractor and its Employees shall, both before and after the completion or termination of the Contract, take all reasonable steps to ensure that:

- (a) no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of the Contract;
- (b) any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy Framework (as amended from time to time) and upon request is delivered up to the Authority who shall be entitled to retain it.

39.4 A decision of the Authority on the question of whether the Sub-Contractor has taken or is taking reasonable steps as required by this Clause 39, shall be final and conclusive.

39.5 The Sub-Contractor shall:

- (a) 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 38.3(b);
  - (ii) upon request, such information as the Authority may from time to time require so as to be satisfied that the Sub-Contractor and its Employees are complying with its obligations under this Clause 39, including the measures taken or proposed by the Sub-Contractor so as to comply with its obligations and to prevent any breach of them;
  - (iii) full particulars of any failure by the Sub-Contractor and its Employees to comply with any obligations relating to Secret Matter arising under this Clause 39 immediately upon such failure becoming apparent; and

- (b) ensure that, for the purpose of checking the Sub-Contractor's compliance with the obligation in Clause 38.3(b), a representative of the Contractor or the Authority shall be entitled at any time to enter and inspect any premises used by the Sub-Contractor which are in any way connected with the Contract and inspect any document or thing in any such premises, which is being used or made for the purposes of the Contract. Such representative shall be entitled to all such information as he may reasonably require.
- 39.6 If at any time either before or after the completion or termination of the Contract, the Sub-Contractor or any of its Employees discovers or suspects that an unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the Sub-Contractor shall forthwith inform the Authority of the matter with full particulars thereof.
- 39.7 If the Sub-Contractor proposes to make a sub-contract which will involve the disclosure of Secret Matter to the sub-contractor, the Sub-Contractor shall:
  - (a) 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 Sub-Contractor which the Authority shall reasonably require;
  - (b) incorporate into the Sub-Contract the terms of this Clause 39 and such secrecy and security obligations as the Authority shall direct;
  - (c) inform the Authority immediately he 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 Contract.
- 39.8 The Contractor shall be entitled to terminate the Contract immediately if:
  - (a) the Sub-Contractor is in breach of any obligation under this Clause 39; or
  - (b) the Sub-Contractor is in breach of any secrecy or security obligation imposed by any other contract with the Crown,

where the Authority consider the circumstances of the breach jeopardise the secrecy or security of the Secret Matter and notifies its contractor accordingly.

#### 40 **OFFICIAL-SENSITIVE SECURITY REQUIREMENTS**

- 40.1 In Clauses 40.2 and 40.3, "**Information**" means information recorded in any form disclosed or created in connection with this Contract.
- 40.2 The Contractor shall protect all Information relating to the aspects designated OFFICIAL-SENSITIVE or above as identified in the security aspects letter annexed to the Contract, in accordance with the official security conditions contained in the contract or annexed to the Security Aspects Letter.
- 40.3 The Contractor shall include the requirements and obligations set out in Clause 40.2 in any Sub-Contract placed in connection with or for the purposes of the Contract which requires

disclosure of OFFICIAL-SENSITIVE Information to the Sub-Contractor or under which any Information relating to aspects designated as OFFICIAL-SENSITIVE is created by the Sub-Contractor. The Contractor shall also include in the Sub-Contract a requirement for the Sub-Contractor to flow the requirements of this Clause 40 to its sub-contractors and through all levels of the supply chain to the lowest level where any OFFICIAL-SENSITIVE Information is handled.

## **41 CONFIDENTIALITY**

41.1 Subject to Clauses 41.4 to 41.8 each Party:

- (a) shall treat in confidence all Information it receives from the other;
- (b) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;
- (c) shall not use any of that Information otherwise than for the purpose of the Contract;
- (d) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract; and
- (e) shall immediately notify the other Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any the other Party's Information.

41.2 The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with the Contract:

- (a) is disclosed to its employees and Sub-Contractors, only to the extent necessary for the performance of the Contract; and
- (b) is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any Sub-Contract under it.

41.3 The Contractor shall ensure that its employees are aware of its arrangements for discharging the obligations at Clauses 41.1 and 41.2 before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.

41.4 Clauses 41.1 and 41.2 shall not apply to any Information to the extent that either Party:

- (a) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;



- (b) has the right to use or disclose the Information in accordance with other conditions of the Contract; or
- (c) can show:
  - (i) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the 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 the 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 the Contract;

provided the relationship to any other Information is not revealed.

41.5 Neither Party shall be in breach of this Clause 41 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 41.

41.6 The Authority may disclose the Information:

- (a) on a confidential basis for any proper purpose of the Authority or of a 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;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant or other person engaged (including benchmarking organisation) for any purpose relating to or connected with this Contract;
- (e) on a confidential basis for the purpose of the exercise of its rights under the Contract; or

- (f) on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract;

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 41.

- 41.7 Before sharing any Information in accordance with Clause 41.6 above, the Authority may redact the Information. Any decision to redact information made by the Authority shall be final.
- 41.8 The Authority shall not be in breach of the Contract where it can show that any disclosure of Information is made solely and to the extent necessary to comply with FOIA or the EIRs. To the extent permitted by the time for compliance under FOIA or the EIRs, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under FOIA or the EIRs and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with FOIA or the EIRs is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of FOIA or the EIRs. For the avoidance of doubt, nothing in this Clause 41 shall affect the Contractor's rights at law.
- 41.9 Nothing in this Clause 41 shall affect the Parties' obligations of confidentiality where information is disclosed orally in confidence.

## **42 TRANSPARENCY AND FREEDOM OF INFORMATION**

### **Transparency Information**

- 42.1 Notwithstanding any other term of the Contract, including Clause 41 (Confidentiality) where applicable, the Contractor understands that the Authority may publish the Publishable Performance Information and the Transparency Information to the general public.
- 42.2 Subject to Clause 42.3, the Authority shall publish and maintain an up-to-date version of the Transparency Information and Publishable Performance Information in a format readily accessible and reusable by the general public under an open licence where applicable.
- 42.3 If, in the Authority's reasonable opinion, publication of any element of the Transparency Information and Publishable Performance Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information and Publishable Performance Information in its entirety. Accordingly, the Authority acknowledges that it shall only exclude Transparency Information and Publishable Performance Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication on that basis, it will provide a clear statement to the general public explaining the categories of information that have been excluded from publication and reasons for withholding that information.

- 42.4 The Contractor shall assist and co-operate with the Authority as reasonably required to enable the Authority to publish the Transparency Information and Publishable Performance Information, in accordance with the principles set out above, including through compliance with the requirements relating to the preparation of Publishable Performance Information. Where the Authority publishes Transparency Information, it shall:
- (a) before publishing, redact any information that would be exempt from disclosure if it was the subject of a Request For Information under the FOIA and/or the EIR, for the avoidance of doubt, including the Contractor's Commercially Sensitive Information;
  - (b) taking into account the Contractor's Commercially Sensitive Information set out in Schedule 14 (Commercially Sensitive Information), consult with the Contractor where the Authority intends to publish information which has been identified as the Contractor's Commercially Sensitive Information. For the avoidance of doubt the Authority, acting reasonably, shall have absolute discretion to decide what information shall be published or be exempt from disclosure in accordance with the FOIA and/or the EIR; and
  - (c) present information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Contract is being performed.

#### **FOIA and EIR Requests**

- 42.5 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs and thus the Authority may be required under the FOIA and EIRs to disclose Information (including the Contractor's Commercially Sensitive Information) without consulting or obtaining consent from the Contractor. The Contractor shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
  - (b) transfer to the Authority all Requests For Information relating to this Contract that it receives as soon as practicable and in any event within two (2) Business Days of receipt;
  - (c) provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within five (5) Business Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
  - (d) not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.

## **43 PROTECTION OF PERSONAL DATA**

### **Mutual obligations of the Parties**

- 43.1 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.
- 43.2 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. Any such amendments made to the Contract to comply with the Information Commissioner's Office guidance shall be agreed by the Parties pursuant to Clause 28 (Change).

### **Contractor obligations as Processor**

- 43.3 The Parties acknowledge that for the purposes of the Data Protection Legislation save for the circumstances set out under Clause 43.16, the Authority is the Controller and the Contractor is the Processor of the personal data contained in and/or referred to in Schedule 18 (Processing Personal Data). The only processing that the Contractor is authorised to do is listed in this Clause 43 and Schedule 18 (Processing Personal Data) by the Authority and may not be determined by the Contractor. The Authority may from time to time, by written notice to the Contractor, make such amendments to Schedule 18 (Processing Personal Data) as the Authority reasonably considers necessary to meet the requirements of Data Protection Legislation. Nothing in Schedule 18 (Processing Personal Data) (including as amended pursuant to this Clause 43.2) confers any right or imposes any obligation on any Party to this Contract. The provisions of this Clause 43 shall apply notwithstanding any error or omission in Schedule 18 (Processing Personal Data) (including as amended pursuant to this Clause 43.2).
- 43.4 The Contractor shall notify the Authority without undue delay if it considers that any of the Authority's instructions infringe the Data Protection Legislation. In such circumstances the Contractor shall contact the Authority regarding its concerns and to seek guidance on the best way to proceed. If the Authority determines, notwithstanding the Contractor's concerns, that the Contractor shall undertake said processing activity, then the Authority accepts that, as Controller, it shall be liable for the processing which infringes the Data Protection Legislation.
- 43.5 The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing and shall continue to provide reasonable assistance to the Authority to ensure that any such Data Protection Impact Assessment is maintained throughout the duration of this Contract. Such assistance may, at the discretion of the Authority, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the services provided under the Contract;

- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

43.6 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under the Contract:

- (a) process that Personal Data only in accordance with this Clause 43 and Schedule 18 (Processing Personal Data), unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall immediately notify the Authority before processing the Personal Data unless prohibited by Law on important grounds of public interest;
- (b) notwithstanding any other provisions in this Contract relating to (amongst others) cybersecurity, ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event 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;
- (c) ensure that:
  - (i) the Contractor Personnel do not process Personal Data except in accordance with the Contract (and in particular this Clause 43);
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
    - (A) have the necessary probity by undertaking the HMG Baseline Personnel Security Standard or other standard as specified in the Contract;
    - (B) are aware of and comply with the Contractor's duties under this Clause 43;
    - (C) 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 the Contract; and

- (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
  - (d) not (and shall procure that any Sub-processor appointed pursuant to Clause 43.13 shall not) transfer Personal Data outside of the UK unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
    - (i) the Authority or the Contractor 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 which includes entering into (or procuring that the recipient of the Personal Data enters into) a data transfer agreement with the Authority;
    - (ii) the Data Subject has enforceable rights and effective legal remedies;
    - (iii) the Contractor complies at all times 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 to the extent that the Contractor becomes aware that safeguard is no longer sufficient, shall promptly notify the Authority of this fact; and
    - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data which includes (at no additional cost) the provision of all such information and assistance as may be requested by the Authority regarding the transfer to enable the Authority to assess the risk of the transfer and thereby discharge its obligations under the Data Protection Legislation;
  - (e) at the written direction of the Authority, securely delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Contractor is required by Law to retain the Personal Data and the Contractor has, on the Authority's request, provided a written certificate signed by an officer of the Contractor confirming the Contractor's compliance with this Clause 43.6(e).
- 43.7 Subject to Clause 43.8, the Contractor shall notify the Authority without undue delay if, in connection with Personal Data processed under the Contract, it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority;

- (e) 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
  - (f) becomes aware of a Data Loss Event.
- 43.8 The Contractor's obligation to notify under Clause 43.7 shall include the provision of further information to the Authority in phases, as details become available.
- 43.9 Taking into account the nature of the processing, the Contractor shall provide the Authority with assistance, insofar as reasonably possible, in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 43.7 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
  - (a) the Authority with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Authority following any Data Loss Event; and
  - (e) 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's Office.
- 43.10 The Contractor shall maintain complete and accurate records and information as necessary to fulfil its obligations under this Clause 43.
- 43.11 The Contractor 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 the Contract.
- 43.12 The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 43.13 Before allowing any Sub-processor to process any Personal Data related to the Contract, the Contractor must:
  - (a) notify the Authority in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Authority;
  - (c) enter into a written contract with the Sub-processor which gives effect to the terms set out in this Clause 43 such that they apply to the Sub-processor; and

- (d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require including details of any proposed transfers by the Contractor and/or by the Sub-processor of Personal Data relating to the contract.

43.14 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor for the duration of the Sub-processor's processing of the Personal Data under this Contract and the Contractor must cease to engage a Sub-processor appointed pursuant to Clause 43.13 upon the Authority's withdrawal of consent where it has reasonable grounds for doing so including (without limitation) where the Authority has concerns regarding the Sub-processor's ability to process the Personal Data in a manner contemplated by this Clause 43.

43.15 The Authority may, at any time on not less than thirty (30) Business Days' notice, revise this Clause 43 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 the Contract).

#### **Contractor obligations as Controller**

43.16 Notwithstanding any other Clause in this Contract and subject to Clause 43.17, the Parties agree that the Contractor shall, in relation to this Clause 43 only, act as a Controller in relation to the Personal Data and not as a Processor which, for the avoidance of doubt, shall only comprise activities where the Contractor is:

- (a) required to comply with applicable Laws including any codes and/or conventions of the International Maritime Organisation (IMO) such as the Convention on Facilitation of International Maritime Traffic (FAL Convention) and any international transport regulations;
- (b) required to comply with any request by any law enforcement agency, governmental body or public authority (including any port authority) having jurisdiction over the Contractor; and
- (c) handling Personal Data which relates to Contractor Personnel.

(paragraphs (a) and (b) are together referred to as the "**Agreed Purposes**").

43.17 Where the Contractor acts as a Controller in relation to the Personal Data pursuant to Clause 43.16, the Contractor shall comply with the Data Protection Legislation and in particular shall:

- (a) ensure that it processes the Personal Data fairly and lawfully during the Contract Term;
- (b) inform the data subjects in accordance with the Data Protection Legislation of the Agreed Purposes for which it will process their Personal Data, the legal basis for such purposes and such other information as is required by the Data Protection Legislation including if Personal Data is intended to be transferred outside of the UK, sufficient information about such transfer, the purpose of such transfer and the safeguards in place by the Contractor acting as Controller to enable the data subject to understand the purpose and risks of such transfer;



- (c) not share Personal Data with another third party which is irrelevant or excessive with regard to the Agreed Purposes;
- (d) not retain or process the Personal Data for longer than is necessary to carry out the Agreed Purposes and shall securely delete the Personal Data when it is no longer legally required to retain it; and
- (e) not transfer Personal Data to a third party located outside of the UK unless such transfer:
  - (i) is necessary to achieve the Agreed Purposes;
  - (ii) complies with the transfer restrictions set out under Chapter V of the UK GDPR; and
  - (iii) the Contractor ensures that the transfer is secure.

#### **44 PUBLICITY**

44.1 The Contractor shall not by itself, its employees or agents, and shall procure that its Sub-Contractors shall not:

- (a) communicate with representatives of the press, television, radio or other communications media on any matter concerning this Contract or the Project;
- (b) photograph or film in or upon any Government Establishment; or
- (c) erect or exhibit on any part of any Government Establishment any signs or trade boards; or
- (d) exhibit or attach to any part of any Government Establishment any notice or advertisement,

unless the Authority's Representative has given its prior written consent or as otherwise required to comply with Law.

## **SECTION G – LIABILITY, INDEMNITIES AND INSURANCE**

### **45 INDEMNITIES**

45.1 The Contractor shall, subject to Clause 45.2 and Clause 46 (Limitations on Liability), be responsible for, and shall release and indemnify the Authority, its officers, employees, agents and contractors on demand from and against, all liability for any loss or claim in respect of:

- (a) death or personal injury;
- (b) loss of or damage to property (including property belonging to the Authority or for which the Contractor is responsible);
- (c) breach of statutory duty;
- (d) any loss or claim in respect of any Entitled Customer Contract to the extent that such loss or claim would, had the same been suffered by the Authority instead of the Entitled Customer, otherwise have fallen within the scope of this Clause 45; and
- (e) any other third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis),

in each case to the extent it arises out of or in consequence of or in connection with:

- (f) the provision of or failure by the Contractor to provide the Services;
- (g) the presence of the Contractor, its Sub-Contractors or its or their employees, officers or agents on any Government Establishment or any premises belonging to the Authority or in the Project Area or use by them of any GFE; or
- (h) the performance or non-performance by the Contractor of any of its obligations under this Contract,

and, in each case, whether or not arising out of the act, neglect or omission of the Contractor, its Sub-Contractors or its agents, officers or employees.

45.2 The Contractor shall not be responsible or be obliged to indemnify the Authority for:

- (a) any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Authority and/or its employees, agents or contractors or by a breach by the Authority of its obligations under this Contract;
- (b) any injury, loss, damage, cost and expense to the extent the same:
  - (i) arises as a result of a Compensation Event; or
  - (ii) constitutes an event for which Non-Performance Points are applied in accordance with Schedule 4 (Payment, Performance and Incentivisation Mechanism);

- (c) any claims or losses relating to Insured Risks insofar as such claims or losses relate to sums in excess of the Insured Amount, and provided that the sums below the Insured Amount have been recovered against the Required Insurances;
- (d) any claims or losses relating to risks other than Insured Risks (but excluding any excesses or deductibles for which the Contractor is responsible) to the extent that the Contractor's aggregate liability during the Contract Term in respect of such risk exceeds the Contractor's liability cap as set out in Clause 46.3(a)(iv) (Limitations on Liability); or
- (e) any claims or losses related to the matters set out in Clause 47 (Carriage of Explosives Indemnity).

### **Conduct of Indemnity Claims**

- 45.3 Within fourteen (14) calendar days of receipt by the Contractor of any claim by the Authority for indemnification under this Clause 45 (Indemnities), the Contractor shall notify the Authority whether it accepts the claim made, either in whole or in part. If the Contractor accepts the claim, it shall pay to the Authority the amount claimed within thirty (30) calendar days of receipt of the Authority's notice. Where the other Party does not fully accept the claimant's claim it shall pay any undisputed sum within the thirty (30) calendar day period referred to above and any dispute as to the balance shall be resolved in accordance with Clause 70 (Disputes).
- 45.4 In establishing or alleging a breach of this Contract or a right to be indemnified in accordance with this Contract, each Party shall be under a duty to mitigate the loss, which has occurred.

### **Contractor's claims in relation to this Contract**

- 45.5 Without prejudice to any entitlement of the Contractor to specific performance of any obligation under this Contract, the Contractor shall not be entitled to any common law or equitable rights including rights to damages or to any other rights under contract, tort or otherwise in relation to any breach of this Contract to the extent that such breach is a Compensation Event or this Contract provides an express remedy in relation to the breach.
- 45.6 The Contractor shall, if it is obliged to effect insurance under Clause 48 (Insurance) and Schedule 7 (Insurance), not bring any claim or action against the Authority (or any Authority Related Party) in respect of any loss or damage in circumstances where the Contractor is able to recover such loss or damage under such insurance (or where it would have been able to recover such loss had it been complying with its obligations under this Contract).

## **46 LIMITATIONS ON LIABILITY**

### **Unlimited liabilities**

- 46.1 Neither Party limits its liability for:
- (a) death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
  - (b) fraud or fraudulent misrepresentation by it or its employees;

- (c) 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
- (d) any liability to the extent it cannot be limited or excluded by Law.

46.2 The financial caps on liability set out in Clauses 46.3 and 46.4 below shall not apply to the following:

- (a) for any indemnity given by the Contractor to the Authority under this Contract to:
  - (i) Clause 36 (Third Party Intellectual Property – Rights and Restrictions); and
  - (ii) TUPE in Schedule 22 (Staff Transfer); and
- (b) for any indemnity given by the Authority to the Contractor under this Contract, including but not limited to:
  - (i) the Authority's indemnity given pursuant to Clause 47 (Carriage of Explosives Indemnity); and
  - (ii) the Authority's indemnity in relation to TUPE under Schedule 22 (Staff Transfer);
- (c) breach by the Contractor of Clause 43 (Protection of Personal Data) and/or the Data Protection Legislation; and
- (d) to the extent it arises as a result of a Default by either Party, any fine or penalty incurred by the other Party pursuant to Law and any costs incurred by such other Party in defending any proceedings which result in such fine or penalty.

#### **Financial limits**

46.3 Subject to Clauses 46.1 and 46.2 and to the maximum extent permitted by Law:

- (a) throughout the Contract Term the Contractor's total liability in respect of losses that are caused by Defaults of the Contractor shall in no event exceed:
  - (i) in respect of Clause 32 (Contractor Personnel at Government Establishments), **Redacted under FOIA Section 43:Trade secrets and prejudice to commercial interests** in aggregate;
  - (ii) in respect of Clause 56 (Termination for Contractor Default), **Redacted under FOIA Section 43:Trade secrets and prejudice to commercial interests** in aggregate;
  - (iii) in respect of Clause 16 (Assets), **Redacted under FOIA Section 43:Trade secrets and prejudice to commercial interests** in aggregate; and

- (iv) in respect of any claims or losses in respect of Clause 45 (Indemnities) relating to risks other than Insured Risks, **Redacted under FOIA Section 43:Trade secrets and prejudice to commercial interests** (excluding any excesses or deductibles for which the Contractor is responsible); or
  - (b) without limiting Clause 46.3(a) and subject always to Clauses 46.1, 46.2 and 46.3(c), the Contractor's total liability throughout the Contract Term in respect of all other liabilities (but excluding any Service Credits paid or payable in accordance with Schedule 4 (Payment Performance and Incentivisation Mechanism)) whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be **Redacted under FOIA Section 43:Trade secrets and prejudice to commercial interests** in aggregate; and
  - (c) in the event of an agreed extension to the Contract Term, the limitation of the Contractor's total liability (in aggregate) set out in Clauses 46.3(a) and 46.3(b) above shall be fully replenished such that on and from each such exercise or extension of the Contract Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 46.3(a) and 46.3(b) of this Contract.
- 46.4 Subject to Clauses 46.1, 46.2 and 46.5, 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 Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.
- 46.5 Clause 46.4 shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

#### **Consequential loss**

- 46.6 Subject to Clauses 46.1, 46.2 and 46.7, 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:
- (a) indirect loss or damage;
  - (b) special loss or damage;
  - (c) consequential loss or damage;
  - (d) loss of profits (whether direct or indirect);
  - (e) loss of turnover (whether direct or indirect);
  - (f) loss of business opportunities (whether direct or indirect); or
  - (g) 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.

46.7 The provisions of Clause 46.6 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 Default by the Contractor (but subject always to Clauses 46.1, 46.2 and 46.3):

- (a) any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the Authority:
  - (i) to any third party;
  - (ii) for putting in place workarounds for the Services and other deliverables that are reliant on the Services; and
  - (iii) relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- (b) any or all wasted expenditure and losses incurred by the Authority arising from the Contractor's Default, including wasted management time;
- (c) the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Contract Term and any option period or agreed extension to the Contract Term (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 Charges that would have been payable for the relevant Services);
- (d) 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 recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority Data, data or software;
- (e) damage to the Authority's physical property and tangible assets, including damage under Clause 32 (Contractor Personnel at Government Establishments) and Clause 16 (Assets);
- (f) costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third-party Intellectual Property Rights or breach of any obligations of confidence;
- (g) 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 Default (including the extension or replacement of such contracts);
- (h) 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
- (i) any savings, discounts or price reductions during the Contract Term and any option period or agreed extension to the Contract Term committed to by the Contractor pursuant to this Contract.

## **Invalidity**

- 46.8 If any limitation or provision contained or expressly referred to in this Clause 46 (Limitations on Liability) 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 46 (Limitations on Liability).

## **Third party claims or losses**

- 46.9 Without prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under Clause 36 (Third Party Intellectual Property – Rights and Restrictions) or at Law), the Authority shall be entitled to make a claim under this Contract against the Contractor 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:

- (a) arises naturally and ordinarily as a result of the Contractor's failure to provide the Services or failure to perform any of its obligations under this Contract; and
- (b) 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 Contractor), such claim to be construed as direct losses for the purpose of this Contract.

## **No double recovery**

- 46.10 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 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.

## **47 CARRIAGE OF EXPLOSIVES INDEMNITY**

- 47.1 Subject to the other provisions of this Clause 47, the Authority hereby agrees to indemnify the Contractor from and against any claims, liabilities, losses and expenses in respect of death or personal injury or loss of or damage to property of the Contractor or any third party, to the extent that such injury, loss or damage is caused by an Explosion of Explosives whilst such Explosives are being loaded on to, carried on or unloaded from a Vessel used for the movement of Explosives under this Contract.
- 47.2 The indemnity at Clause 47.1 above, shall not apply to the extent that any such injury, loss or damage is caused or contributed to by any wilful mis-conduct, negligence, other breach of legal duty (including, without limitation, any failure to comply with the legislation and regulations referred to in Clause 47.3) or fraud of the Contractor, its officers, employees or agents or by any failure of any of them to carry out any order, direction or instruction which is issued by or on behalf of the Authority and applies to the period of loading, unloading or carriage of the Explosives.

- 47.3 The Contractor shall comply and shall procure that all of its officers, employees and agents shall comply with all legislation and regulations from time to time in force and applicable to its performance of the Contract, including (without limitation and so far as the same shall apply) the Explosives Act 1875, regulations made under that Act, the Dangerous Substances in Harbour Areas Regulations 1987 (S.I. 1987 No 37) and the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1990 (S.I. 1990 No 2605).
- 47.4 The indemnity at Clause 47.1 shall not apply to any claim, liability, loss or expense brought against or incurred by the Contractor in relation to which the Contractor has expressly or impliedly agreed to meet and be responsible for such claim, liability, loss or expense, unless the Contractor's agreement was made with the prior written consent of the Authority or the Contractor would nevertheless have been legally responsible to meet such claim, liability, loss or expense in the absence of such agreement.
- 47.5 It is a condition precedent to the Authority assuming any liability under the indemnity at Clause 47.1 that the Authority shall be entitled to the benefit of all rights and remedies of the Contractor, whether for damages, indemnity, contribution or other payment or relief and howsoever arising, against any third party (including any servant or agent of the Contractor, but excluding any policy of insurance) in respect of any claim, liability, loss or expense in relation to any injury, loss or damage as is referred to in Clause 47.1, and that the Contractor shall:
- (a) Immediately or as soon as reasonably practicable thereafter upon the occurrence of any such injury, loss or damage, furnish to the Authority full particulars thereof and of the Explosion giving rise thereto and, whenever requested to do so, furnish such further particulars in respect of such injury, loss or damage or the Explosion as the Authority may from time to time require; and
  - (b) promptly give the Authority written notice of any claim made against it in respect of any such injury, loss or damage and keep the Authority regularly informed of the progress of any such claim and all actions and proceedings in connection therewith; and
  - (c) not without the prior written consent of the Authority make any admission or payment, enter into any compromise or take any step in connection with any such claim, liability, loss or expense in respect of or arising out of such injury, loss or damage, which will or may prejudice either the defence, reduction or settlement of any such claim, liability, loss or expense or any right or remedy of the Contractor as is referred to above; and
  - (d) at the request and expense of the Authority do or concur in doing or permit to be done all such acts and things as may be necessary or reasonably required by the Authority for the purpose of enforcing or permitting the enforcement (whether by the Contractor or the Authority) of any such right or remedy as is referred to above (including, in particular, but without limitation, the execution or any assignment to the Authority of any such right or remedy and the giving of a retainer in such form as the Authority may require to the Treasury Solicitor or any other solicitor or professional person nominated by the Authority), whether or not such acts and things shall be or become necessary or are required before or after the Authority has indemnified the Contractor in relation to any such claim, liability, loss or expense.



- 47.6 The Contractor shall ensure that all persons employed or otherwise engaged by it as crew members involved in the movement of Explosives are competent and properly trained in accordance with the legislation specified in Clause 47.3 and all such other legislation and regulations as shall from time to time be applicable to the Contractor's performance of the Contract.
- 47.7 The Contractor shall:
- (a) in the event that an accident involving a Vessel used for the movement of Explosives occurs, procure that the Master of the Vessel shall notify the Duty Defence Munitions Officer, on behalf of the Authority at Portsmouth and Devonport, as soon as possible; and
  - (b) if any Vessel used for the movement of Explosives breaks down or becomes unusable, promptly at its own expense provide a replacement vessel as necessary and, if there is any risk of Explosion or damage to the Explosives, procure that the Master of the Vessel shall notify the Duty Defence Munitions Officer, on behalf of the Authority Portsmouth and Devonport, as soon as possible; and
- 47.8 In the circumstances described in Clauses 47.6 and 47.7(b), save where immediate action to protect life, property or the integrity of the Explosives is required, not attempt and ensure that no person without due authority attempts to transfer or move the Explosives until a relevant Duty Defence Munitions Officer for the Authority has arrived at the site of the accident or breakdown and approved the transfer or movement.
- 47.9 The Contractor shall, and shall procure that its servants and agents including the Master of any Vessel used for carrying Explosives or towing an Explosives barge shall, take all reasonable steps to:
- (a) prevent any Explosion or other accident and minimise the harmful effects of any Explosion or other accident; and
  - (b) prevent unauthorised access to or removal of any part of the Explosives; and
  - (c) ensure that any Vessel used for the carriage and/or towage of Explosives is safe and suitable for that purpose.

## 48 INSURANCE

- 48.1 Without prejudice to its obligation to indemnify or otherwise be liable to the Authority under this Contract, the Contractor shall for the periods specified in Schedule 7 (Insurance) take out and maintain, or procure the taking out and maintenance of, insurances in accordance with the requirements specified in Schedule 7 (Insurance) and any other insurances required by Law (together the "**Required Insurances**"). The Contractor shall ensure that the Required Insurances are effective in each case not later than the date on which the relevant risk commences.

- 48.2 The Required Insurances shall be taken out and maintained with insurers who are of good financial standing, appropriately regulated and of good repute in the international insurance market.
- 48.3 The Required Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 48.4 Where specified in Schedule 7 (Insurances), the Contractor shall ensure that the relevant policy of insurance protects the Authority's separate interests.
- 48.5 Without limiting the other provisions of this Contract, the Contractor shall:
- (a) take or procure the taking of all reasonable risk management and risk control measures in relation to the Contract as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
  - (b) promptly notify the insurers in writing of any relevant material fact under any of the Required Insurances of which the Contractor is or becomes aware; and
  - (c) hold all policies in respect of the Required Insurances and cause any insurance broker effecting the Required Insurances to hold any insurance slips and other evidence of placing cover representing any of the Required Insurances to which it is a party.
- 48.6 The Contractor shall not (and the Contractor shall procure that none of its sub-contractors of any tier shall) 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.
- 48.7 If the Contractor is in breach of Clause 48.1, the Authority may elect, but shall not be obliged, to purchase any insurance which the Contractor is required to maintain pursuant to this Contract but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.
- 48.8 The Contractor shall, within fifteen (15) calendar 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 force and effect and meet the requirements of this Clause 48. The supply to the Authority of any evidence of insurance cover in compliance with the requirements of this Clause 48.8 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 Contractor's liability under this Contract.
- 48.9 The Contractor shall notify the Authority of the cancellation, suspension, termination or non-renewal of any of the Required Insurances at least five (5) calendar days prior to such cancellation, suspension, termination or non-renewal.

- 48.10 The Contractor shall promptly notify to insurers any matter arising from, or in relation to, the Services 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 Services or this Contract, the Contractor shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 48.11 Except where the Authority is the claimant party, the Contractor 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:
- (a) 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
  - (b) any incident or circumstances which may give rise to any claim in connecting with this Contract which may be in excess of the limits of Required Insurances in Schedule 7 (Insurances).
- 48.12 The Contractor shall maintain a register of all claims under the Required Insurances in connection with this Contract on the Shared Data Environment (as set out in Appendix 1 (Records to be Maintained in the Shared Data Environment) to Schedule 6 (Governance, Management Information, Reports, Records and Audit).
- 48.13 Where any Required Insurance requires payment of a premium, the Contractor shall be liable for such premium.
- 48.14 Where any Required Insurance referred to in Schedule 7 (Insurances) is subject to an excess or deductible, below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible which would otherwise be insured but for the excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Required Insurances whether under the terms of this Contract or otherwise.
- 48.15 Neither failure to comply nor full compliance with the insurance provisions of this Contract shall limit or relieve the Contractor of its liabilities and obligations under this Contract.

## **SECTION H – REMEDIES AND RELIEF**

### **49 CONTRACTOR DEFAULT AND RECTIFICATION PLAN**

49.1 The Contractor shall notify the Authority's Representative in writing if:

- (a) a Default has occurred; or
- (b) it reasonably believes that a Default may occur,

giving full details of the same.

49.2 In the event that the Authority serves the Contractor with notice that a Default has occurred (other than Persistent Breach), which the Authority reasonably believes is capable of remedy by the Contractor, then the Contractor shall submit a draft Rectification Plan to the Authority for review as soon as possible and in any event within five (5) Business Days (or such longer period as may be agreed by the Authority) from the date of the notice of Default.

49.3 The draft Rectification Plan shall set out the steps which the Contractor proposes to take to rectify the Default and to prevent such Default from recurring and the timescales for such steps and for the rectification of the Default.

49.4 The Authority shall notify the Contractor in writing whether it accepts or rejects the draft Rectification Plan within thirty (30) Business Days of receipt of the draft Rectification Plan.

49.5 Where the Authority rejects the draft Rectification Plan under Clause 49.4, it shall give its reasons for such decision and the Contractor shall submit a revised draft Rectification Plan to the Authority within five (5) Business Days (or such other period as agreed by the Authority) of receipt of the Authority's notice rejecting the first draft. The Parties shall use reasonable endeavours to agree any necessary amendments to the draft Rectification Plan within ten (10) Business Days (or such other period as the Authority may specify in writing) of the Authority's receipt of the revised draft Rectification Plan.

49.6 If the Authority accepts the draft Rectification Plan under Clause 49.4 or 49.5, the Contractor shall immediately start work on the actions set out in the Rectification Plan.

49.7 If the Contractor either rectifies the Default within the time period specified in the notice of Default issued pursuant to Clause 49.1 and/or implements the accepted Rectification Plan in accordance with its terms, the notice of Default issued pursuant to Clause 49.1 shall be deemed to be revoked and this Contract shall continue.

49.8 In the event that:

- (a) no acceptable Rectification Plan has been put forward by the Contractor pursuant to this Clause 49; and/or
- (b) the Contractor fails to rectify the Default within the time period specified in the Rectification Plan,

the Authority may serve the Contractor with a Termination Notice stating that this Contract will terminate on the date specified in the Termination Notice.

## **50 STEP-IN RIGHTS**

### **Right to Step-In**

50.1 If the Authority reasonably believes that it needs to take action in connection with the Contract and/or the Services:

- (a) because a serious risk exists to the health or safety of persons or property or to the Environment;
- (b) in order to comply with a statutory duty; and/or
- (c) because the Authority invokes its rights in Clause 51 (Measures in a Crisis),

then the Authority shall be entitled to take action in accordance with this Clause 50 (Step-in Rights).

### **Procedure for Authority Step-In**

50.2 If Clause 50.1 (Right to Step-In) applies and the Authority wishes to take action, the Authority Representative shall notify the Contractor Representative in writing of the following:

- (a) the action it wishes to take;
- (b) the reason for such action;
- (c) the date it wishes to commence such action;
- (d) the time period which it believes shall be necessary for such action;
- (e) any Assets and/or Vessels it requires the Contractor to make available to it to perform such action; and
- (f) to the extent practicable, the effect on the Contractor and its obligation to provide the Services during the period such action is being taken ("**Step-In Notice**").

50.3 Following service of such Step-In Notice, the Authority shall take such action as notified under Clause 50.2 and any consequential additional action as it reasonably believes is necessary in order to deliver the Services in accordance with this Contract (together, the "**Required Action**") and the Contractor shall give all reasonable assistance to the Authority while it is taking the Required Action.

### **Effect of Step-In Without Contractor Breach**

- 50.4 If the Authority exercises its right to take action pursuant to Clause 50.1 (Right to Step-In) and such exercise is not as a consequence of the Contractor's breach of its obligations under this Contract:
- (a) then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing all or any part of the Services, the Contractor shall be relieved from its obligations to provide such part of the Services; and
  - (b) in respect of the period in which the Authority is taking the Required Action, and provided that the Contractor provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent incremental costs are incurred), any Charges payments due from the Authority to the Contractor in accordance with Clause 18 (Charges) shall assume that the Contractor has been providing the Services affected by the Required Action in full over that period.

### **Effects of Step-In Following Contractor Breach**

- 50.5 If the Contractor is in breach of its obligations under this Contract and in consequence the Authority exercises its right to take action pursuant to Clause 50.1 (Right to Step-In):
- (a) then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing the Services, the Contractor shall be relieved from its obligations to provide such part of the Services; and
  - (b) in respect of the period in which the Authority is taking Required Action, the Charges due from the Authority to the Contractor shall assume that the Contractor has been performing the Services affected by the Required Action in full over that period, less an amount equal to all of the Authority's reasonably incurred Capital Expenditure and Operating Expenditure in taking the Required Action which amount shall be deducted from the amount of the Charges which would otherwise be due from the Authority.

### **Notification of Step-Out**

- 50.6 The Authority Representative may at any time during the period of the Required Action notify the Contractor Representative that the Authority wishes to cease the Required Action setting out a reasonable programme for transition of contractual responsibility to the Contractor (the "**Step-Out Plan**") and the date on which it intends to cease the Required Action, in which event:
- (a) as soon as is reasonably practicable but in any case within ten (10) Business Days of receipt of the Authority's Representative's notification pursuant to Clause 50.6, the Parties shall consult with each other as to, and agree upon, the Step-Out Plan and the method by which the Authority shall cease the Required Action;
  - (b) if within fifteen (15) Business Days of the Parties first meeting to agree the Step-Out Plan the Parties are unable to reach agreement, then the matter shall be determined in accordance with the Dispute Resolution Procedure; and

- (c) upon agreement of a Step-Out Plan pursuant to this Clause 50 (or determination pursuant to the Dispute Resolution Procedure), the Parties shall comply with their respective obligations in implementing the Step-Out Plan.

50.7 On the date on which the Required Action ceases, in accordance with the Step-Out Plan:

- (a) the Authority will be released from all of its obligations and liabilities in relation to the Required Action arising prior to the cessation of the Required Action other than its obligations to pay the Contractor pursuant to this Clause 50;
- (b) the Authority shall return any Assets to the Contractor which the Contractor provided to it to enable the Authority to perform the Required Action; and
- (c) the Contractor shall resume the provision of all or any part of the Services which was the subject of the Required Action.

50.8 If on or following the date on which the Required Action ceases, the Contractor can demonstrate that:

- (a) the effect of carrying out the Required Action is to delay, increase the Contractor's costs of, or otherwise affect the ability of the Contractor to provide the Services;
- (b) there was a deterioration, during such period of Required Action, in the performance or availability of any Asset which was used by the Authority during such period;
- (c) such deterioration was caused by the Authority during such period of Required Action as a result of the Authority using such Asset other than in accordance with Good Industry Practice; and
- (d) such deterioration in such Asset's performance or availability is in excess of any deterioration that would have arisen if such Asset had continued to be used by the Contractor during such period for the proper performance of its obligations under, and in accordance with, the provisions of this Contract,

then, provided that the Required Action did not arise in consequence of the Contractor being in breach of its obligations when the Authority exercised its right to step-in pursuant to this Clause 50, such excess deterioration to such Asset shall be an Authority Dependency.

## **51 MEASURES IN A CRISIS**

51.1 If, at any time, the Authority believes, in its sole opinion, that there exists any of the circumstances in Clause 51.2, the Authority Representative may issue a written notice to the Contractor's Representative of such belief.

51.2 If at any time the Authority believes, at its absolute discretion, in view of:

- (a) the national interest, the requirements of national security or the occurrence of a state of transition to war or other emergency (whether or not involving hostilities); and/or

- (b) a request to the Authority by a local authority, public body, or statutory corporation for assistance in relation to the occurrence or possible occurrence of a major accident, crisis or natural disaster; and/or
- (c) a request by NATO, the United Nations, the European Union, or another country for support and assistance in relation to international obligations,

it is necessary, appropriate or desirable for the Authority to take all or any of the measures described in this Clause 51.

51.3 If the Authority Representative has issued the notice contemplated in Clause 51.1, the Authority Representative may require the Contractor, within such period as the Authority Representative in his or her sole discretion specifies (but provided that such period is reasonable taking into account all relevant circumstances), to provide such information in the possession, knowledge or control of the Contractor as the Authority Representative may, in his or her sole discretion, require including information relating to all or any of the following matters:

- (a) the Services currently being provided by the Contractor;
- (b) the Services to be provided by the Contractor due to commence within a period specified by the Authority;
- (c) the Contractor's current deployment of its employees whether inside or outside the Authority Premises; and/or
- (d) all supporting equipment and documentation currently held by the Contractor and the location of such equipment and documentation,

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

51.4 Upon providing the Authority Representative with the information requested pursuant to Clause 51.3, or upon expiry of the period specified by the Authority for the supply of such information, the Contractor shall, upon being so requested by the Authority Representative, discuss in good faith with the Authority Representative any matters which the Authority, at its absolute discretion, may consider relevant or appropriate to any proposals the Authority may have for the reallocation of priorities for, or for the reorganisation of, the Services to be provided by the Contractor. These shall be in order to deal with the circumstances which gave rise to the issuing of a notice pursuant to Clause 51.1, including but not limited to the following matters:

- (a) the revision (including the early completion, suspension or cancellation) of any part of the Services; and
- (b) the immediate implementation of new services,

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



51.5 Notwithstanding any provision to the contrary in this Contract, and notwithstanding that any of the measures described in Clause 51.3 may not have been taken, required to be taken, or have been completed, the Authority may, at any time and in its absolute discretion step-in to this Contract pursuant to Clause 50 (Step-in Rights) and/or the Authority Representative may instruct the Contractor:

- (a) to accelerate to early completion, to suspend, or to cease permanently, any part of the services carried out by the Contractor for third parties, to remove (permanently or temporarily) the property of third parties from any Authority Premises or Vessel and to procure that any such action is carried out on terms with such parties which result in the least possible losses to the Contractor;
- (b) to accelerate to early completion or to suspend provision of the Services;
- (c) to carry out any Changes whatsoever to this Contract required by the Authority without reference to Clause 28 (Change);
- (d) to deploy its employees and any Vessel(s) or rights used in connection with the Vessels or to use, or make available for use by the Authority or as directed by the Authority, all such Vessel(s) or rights in accordance with the Authority's directions,

and the Contractor shall promptly and diligently comply (in a manner consistent with applicable Law) with any instruction issued by the Authority Representative referred to in this Clause 51.5.

51.6 The Contractor may refuse to comply with any written instruction issued by the Authority pursuant to Clause 51.5 if the implementation of such instruction would reasonably be expected to pose a threat of personal injury to the Contractor Personnel or the fact that the Contractor Personnel are neither adequately trained nor equipped to carry out or implement such instructions.

51.7 If the Authority has stepped in to this Contract pursuant to Clause 50.1(c) (Step-In Rights) then the provisions of Clause 50.4 (Step-In Rights) shall apply. If the Authority has exercised any of its other rights under this Clause 51 then:

- (a) for so long as and to the extent that the provisions of Clause 51.4 or any instruction issued by the Authority Representative pursuant to Clause 51.5 ("**MIAC Required Action**") prevents the Contractor from providing all or any part of the Services, the Contractor shall be relieved from its obligations to provide such part of the Services; and
- (b) in respect of the period in which the Authority is taking the MIAC Required Action and provided that the Contractor complies with its obligations under Clause 51.4 or Clause 51.5, then:
  - (i) in respect of the period in which the Authority is taking the MIAC Required Action and provided that the Contractor provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent incremental costs are incurred and subject to Clause 51.7(b)(ii)), the Charges due from the Authority to the Contractor in accordance with Clause 18

(Charges), shall assume that the Contractor has been providing the Services affected by the MIAC Required Action in full over that period;

(ii) Subject to the provisions regarding the conduct of indemnity claims at Clauses 45.3 to 45.4 (Indemnities):

(A) the Authority shall indemnify the Contractor against any Direct Losses from any claim or action for damages by a third party against the Contractor arising out of the MIAC Required Action; and/or

(B) the Authority shall further indemnify the Contractor against all incremental costs incurred pursuant to Clause 51.7(b)(i).

51.8 The MIAC Required Action shall cease to apply when the Authority Representative issues a written notice to that effect to the Contractor Representative and gives effect to the relevant Step-Out Plan in accordance with Clause 50.6 (Step-In Rights) and thereafter the Contractor shall continue to be bound by the provisions of this Contract.

## **52 RELIEF EVENTS**

52.1 If, and to the extent that, a Relief Event is the direct cause of a failure by the Contractor to:

(a) commence delivery of the Services on or before the Planned Service Commencement Date; or

(b) deliver the Services in accordance with the provisions of Schedule 2 (Statement of Requirement),

then the Contractor shall be entitled to apply for relief from any rights of the Authority arising under Clause 56 (Termination for Contractor Default) and its obligations under this Contract, provided that the provisions of this Clause 52 shall be subject to the provisions of Clause 50 (Step-In Rights).

### **Procedure for Relief Event Claims**

52.2 To obtain relief the Contractor must as soon as practicable, and in any event within five (5) Business Days after it becomes aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Contractor to perform its other obligations notify the Authority's Representative of its claim for relief from its obligations under this Contract, including all such details as are available at the time as to the nature of the Relief Event, the date of occurrence and its likely duration, together with any proposed mitigation.

52.3 Within ten (10) Business Days of service on the Authority's Representative of the notice referred to in Clause 52.2, notify the Authority's Representative of full details of the relief claimed and demonstrate to the reasonable satisfaction of the Authority that:

(a) the Contractor and its Sub-Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure; and

- (b) the Relief Event directly caused:
  - (i) the delay in achieving the Planned Service Commencement Date; and/or
  - (ii) the failure of the Contractor to deliver the Services in accordance with the provisions of Schedule 2 (Statement of Requirement);
- (c) the time lost and/or relief from the obligations under this Contract claimed could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice, without incurring material expenditure; and
- (d) the Contractor is using reasonable endeavours to perform its obligations under this Contract.

52.4 The Contractor shall notify the Authority's Representative if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

#### **Effect of a Relief Event**

52.5 Following a Relief Event, the Authority may step-in to this Contract, pursuant to the provisions of Clause 50 (Step-In Rights) to continue the provision of any aspects of the Services affected by the Relief Event or to provide a service which is as close as is reasonably possible to the affected aspects of the Services and/or to reinstate or replace any Vessel or Asset which has been damaged or destroyed by the Relief Event.

52.6 If the Contractor has complied with its obligations under Clause 52.2, then:

- (a) the Planned Service Commencement Date shall be postponed by such time as shall be reasonable for such Relief Event, taking into account the likely effect of delay; and/or
- (b) in relation to those parts of the Services impacted by the relevant Relief Event, the Contractor shall not accrue Non-Performance Points for its failure to deliver such parts of the Services in accordance with the provisions of Schedule 2 (Statement of Requirement), as set out in paragraph 3.5(b) of Schedule 4 (Payment, Performance and Incentivisation Mechanism); and/or
- (c) subject to Clause 50 (Step-In Rights), the Authority shall not be entitled to exercise its right to terminate this Contract for Contractor Default under Clause 56.1 (Termination for Contractor Default); and/or
- (d) subject to Clause 52.7, the Authority shall give such other relief as has been requested by the Contractor.

#### **No Relief from Non-Performance Points for other parts of the Services**

52.7 Nothing in Clause 52.6 shall affect any entitlement to apply Non-Performance Points pursuant to Schedule 4 (Payment, Performance and Incentivisation Mechanism) in relation to the

Services other than those parts of the Services for which relief has been granted by the relevant Relief Event (in accordance with Clause 52.6).

#### **Late Provision of Notice or Information**

- 52.8 If the information required by Clause 52.2 is provided after the dates referred to in that Clause, or after such other later deadline expressly permitted by the Authority's Representative in writing, then the Contractor shall not be entitled to any relief during the period for which the information is delayed.

#### **Failure to Agree**

- 52.9 If the Parties cannot agree the extent of the relief required, or the Authority disagrees that a Relief Event has occurred or that the Contractor is entitled to any extension to any Planned Service Commencement Date and/or relief from other obligations under this Contract, the Parties shall resolve the matter in accordance with Clause 70 (Disputes).

### **53 COMPENSATION EVENTS**

- 53.1 If, as a direct result of the occurrence of a Compensation Event, the Contractor:

- (a) is unable to commence delivery of the Services on or before the Planned Service Commencement Date; or
- (b) is unable to comply with its obligations under this Contract; or
- (c) incurs costs or loses revenue,

then the Contractor is entitled to apply for an extension of time to the Planned Service Commencement Date and/or relief from its obligations and/or to claim compensation under this Contract.

#### **Procedure for Compensation Event Claims**

- 53.2 Subject to Clause 53.5, to obtain an extension of time and/or relief and/or claim compensation the Contractor must:

- (a) as soon as practicable, and in any event within five (5) Business Days after it became aware that the Compensation Event has caused or is likely to cause delay, breach of an obligation under this Contract, and/or the Contractor to incur costs and/or lose revenue, notify the Authority's Representative of its claim for an extension of time to the Planned Service Commencement Date and/or payment of compensation and/or relief from its obligations under this Contract; and
- (b) as soon as practicable, and in any event within ten (10) Business Days of service on the Authority's Representative of the notice referred to in Clause 53.2(a), notify the Authority's Representative of full details of the Compensation Event and the extension of time and/or relief from its obligations and/or any Estimated Change in Charges and/or

loss of revenue claimed, together with any proposed mitigation and/or alternative methods of recovery; and

- (c) demonstrate to the reasonable satisfaction of the Authority's Representative that:
  - (i) the Compensation Event was the direct cause of the Estimated Change in Charges and/or loss of revenue and/or delay in the achievement of the Planned Service Commencement Date or, following the Planned Service Commencement Date, and/or breach of the Contractor's obligations under this Contract; and
  - (ii) the Estimated Change in Charges and/or loss of revenue, time lost, and/or relief from the obligations under this Contract claimed, could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice.

#### **Effect of a Compensation Event**

53.3 If the Contractor has complied with its obligations under Clause 53.2, then:

- (a) in the case of a delay, the Planned Service Commencement Date, shall be postponed by such time as shall be reasonable for such a Compensation Event, taking into account the likely effect of the delay; and
- (b) in the case of an additional cost being incurred or revenue being lost by the Contractor:
  - (i) on or before the Service Commencement Date; or
  - (ii) as a result of Capital Expenditure being incurred by the Contractor at any time,

the Authority shall compensate the Contractor for the actual Estimated Change in Charges as adjusted to reflect the actual costs reasonably incurred and, without double counting, for revenue actually lost (to the extent it could not reasonably have been mitigated) pursuant to Schedule 4 (Payment, Performance and Incentivisation Mechanism); and

- (c) in the case of a payment of compensation for the actual Estimated Change in Charges and/or without double counting, loss of revenue as a result of Capital Expenditure being incurred by the Contractor referred to in Clause 53.3(b)(ii) but which reflects a change in the Operating Expenditure and, without double counting, loss of revenue being incurred by the Contractor after the relevant Service Commencement Date, the Authority shall compensate the Contractor in accordance with Clause 53.4 by an adjustment to the Charges; and
- (d) the Authority shall give the Contractor such relief from its obligations (including relief from Non-Performance Points) under this Contract as is reasonable for such a Compensation Event.

53.4 Any payment of compensation referred to in Clause 53.3(c) shall be calculated using the Updated Baseline Financial Model.

### **Late Provision of Notice or Information**

- 53.5 If the information required by Clause 53.2 is provided after the dates referred to in that Clause, then the Contractor shall not be entitled to any extension of time, compensation or relief from its obligations under this Contract during the period for which the relevant information is delayed.

### **Failure to Agree**

- 53.6 If the Parties cannot agree the extent of any compensation, delay incurred, relief from the Contractor's obligations under this Contract, or the Authority disagrees that a Compensation Event has occurred (or as to its consequences), or that the Contractor is entitled to relief under this Clause 53, the Parties shall resolve the matter in accordance with Clause 70 (Disputes).

## **54 FORCE MAJEURE**

- 54.1 On the occurrence of a Force Majeure Event, the Affected Party shall issue a Force Majeure Notice to the other Party as soon as practicable. The Force Majeure Notice shall include details of the Force Majeure Event, the nature and likely duration of its impact upon the other Party including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.
- 54.2 As soon as practicable following the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use all reasonable endeavours to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the affected obligations under this Contract.
- 54.3 The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Contractor shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 54.4 If a Force Majeure Event occurs which prevents, hinders or delays the Affected Party from performing any of its obligations under this Contract, the Affected Party shall not be liable to the other Party and shall be released from performance of its obligations under this Contract to the extent that its ability to perform such obligations has been affected by the Force Majeure Event, provided that:
- (a) the Affected Party notifies the other Party in accordance with Clause 54.1;
  - (b) (in the event that the Contractor is the Affected Party) the Contractor has complied fully with the Service Continuity Plan;
  - (c) the Affected Party takes all reasonable steps to limit and mitigate the impact of the Force Majeure Event; and
  - (d) the Affected Party continues to perform all its obligations which have not been affected by the Force Majeure Event.

- 54.5 Where a Force Majeure Event occurs which would cause the Contractor to be unable achieve commencement of the Services on or before the Planned Service Commencement Date then the Contractor shall be entitled to an adjustment of the relevant date and the objective of such adjustment shall be to put the Contractor in no better and no worse position (save for the benefit of the adjustment) than it would have been in if the Force Majeure Event giving rise to the adjustment had not occurred, provided that the Contractor has complied fully with the Service Continuity Plan.
- 54.6 Where, as a result of a Force Majeure Event, the Contractor fails to perform its obligations in accordance with this Contract:
- (a) the Contractor shall be entitled to receive payment of the Charges (or a proportional payment of them):
    - (i) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Contract during the occurrence of the Force Majeure Event; and
    - (ii) provided that the Contractor has complied fully with the Service Continuity Plan; and
  - (b) the Authority shall not be entitled to apply Non-Performance Points to the extent that the failure of performance is due to the Force Majeure Event. Nothing in this Clause 54.6(b) shall affect any entitlement of the Authority to apply Non-Performance Points in the period during which the Force Majeure Event subsists where such failure is not as a result of the Force Majeure Event.
- 54.7 Where a Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with all or a material part of its obligations under this Contract for a period of more than one hundred and twenty (120) Business Days, then:
- (a) the Authority may, by notice in writing to the Contractor at any time while such Force Majeure Event continues, terminate this Contract or the portion thereof prevented by such Force Majeure Event on twenty (20) Business Days' notice; and
  - (b) if such Force Majeure Event continues for longer than one hundred and twenty (120) Business Days and has not been terminated by the Authority under (a) above, then the Contractor may, by notice in writing to the Authority at any time whilst such Force Majeure Event continues, immediately terminate this Contract or the portion thereof prevented by such Force Majeure Event.
- 54.8 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification this Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.
- 54.9 Relief from liability for the Affected Party under this Clause 54 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 54.8.

54.10 Inability (howsoever caused) of a Party to pay any amounts due under this Contract shall not be a Force Majeure Event.

54.11 If the parties disagree that a Force Majeure Event has occurred and/or the extent of relief claimed by the Affected Party, the matter shall be resolved in accordance with the provisions of the Dispute Resolution Procedure.

**55 NOT USED**



## **SECTION I – TERMINATION AND EXIT MANAGEMENT**

### **56 TERMINATION FOR CONTRACTOR DEFAULT**

#### **Contractor Termination Events**

56.1 Without affecting any other right or remedy available to it, the Authority may terminate this Contract by serving a Termination Notice, and the Contract will terminate on the date specified in the Termination Notice, where:

- (a) a failure to provide the Transition Services in accordance with Clause 6.1 (Services);
- (b) a failure to achieve the Service Commencement Date, and commence the provision of the Services, by the Planned Service Commencement Date;
- (c) the Contractor fails to pay any undisputed sum in excess of £100,000 (which is or determined to be due and payable by the Contractor to the Authority in accordance with the terms of this Contract) within forty (40) Business Days after the due date for payment, where such liability remains outstanding after the Authority has given notice in writing to the Contractor of the amount outstanding;
- (d) a Potential Termination Trigger (as defined in Schedule 4 (Payment, Performance and Incentivisation Mechanism)) occurs, which is irremediable or not remedied in accordance with Clause 49 (Contractor Default and Rectification Plan);
- (e) not used;
- (f) there is an Insolvency Event in accordance with Clause 56.2;
- (g) the Contractor commits a material Default which is irremediable or not remedied in accordance with Clause 49 (Contractor Default and Rectification Plan);
- (h) the Contractor fails to agree a Rectification Plan and/or implement an agreed Rectification Plan in accordance with Clause 49 (Contractor Default and Rectification Plan);
- (i) the Contractor commits a Persistent Breach;
- (j) where a right of termination is expressly reserved in this Contract, including pursuant to:
  - (i) Clause 24.5 (Tax Compliance);
  - (ii) Clause 38.7 (Security Measures);
  - (iii) Clause 58 (Termination for Prohibited Acts);
  - (iv) Clause 61.12 (Compliance) in relation to Conflicts of Interest;

- (v) Clause 61.16(b) (Compliance) in relation to modern slavery obligations;
- (vi) paragraph 6 of Schedule 25 (Financial Distress); and
- (vii) Schedule 8 (Security and Information Management);
- (k) not used;
- (l) the representation and warranty given by the Contractor pursuant to Clause 3 (Warranties) is materially untrue or misleading;
- (m) a Change of Control under Clause 30 (Change of Control of Contractor);
- (n) a Change of Control of a Key Sub-Contractor unless, within three (3) months of being notified by the Authority that it objects to such Change of Control, the Contractor terminates the relevant Key Sub-Contract and replaces it with a comparable Key Sub-Contract which is approved by the Authority pursuant to Clause 34 (Key Sub-Contracts);
- (o) any failure by the Contractor to enter into or to comply with an Admission Agreement pursuant to Part 3 (Pension Matters) of Schedule 22 (Staff Transfer);
- (p) the Authority has become aware that the Contractor should have been excluded under Regulation 23(1) of the Regulations from the procurement procedure leading to the award of this Contract;
- (q) a failure to maintain insurances in accordance with the requirements of Clause 48 (Insurance);
- (r) a failure to apply the proceeds received from any insurance policy accordance with the terms of Clause 48 (Insurance);
- (s) Conditions Failure (unless waived by the Authority in writing pursuant to Clause 4.3);
- (t) a material breach by the Contractor of any of its obligations pursuant to Clause 43 (Protection of Personal Data);
- (u) the Contractor fails to comply with its obligations in relation to the provision of CRP Information as set out in paragraph 3 of Part B of Schedule 29 (Service Continuity);
- (v) the Contractor does not enter into the Admission Agreement by the Relevant Transfer Date;
- (w) the Contractor breaches the provisions of the Admission Agreement provided that where the breach is remediable the right to terminate shall only arise where the Contractor fails to remedy the breach within twenty-eight (28) days of service of a notice from the Minister for the Cabinet Office setting out particulars of the breach and requiring the Contractor to remedy it;

- (x) the Contractor breaches the provisions of Part 3 (Pensions Matters) to Schedule 22 (Staff Transfer) provided that where the breach is remediable the right to terminate shall only arise where the Contractor fails to remedy the breach within twenty-eight (28) days of service of a notice from the Authority setting out particulars of the breach and requiring the Contractor to remedy it; or
- (y) notice to terminate the Admission Agreement has been served under clause 13.1 of the Admission Agreement,

each of the above being a "**Contractor Termination Event**".

### **Insolvency Events**

56.2 The Authority may terminate the Contract, without paying compensation to the Contractor, by giving written notice of such termination to the Contractor at any time after any of the following events (each an "**Insolvency Event**"):

- (a) where the Contractor is an individual or a firm:
  - (i) the application by the individual or, in the case of a firm constituted under English law, any partner of the firm to the court for an interim order pursuant to Section 253 of the Insolvency Act 1986; or
  - (ii) the court making an interim order pursuant to Section 252 of the Insolvency Act 1986; or
  - (iii) the individual, the firm or, in the case of a firm constituted under English law, any partner of the firm making a composition or a scheme of arrangement with his or its creditors; or
  - (iv) the presentation of a petition for bankruptcy order against the individual or, in the case of a firm constituted under English law, any partner of the firm unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
  - (v) the court making a bankruptcy order in respect of the individual or, in the case of a firm constituted under English law, any partner of the firm; or
  - (vi) where the Contractor is either unable to pay its debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay its debts if:
    - (A) he has failed to comply with or to set aside a statutory demand under Section 268 of the Insolvency Act 1986 within twenty one (21) calendar days of service of the statutory demand on him; or
    - (B) execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part;

- (vii) the presentation of a petition for sequestration in relation to the Contractor's estates unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
  - (viii) the court making an award of sequestration in relation to the Contractor's estates; or
- (b) where the Contractor is a company registered in England:
  - (i) the presentation of a petition for the appointment of an administrator; unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
  - (ii) the court making an administration order in relation to the company; or
  - (iii) the presentation of a petition for the winding-up of the company unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of the presentation; or
  - (iv) the company passing a resolution that the company shall be wound-up; or
  - (v) the court making an order that the company shall be wound-up; or
  - (vi) the appointment of a receiver or manager or administrative receiver; or
- (c) where the Contractor is a company registered other than in England, events occur or are carried out which, within the jurisdiction to which it is subject, are similar in nature or effect to those specified in sub-Clauses 56.2(b) (i) to (vi) (inclusive) above.

#### **Persistent Breach**

56.3 If a particular breach (other than a breach for which Non-Performance Points could have been applied) has continued for more than twenty (20) Business Days or occurred more than three (3) times in any three (3) month period, then the Authority Representative may serve a notice on the Contractor Representative ("**Warning Notice**"):

- (a) specifying that it is a formal warning notice; and
- (b) giving reasonable details of the breach; and
- (c) stating that the breach is a breach which, if it recurs frequently or continues, may result in a termination of this Contract.

56.4 If, following service of such a warning notice the breach specified has continued beyond twenty (20) Business Days or recurred more than three (3) times in any three (3) month period after the date of service, then the Authority Representative may serve another notice (a "**Final Warning Notice**") on the Contractor Representative:

- (a) specifying that it is a Final Warning Notice; and

- (b) stating that the breach specified has been the subject of a warning notice served within the six (6) month period prior to the date of service of the Final Warning Notice; and
- (c) stating that, if such breach continues for more than twenty (20) Business Days or recurs in more than three (3) times in any three (3) month period after the date of service of the Final Warning Notice, this Contract may be terminated.

56.5 A warning notice may not be served in respect of any incident of breach which has previously been counted in the award of a separate warning notice.

56.6 If the breach continues for more than ten (10) Business Days or recurs in one or more months within the six (6) month period after the date of service of the Final Warning Notice (a "**Persistent Breach**"), the Authority Representative may, by notice to the Contractor Representative, terminate this Contract on the date falling twenty (20) Business Days after receipt of such notice.

#### **Compensation on Termination for Contractor Default**

56.7 In the event of termination pursuant to Clause 56.1, the provisions of Schedule 20 (Compensation on Termination) shall apply.

#### **Partial Termination**

56.8 Where a Contractor Termination Event has occurred, without affecting any other right or remedy available to it, the Authority may terminate the part(s) of the Contract affected by such a Contractor Termination Event by serving notice of a partial termination on the Contractor.

56.9 Following service by the Authority of notice of a partial termination in accordance with Clause 56.8, the Authority shall issue the Contractor with a Change Request in respect of such partial termination, and the partial termination shall be effected in accordance with the Change Control Procedure.

56.10 In the event of a partial termination:

- (a) the provisions of Schedule 20 (Compensation on Termination) shall not apply; and
- (b) the Contractor shall perform its obligations pursuant to Schedule 21 (Exit Management) in relation to those parts of the Contract and/or Services what are being terminated, as required by the Authority.

### **57 TERMINATION FOR AUTHORITY DEFAULT**

57.1 Without affecting any other right or remedy available to it, the Contractor may, by issuing a Termination Notice to the Authority, terminate this Contract if the Authority fails to pay an undisputed sum due to the Contractor under this Contract which in aggregate exceeds an amount equivalent to three (3) months of the Total Monthly Payment and such amount remains outstanding forty (40) Business Days after the receipt by the Authority of a notice of non-payment from the Contractor and this Contract or the relevant Services (as the case may be)

shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Business Days from the date of the issue of the Termination Notice).

- 57.2 Termination under Clause 57.1 above shall take effect on the date specified in the Termination Notice (which shall not be less than twenty (20) Business Days from the date of the issue of the Termination Notice) provided that the Authority has not paid the undisputed sum by the specified date of termination. If the Authority has paid the undisputed sum by the specified date of termination, then the right to terminate shall lapse and the Termination Notice shall be deemed to have been withdrawn.

#### **Compensation on Termination for Authority Default**

- 57.3 In the event of termination pursuant to Clause 57.1, the provisions of Schedule 20 (Compensation on Termination) shall apply.

### **58 TERMINATION FOR PROHIBITED ACTS**

- 58.1 The Contractor shall not do, and warrants that in entering the Contract it has not done any of the following (hereafter referred to as '**Prohibited Acts**'):

- (a) offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward:
  - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other contract with the Crown; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to this or any other Contract with the Crown.
- (b) enter into this or any other Contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any such Contract for the payment thereof have been disclosed in writing to the Authority.

- 58.2 If the Contractor, its employees, agents or any Sub-Contractor (or anyone acting on its behalf or any of its or their employees) does any of the Prohibited Acts or commits any offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:

- (a) to terminate this Contract and recover from the Contractor the amount of any loss resulting from the termination;
- (b) to recover from the Contractor the amount or value of any such gift, consideration or commission; and
- (c) to recover from the Contractor any other loss sustained in consequence of any breach of this Clause 58, where the Contract has not been terminated.

58.3 In exercising its rights or remedies under this Clause 58, the Authority shall:

- (a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act or committing of any offence under the Bribery Act 2010;
- (b) give all due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):
  - (i) requiring the Contractor to procure the termination of a Sub-Contract where the Prohibited Act or committing of any offence under the Bribery Act 2010 is that of a Sub-Contractor or anyone acting on its or their behalf;
  - (ii) requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Sub-Contractor or anyone acting on its behalf) where the prohibited act or committing of any offence under the Bribery Act 2010 is that of such employee.

58.4 Recovery action taken against any person in His Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this Clause 58.

#### **Compensation on Termination for Prohibited Acts**

58.5 In the event of termination pursuant to Clause 58.2, the provisions of Schedule 20 (Compensation on Termination) shall apply.

### **59 AUTHORITY VOLUNTARY TERMINATION RIGHT**

59.1 If the Authority wishes to terminate this Contract voluntarily, it must serve a Termination Notice on the Contractor Representative stating that:

- (a) the Authority is terminating this Contract voluntarily; and
- (b) this Contract shall terminate on the date specified in the Termination Notice which must be a minimum of twenty (20) Business Days after the date of receipt of the Termination Notice.

59.2 This Contract shall terminate on the date specified in the Termination Notice which must be a minimum of twenty (20) Business Days after the date of receipt of the Termination Notice referred to in Clause 59.1.

#### **Compensation on Authority Voluntary Termination**

59.3 In the event of termination pursuant to Clause 59.2, the provisions of Schedule 20 (Compensation on Termination) shall apply.

## **60 CONSEQUENCES OF EXPIRY OR TERMINATION**

- 60.1 The provisions of Clauses 20.6 (Payment and Recovery of Sums Due), 21 (Value Added Tax and Other Taxes), 23 (Other Attributable Costs), 27 (Records, Audits and Open Book Data), 31.8 (Income Tax and National Insurance Contributions), 35 (Intellectual Property Rights), 36 (Third Party Intellectual Property – Rights and Restrictions), 41 (Confidentiality), 42 (Transparency and Freedom of Information), 43 (Protection of Personal Data), 45 (Indemnities), 46 (Limitations on Liability), 60 (Consequences of Expiry or Termination), 65 (Severance), 67 (Entire Agreement), 68 (Third Party Rights), 70 (Disputes) and 74 (Governing Law and Jurisdiction), and the provisions of Schedule 1 (Definitions), Schedule 4 (Payment, Performance and Incentivisation Mechanism), Schedule 6 (Governance, Management Information, Reports, Records and Audit), Schedule 20 (Compensation on Termination), Schedule 21 (Exit Management), Schedule 22 (Staff Transfer) and Schedule 30 (Dispute Resolution Procedure) shall survive the termination or expiry of this Contract.

### ***Exit Management***

- 60.2 The Parties shall comply with the provisions of Schedule 21 (Exit Management) and any current Exit Management Plan in relation to orderly transition of the Services to the Authority or a Replacement Contractor.



## **SECTION J – MISCELLANEOUS AND GOVERNING LAW**

### **61 COMPLIANCE**

#### **Health and Safety**

61.1 The Contractor shall perform its obligations under this Contract (including those in relation to the Services) in accordance with the following (without limitation):

- (a) JSP 375, Part 2 (Management of health and safety in defence);
- (b) DEFSTAN 00-56;
- (c) JSP 482 (MOD Explosives Regulations);
- (d) DSA 01 Chapters 1-4;
- (e) Defence Maritime Regulations;
- (f) Merchant Shipping Act 1995;
- (g) Diving at Work Regulations 1997; and
- (h) Dockyard Ports Regulation Act 1865.

61.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Contract. The Contractor shall instruct the Contractor Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

#### **Equality and Diversity**

61.3 The Contractor shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including re-assignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.

61.4 Without prejudice to the generality of the obligation in Clause 61.3 above, the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent legislation in the country where the Contract is being performed.

61.5 The Contractor agrees to take reasonable efforts to secure the observance of the provisions of Clauses 61.3 to 61.4 by any of its employees, agents or other persons acting under its direction or control who are engaged in the performance of the Contract.

61.6 The Contractor agrees to take reasonable efforts to reflect Clauses 61.3 to 61.4 in any Sub-Contract that it enters into to satisfy the requirements of the Contract and to require its Sub-

Contractors to reflect Clauses 61.3 to 61.6 in the sub-contracts that they enter into to satisfy the requirements of the Contract.

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

- 61.7 In Clauses 61.7 to 61.9, "**Child Labour Legislation**" means those International Labour Law Conventions concerning economic exploitation of children through the performance of work which is likely to be hazardous or to interfere with a child's health or development, including but not limited to slavery, trafficking, debt bondage or forced labour, which are ratified and enacted into domestic law and directly applicable to the Contractor in the jurisdiction(s) in which it performs the Contract.
- 61.8 The Contractor shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where the Contract is being performed.
- 61.9 The Contractor agrees to take reasonable efforts to reflect Clauses 61.7 to 61.9 in any Sub-Contract that it enters into to satisfy the requirements of the Contract and to require its Sub-Contractors to reflect Clauses 61.7 to 61.8 in the sub-contracts that they enter into to satisfy the requirements of the Contract.

#### **Official Secrets Act and Finance Act**

- 61.10 The Contractor shall comply with the provisions of:
- (a) the Official Secrets Acts 1911 to 1989; and
  - (b) section 182 of the Finance Act 1989.

#### **Conflicts of Interest**

- 61.11 The Contractor must:
- (a) take action to ensure that neither the Contractor nor the Contractor Personnel are placed in the position of an actual, potential or perceived Conflict of Interest; and
  - (b) promptly notify and provide details to the Authority if an actual, potential or perceived Conflict of Interest happens or is expected to happen.
- 61.12 In the event of a perceived Conflict of Interest, the Contractor shall provide the Authority with such reasonable support and assistance as may be required in order to enable the Authority to manage the perceived Conflict of Interest.
- 61.13 In the event of an actual or potential Conflict of Interest, the Contractor shall provide the Authority with a written proposal informing the Authority how they intend to manage the Conflict of Interest within fifteen (15) Business Days (or such other time as agreed in writing between both Parties) of:
- (a) the Contractor notifying the Authority of the actual or potential Conflict of Interest pursuant to Clause 61.11(b); or

- (b) receipt by the Contractor of written notice from the Authority where the Authority otherwise becomes aware of an actual or potential Conflict of Interest.

61.14 The Authority will consider whether there are any measures, including those proposed by the Contractor in accordance with Clause 61.13, which are sufficient and can be put in place to appropriately remedy an actual or potential Conflict of Interest and the Contractor shall put into place all measures reasonably required by the Authority to actively manage any Conflict of Interest as notified by the Authority in writing. If, in the reasonable opinion of the Authority, there are no sufficient measures available to resolve an actual or potential Conflict of Interest, the Authority may terminate this Contract immediately by giving notice in writing to the Contractor where there is or may be an actual or potential Conflict of Interest.

### **Modern Slavery**

61.15 The Contractor:

- (a) shall not use, nor allow its sub-contractors to use forced, bonded or involuntary prison labour;
- (b) shall not require any Contractor Personnel or the personnel of any sub-contractors to lodge deposits or identity papers with their employer and shall be free to leave their employer after reasonable notice;
- (c) warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
- (d) warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;
- (e) shall make reasonable enquires to ensure that its officers, employees and sub-contractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- (f) shall have and maintain throughout the Contract Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its sub-contractors anti-slavery and human trafficking provisions;
- (g) shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;
- (h) shall prepare and deliver to the Authority, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;
- (i) shall not use, nor allow its employees or sub-contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or sub-contractors;

- (j) shall not use or allow child or slave labour to be used by its sub-contractors; and
- (k) shall report the discovery or suspicion of any slavery or trafficking by it or its sub-contractors to the Authority and the Modern Slavery Helpline.

61.16 If the Contractor is in Default under Clause 61.15, the Authority may by notice:

- (a) require the Contractor to remove from performance of the Contract any Sub-Contractor, Contractor Personnel or other persons associated with it whose acts or omissions have caused the Default; or
- (b) immediately terminate the Contract.

### **Whistleblowing**

61.17 The Contractor and Contractor Personnel must report to the Authority any actual or suspected:

- (a) breach of Law; or
- (b) breach of any of Clauses 61.1 to 61.15; or
- (c) Prohibited Act or any offence under the Bribery Act 2010 by the Contractor, any Contractor Personnel or any Contractor Related Party (or anyone acting on its behalf or any of its or their employees),

as soon as it is aware of any such actual or suspected breach, Prohibited Act or offence under the Bribery Act 2010.

61.18 The Contractor must not retaliate against any of the Contractor Personnel who in good faith reports a breach listed in Clause 61.17 (Whistleblowing) to the Authority or a Prescribed Person.

61.19 If the Contractor notifies the Authority pursuant to Clause 61.17 (Whistleblowing) it shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with the Contract.

## **62 ASSIGNMENT AND NOVATION**

62.1 The Contractor shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract without the prior written consent of the Authority.

62.2 The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Contract and/or any associated licences to:

- (a) any Central Government Body; or

- (b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority,

and the Contractor shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify (and the form of which shall be shared with the Contractor in advance) in order to enable the Authority to exercise its rights pursuant to this Clause 62.2.

- 62.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not affect the validity of this Contract and this Contract shall be binding on any successor body to the Authority.
- 62.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Contract to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority (any such body being a **"Successor Body"** for the purposes of this Clause 62.4), the Contractor shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination that the Authority has under limb (f) of the definition of Contractor Termination Event (as if references in that limb (f) (and Clause 56.2 (Termination for Contractor Default)) to the Contractor were references to the Successor Body).

## **63 WAIVER AND CUMULATIVE REMEDIES**

- 63.1 The rights and remedies under this Contract may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Contract or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 63.2 Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

## **64 RELATIONSHIP OF THE PARTIES**

- 64.1 Except as expressly provided otherwise in this Contract, nothing in this Contract, nor any actions taken by the Parties pursuant to this Contract, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

## **65 SEVERANCE**

- 65.1 If any provision of the Contract is held to be invalid, illegal or unenforceable to any extent then:
  - (a) such provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in the Contract but without invalidating any of the remaining provisions of the Contract; and

- (b) the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

## **66 FURTHER ASSURANCE**

- 66.1 Each Party undertakes at the request of the other, and at the cost of the non-requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Contract.

## **67 ENTIRE AGREEMENT**

- 67.1 This Contract constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 67.2 Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.
- 67.3 Nothing in this Clause 67 shall exclude any liability in respect of misrepresentations made fraudulently.

## **68 THIRD PARTY RIGHTS**

- 68.1 Except as provided in Clause 68.2 and notwithstanding anything to the contrary elsewhere in this Contract, no right is granted to any person who is not a party to the Contract 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.
- 68.2 Where, and only where, this Contract expressly states that a third party shall be entitled to enforce a term of this Contract:
  - (a) the said third party shall be entitled to enforce that term in its own right;
  - (b) the Contractor shall inform the said third party as soon as is reasonably practicable of the existence of the relevant right together with any other terms (including the terms of this Clause 68) relevant to the exercise of that right; and
  - (c) the third party's rights shall be subject to the Dispute Resolution Procedure and Clause 74 (Governing Law and Jurisdiction).

## **69 NOTICES**

- 69.1 Any notices sent under this Contract must be in writing.

- 69.2 The following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Business Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Business Day. Otherwise, delivery will occur at 9.00am on the next Business Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt
Prepaid, Royal Mail Signed For™ 1 <sup>st</sup> Class or other prepaid, next working day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Business Day.  Otherwise, delivery will occur at 9.00am on the same Business Day (if delivery before 9.00am) or on the next Business Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

- 69.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Contract:

	Contractor	Authority
Contact	Redacted under FOIA Section 40(2): Personal Information	Redacted under FOIA Section 40(2): Personal Information
Address	Redacted under FOIA Section 40(2): Personal Information	Redacted under FOIA Section 40(2): Personal Information
Email	Redacted under FOIA Section 40(2): Personal Information	Redacted under FOIA Section 40(2): Personal Information

## 70 DISPUTES

- 70.1 The Parties shall resolve Disputes arising out of or in connection with this Contract in accordance with the Dispute Resolution Procedure.

- 70.2 The Contractor shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.

## **71 INADEQUACY OF DAMAGES**

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

## **72 COSTS**

- 72.1 Except as expressly provided in this Contract, each Party shall pay its own costs incurred in connection with the negotiation, preparation, execution and registration of this Contract and any documents referred to in it.

## **73 COUNTERPARTS**

- 73.1 This Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one Contract.
- 73.2 No counterpart shall be effective until each Party has executed at least one counterpart.

## **74 GOVERNING LAW AND JURISDICTION**

- 74.1 This Contract and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 74.2 Subject to Clause 70 (Disputes) and Schedule 30 (Dispute Resolution Procedure) (including each Party's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.



This Contract has been entered into on the date stated at the beginning of it.

**SIGNED BY** )  
for and on behalf of )  
**THE SECRETARY OF STATE FOR DEFENCE** )

SIGNATURE .....

NAME .....

**SIGNED BY** )  
for and on behalf of )  
**SERCO LIMITED** )

SIGNATURE .....

NAME .....

## **SCHEDULE 1**

### **Definitions**

## **SCHEDULE 2**

### **Statement of Requirement**

### **SCHEDULE 3**

#### **Service Delivery Plan**

## **SCHEDULE 4**

### **Payment, Performance and Incentivisation Mechanism**

## **SCHEDULE 5**

### **Transition**

## **SCHEDULE 6**

### **Governance, Management Information, Reports, Records and Audit**

## **SCHEDULE 7**

### **Insurance**



## **SCHEDULE 8**

### **Security and Information Management**

**SCHEDULE 9**

**Standards**

## **SCHEDULE 10**

### **Bareboat Charter Agreement**

## **SCHEDULE 11**

### **Vessels**

## **SCHEDULE 12**

### **Assets**

**SCHEDULE 13**

**Not Used**

## **SCHEDULE 14**

### **Commercially Sensitive Information**

## **SCHEDULE 15**

### **Warranted Data**



## **SCHEDULE 16**

### **Project and Ancillary Documents**

## **SCHEDULE 17**

### **Intellectual Property Rights**

## **SCHEDULE 18**

### **Processing Personal Data**

## **SCHEDULE 19**

### **Change Control Procedure**

**SCHEDULE 20**

**Compensation on Termination**

## **SCHEDULE 21**

### **Exit Management**

## **SCHEDULE 22**

### **Staff Transfer**

## **SCHEDULE 23**

### **Key Sub-Contractors**



## **SCHEDULE 24**

### **Form of Direct Agreement**

**SCHEDULE 25**

**Financial Distress**

## **SCHEDULE 26**

### **Guarantees**

## **SCHEDULE 27**

### **Authority Dependencies**

## **SCHEDULE 28**

### **Key Personnel**

## **SCHEDULE 29**

### **Service Continuity**

## **SCHEDULE 30**

### **Dispute Resolution Procedure**

## **SCHEDULE 31**

### **Transparency and Financial Models**



## **SCHEDULE 32**

### **Cyber Provisions to be Included in Relevant Sub-Contracts**