

OFFICIAL

DEFENCE ESTATE OPTIMISATION PORTFOLIO

STRATEGIC ALLIANCE CONTRACT

OFFICIAL

STRATEGIC ALLIANCE CONTRACT

CONTENTS

STRATEGIC ALLIANCE AGREEMENT 4

SCHEDULE 1 16

TENDER DOCUMENTS 9

SCHEDULE 2 10

PROJECT DOCUMENTS..... 10

SCHEDULE 3 11

OBJECTIVES AND PERFORMANCE MEASURES 11

SCHEDULE 4 19

PROJECT CONTRACT PROCESS..... 19

SCHEDULE 5 20

RESILIENCE MECHANISM 13

SCHEDULE 6 14

TIMETABLE 14

SCHEDULE 7 15

RISK REGISTER..... 15

STRATEGIC ALLIANCE CONTRACT TERMS..... 16

1 *STRATEGIC ALLIANCE MEMBERS, STRATEGIC ALLIANCE DOCUMENTS AND CORE GROUP*..... 16

2 *OBJECTIVES, PERFORMANCE MEASURES AND TIMETABLE* 20

3 *STRATEGIC ALLIANCE MANAGER AND COLLABORATION MANAGER* 21

4 *AWARD OF PROJECT CONTRACTS* 22

5 *CCS AND OTHER FRAMEWORK AGREEMENTS* 22

6 *STRATEGIC ALLIANCE ACTIVITIES, SUPPLY CHAIN COLLABORATION AND TIMETABLE*..... 23

7 *QUOTATION INFORMATION* 23

8 *PAYMENT* 24

9 *CHANGE AND RISK MANAGEMENT* 24

10 *DUTY OF CARE*..... 24

11 *INTELLECTUAL PROPERTY RIGHTS* 25

12 *CYBER*..... 32

OFFICIAL

13 SECURITY MEASURES 39

14 REPORTABLE OFFICIAL AND OFFICIAL-SENSITIVE SECURITY REQUIREMENTS..... 42

15 TRANSPARENCY 42

16 STRATEGIC ALLIANCE MEMBER'S RECORDS..... 44

17 PROTECTION OF PERSONAL DATA 44

18 INSURANCES..... 50

19 STRATEGIC ALLIANCE MEMBERS' PERSONNEL AT GOVERNMENT ESTABLISHMENTS
..... 53

20 EQUALITY..... 58

21 CHILD LABOUR AND EMPLOYMENT LAW..... 58

22 GENERAL..... 58

23 DURATION AND TERMINATION..... 63

24 BANKRUPTCY AND INSOLVENCY..... 65

25 CORRUPT GIFTS AND PAYMENT OF COMMISSION 66

26 TAX COMPLIANCE 67

27 JURISDICTION, PROBLEM-SOLVING AND DISPUTE RESOLUTION 70

APPENDIX 1 71

 DEFINITIONS 71

APPENDIX 2 82

 FORM OF JOINING AGREEMENT 82

APPENDIX 3 84

 JOINT RELATIONSHIP MANAGEMENT PLAN TEMPLATE 84

APPENDIX 4 85

 INSURANCES..... 85

APPENDIX 5 90

PART 1 90

 PART 1 ANNEX TO CLAUSE 13 (SECURITY MEASURES)..... 90

PART 2 93

 PART 2 ANNEX TO CLAUSE 15 (TRANSPARENCY): PUBLISHABLE PERFORMANCE
 INFORMATION..... 93

PART 3 94

 PART 3 ANNEX TO CLAUSE 12 (CYBER)..... 94

OFFICIAL

STRATEGIC ALLIANCE AGREEMENT

THIS ***STRATEGIC ALLIANCE CONTRACT*** is created and delivered the day of 2023.

IN RELATION TO THE DEFENCE ESTATE OPTIMISATION PORTFOLIO (the *Strategic Alliance Programme*)

as described in the *Strategic Alliance Documents*

BETWEEN the Secretary of State for Defence (the *Client*) and the other *Strategic Alliance Members* who have signed this *Strategic Alliance Agreement*

WHO AGREE to work in a *Strategic Alliance*, to fulfil their agreed roles and responsibilities and to apply their agreed expertise in relation to the *Strategic Alliance Programme*, in accordance with and subject to the *Strategic Alliance Documents*, and who agree that subject to amendment in accordance with the *Strategic Alliance Agreement*:

Reference in

Strategic Alliance Contract Terms

Clauses 1.1 to 1.7 The roles expertise and responsibilities of the *Strategic Alliance Members* are described in the *Strategic Alliance Documents* and, in addition to the *Client* and the *Strategic Alliance Manager*, the *Strategic Alliance Members* are:

Morgan Sindall Construction & Infrastructure Ltd

Galliford Try Construction Limited

Lendlease Construction (Europe) Limited

John Graham Construction Limited

Laing O'Rourke Delivery Limited

ISG Construction Limited

Kier Construction Ltd

Clauses 1.9, 1.10 and 1.11 The *Strategic Alliance Documents*, subject to addition and amendment in accordance with any *Joining Agreements* and the *Strategic Alliance Contract Terms*, are:

OFFICIAL

- this *Strategic Alliance Agreement* incorporating:
 - The *Strategic Alliance Members' tenders* (each of which shall be confidential as between each *Strategic Alliance Member*, the *Strategic Alliance Manager* and the *Client*) (Schedule 1);
 - the *Project Documents* (Schedule 2);
 - the *Objectives and Performance Measures* (Schedule 3);
 - the *Project Contract Process*, including the *Quotation Information* (Schedule 4);
 - the *Resilience Mechanism* (Schedule 5);
 - the *Timetable* (Schedule 6);
 - the *Risk Register* (Schedule 7);
 - *Definitions* (Appendix 1);
 - Form of *Joining Agreement* (Appendix 2);
 - *Joint Relationship Management Plan Template* (Appendix 3);
 - *Insurances* (Appendix 4);
 - *Annexes to Strategic Alliance Contract Terms* (Appendix 5);
- the *Strategic Alliance Contract Terms*; and
- the *Strategic Alliance Brief*.

Clause 1.12 The *Core Group* members are the *Client* and the individuals appointed by the *Strategic Alliance Manager* and approved by the *Client* based on the *Strategic Alliance Member's Strategic Alliance Key Persons* Schedule contained in its tender as set out in Schedule 1. The *Strategic Alliance Members* shall only change their *Core Group* member(s) with the prior approval of the *Strategic Alliance Manager* and/or the *Client* in accordance with clause 3.5 and in the circumstances described in clause 3.6.

Clause 1.15.3 The communication system is email, using the communication template set out in Annex 9 of the *Strategic Alliance Brief*.

OFFICIAL

Clause 1.16 The *Strategic Alliance Members* shall engage with the *Stakeholders* in accordance with clause 1.16 and the *Strategic Alliance Brief*.

Clause 1.17 The following *Additional Strategic Alliance Members* may join the *Strategic Alliance* in accordance with clause 1.17:

such parties who are delivering works and/or services in relation to the *Strategic Alliance Programme* as may at the *Client's* sole discretion enter into a *Joining Agreement* with the *Strategic Alliance Members*.

Clause 3.1 The *Strategic Alliance Manager* is: **REDACTED**

and the *Strategic Alliance Manager's* authority under clause 3.1 is subject to the following restrictions:

the *Strategic Alliance Manager* shall not perform the duties of the *Project Manager* unless also appointed to the role of *Project Manager*.

Clause 3.2 The *Strategic Alliance Manager* may act on behalf of the *Client* in the following matters:

the *Objectives and Performance Measures*, the *Resilience Mechanism*, administering the *Project Contract Process*, including preparing *Project Contracts* between the *Client* and any *Strategic Alliance Member*.

Clause 6 The *Strategic Alliance Members* shall implement the following *Supply Chain Collaboration* and/or other *Strategic Alliance Activities* in accordance with clause 6 within the timescales stated in the *Timetable* or as otherwise agreed:

as agreed in accordance with the process as set out in the *Strategic Alliance Brief* and the *Strategic Alliance Contract*.

Clause 18 The following *Strategic Alliance Members* shall take out the following types and amounts of insurance cover in accordance with clause 18 in respect of matters governed by the *Strategic Alliance Contract*:

as specified in Appendix 4 and the *Strategic Alliance Member's* part of Schedule 1.

Clause 23.1 The *Strategic Alliance Contract* commences on:

OFFICIAL

the date when it has been signed by one or more *Strategic Alliance Member* and shall continue:

until the *Strategic Alliance Manager* gives the *Strategic Alliance Members* notice to terminate the *Strategic Alliance Contract* and/or the *Strategic Alliance Programme* is completed

subject to the remainder of clause 23.

Clauses 22.9 and 27.5 The applicable laws under clauses 22.9 and 27.5 are those of England and Wales.

OFFICIAL

EXECUTION BLOCKS REDACTED

OFFICIAL

SCHEDULE 1

TENDER DOCUMENTS

REDACTED

OFFICIAL

SCHEDULE 2

PROJECT DOCUMENTS

[See separate attachments]

Schedule 2A – NEC 4 ECC Option C - Form of Agreement

Schedule 2B – NEC4 ECC Option C – Contract Data Part One

Schedule 2C – NEC4 ECC Option C - Z: *Additional conditions of contract*

Schedule 2D – NEC4 ECC Option C – Scope

Schedule 2E – NEC4 ECC Option C – Site Information (template)

Schedule 2F – NEC4 ECC Option C – Contract Data Part Two (template)

OFFICIAL

SCHEDULE 3

OBJECTIVES and PERFORMANCE MEASURES

[See separate attachments]

Part One – Objectives

Part Two – Performance Measures

Part Three – Strategic Alliance KPIs

REDACTED

Part Four – Strategic Alliance KPI Reporting Tool and monthly report template

REDACTED

Part Five – Strategic Alliance Contract PIN template

Part Six – LFE Report Update template

SCHEDULE 4

PROJECT CONTRACT PROCESS

OFFICIAL

[See separate attachments]

Part One – *Project Contract Process*

Part Two – *Quotation Information (Pre-Project Process)*

Part Three – *Quotation Information (During Project Process)*

Part Four – *Budget Agreement Document template*

REDACTED

Part Five – *Pricing Tool template*

REDACTED

Part Six – *Live Pricing Workbook template*

REDACTED

Part Seven – *List of Relevant Strategic Alliance Members*

OFFICIAL

SCHEDULE 5

RESILIENCE MECHANISM

[See separate attachments]

Part One – *Resilience Mechanism*

Part Two – *Ranking Table and Alternative Ranking Table*

SCHEDULE 6

TIMETABLE

(see clauses 2.6, 2.7 and 6.1)

Description of action/consent/approval	<i>Strategic Alliance Member(s)</i> responsible for action/consent/approval	Period/deadline for action/consent/approval	<i>Additional comments</i>

Guidance note: The *Timetable* states agreed deadlines, gateways and milestones in respect of the *Strategic Alliance Programme* and achievement of the *Objectives*, and the timescales for *Strategic Alliance Activities*, including the nature, sequence and duration of the agreed actions of each *Strategic Alliance Member* and any consents or approvals (whether required from *Strategic Alliance Members* or third parties) that are pre-conditions to subsequent actions.

SCHEDULE 7

RISK REGISTER
(see clauses 9.3 and 9.4)

Risk	Likelihood of risk	Impact of risk on Strategic Alliance Programme and/or Objectives and/or Strategic Alliance Activities	Strategic Alliance Member(s) responsible for Risk Management action	Risk Management action	Risk Management action period/deadline

Guidance note: The *Risk Register* states the nature of each risk, its likelihood and impact on the *Strategic Alliance Programme* and/or achievement of the *Objectives* and/or any *Strategic Alliance Activities* (including any anticipated financial impact), the *Strategic Alliance Member(s)* responsible for each *Risk Management* action, the agreed *Risk Management* actions (including actions to reduce the likelihood of each risk and to reduce its financial and other impact) and the agreed periods/deadlines for completing those actions.

STRATEGIC ALLIANCE CONTRACT TERMS

1 STRATEGIC ALLIANCE MEMBERS, STRATEGIC ALLIANCE DOCUMENTS AND CORE GROUP

Strategic Alliance Members

- 1.1 No *Strategic Alliance Member* can join the *Strategic Alliance* without first having complied with the *Compliance Regime* contained in its tender as set out in Schedule 1.
- 1.2 Throughout the duration of the *Strategic Alliance Contract*, each *Strategic Alliance Member* shall:
 - 1.2.1 comply with the *Compliance Regime* contained in its tender as set out in Schedule 1 or any amended *Compliance Regime* accepted by the *Strategic Alliance Manager* in accordance with clause 1.4 below; and
 - 1.2.2 take appropriate action to ensure that there is no actual or potential conflict between its personal and/or pecuniary interests and the duties it owes to the *Client* under either the *Strategic Alliance Contract* or any *Project Contract* even if the *Project Contract* is not yet entered into.
- 1.3 Immediately upon becoming aware of any conflict in accordance with clause 1.2.2 above, the *Strategic Alliance Member* shall inform the *Strategic Alliance Manager* of such conflict and shall use reasonable endeavours to remove such conflict of interest and, until such removal, mitigate the effect of the conflict at its own expense.
- 1.4 A *Strategic Alliance Member* shall amend its *Compliance Regime* on the reasonable request of the *Strategic Alliance Manager* and shall submit the amended *Compliance Regime* to the *Strategic Alliance Manager* for acceptance, and:
 - 1.4.1 if the *Strategic Alliance Manager* informs the *Strategic Alliance Member* that such amended *Compliance Regime* has not been accepted, the *Strategic Alliance Member* shall amend the *Compliance Regime* (taking into account any comments from the *Strategic Alliance Manager*) and submit such amended *Compliance Regime* to the *Strategic Alliance Manager* for acceptance; and/or
 - 1.4.2 when the *Strategic Alliance Manager* informs the *Strategic Alliance Member* that the amended *Compliance Regime* has been accepted, the *Strategic Alliance Member* shall comply with such amended *Compliance Regime*.
- 1.5 The *Strategic Alliance Members* shall notify the *Strategic Alliance Manager* and the *Client* of any *Change in Control*.
- 1.6 As set out in clause 23.7 the *Client* reserves the right to remove a *Strategic Alliance Member* as a party to the *Strategic Alliance Contract* should it not be satisfied with the *Strategic Alliance Member's* approach or response to the *Compliance Regimes*, conflicts of interest or a *Change in Control*.
- 1.7 The *Strategic Alliance Members* shall work together and individually in the spirit of trust, fairness and collaboration for the benefit of the *Strategic Alliance Programme*, within the scope of their agreed roles, expertise and responsibilities as stated in the *Strategic Alliance Documents*, and all their respective obligations under the *Strategic Alliance Contract* shall be

OFFICIAL

construed within the scope of those roles, expertise and responsibilities, and in all matters governed by the *Strategic Alliance Contract* they shall act reasonably and without delay.

- Definitions* 1.8 All words and expressions used in the *Strategic Alliance Documents* have the meanings stated in the Definitions set out in Appendix 1 and the meanings stated elsewhere in the *Strategic Alliance Documents*, including any *Project Contract* and the *Project Documents*;
- Strategic Alliance Documents* 1.9 The *Strategic Alliance Documents* are described in the *Strategic Alliance Agreement* and any *Strategic Alliance Document* created or amended in accordance with the *Strategic Alliance Contract Terms* is binding on all *Strategic Alliance Members*, except that:
- 1.9.1 unless otherwise agreed in accordance with the *Strategic Alliance Contract Terms*, no *Strategic Alliance Document* added or amended after the date of the *Strategic Alliance Agreement* shall add to or amend the role, expertise, responsibilities or other obligations of any *Strategic Alliance Member* who does not agree it.
- 1.9.2 not used.
- 1.9.3 not used.
- Responsibility for Strategic Alliance Documents* 1.10 Save that this clause shall not apply to the *Client* or the *Strategic Alliance Manager*, each *Strategic Alliance Member* who prepares any one or more *Strategic Alliance Documents* shall be responsible for the consequences of any error or omission in, or any discrepancy between, those *Strategic Alliance Documents* or its contributions to them, except to the extent of its reliance (if stated in those *Strategic Alliance Documents*) on any information provided by any one or more other *Strategic Alliance Members*.
- Errors, omissions and discrepancies* 1.11 All *Strategic Alliance Documents* shall be treated as complementary and:
- 1.11.1 a *Strategic Alliance Member* shall give *Early Warning* in accordance with clause 1.14 as soon as it becomes aware of any error, omission or discrepancy in or between the *Strategic Alliance Documents*;
- 1.11.2 if any error, omission or discrepancy in or between the *Strategic Alliance Documents* cannot be resolved in accordance with this clause 1.11, then the *Client* shall decide how such error, omission or discrepancy shall be resolved and the *Strategic Alliance Members* shall comply with that decision;
- 1.11.3 in the event of any dispute or discrepancy between the terms of a *Strategic Alliance Member's Tender Commitments* contained in Schedule 1 and the remainder of the *Strategic Alliance Contract*, the remainder of the *Strategic Alliance Contract* shall take precedence unless the *Client* decides otherwise.
- Core Group* 1.12 The *Core Group* shall review and support the implementation of the *Strategic Alliance Contract* and shall fulfil the other functions stated in the *Strategic Alliance Documents*, including those functions stated in the *Joint Relationship Management Plan* set out in Appendix 3 or agreed by the *Strategic Alliance Members*, and:

OFFICIAL

- 1.12.1 the *Core Group* comprises the *Client* and those individuals appointed by the *Strategic Alliance Manager* and approved by the *Client* based on the *Strategic Alliance Member's Strategic Alliance Key Persons Schedule* contained in its tender as set out in Schedule 1;
- 1.12.2 each *Strategic Alliance Member* shall ensure at its own cost that any individual who is a *Core Group* member or an agreed alternate shall attend *Core Group* meetings and fulfil the agreed functions of a *Core Group* member in accordance with the *Strategic Alliance Documents*.

Core Group
meetings and
decisions

1.13 Each meeting of the *Core Group*:

- 1.13.1 shall be convened by the *Strategic Alliance Manager* at the request of any *Core Group* member and otherwise as required by the *Strategic Alliance Documents* at not less than five *Working Days'* notice (unless all *Core Group* members agree a shorter period) issued to all *Core Group* members stating its agenda;
- 1.13.2 shall be chaired by the *Strategic Alliance Manager* and shall deal only with the matters listed in its agenda (unless all *Core Group* members otherwise agree); and
- 1.13.3 subject to clause 1.13.4 and clause 1.13.5, shall make decisions by *Consensus* of all *Core Group* members present at that meeting and the *Strategic Alliance Members* shall comply with any decision of the *Core Group* made within the scope of its agreed functions.
- 1.13.4 If the *Core Group* cannot reach *Consensus* on any issue, the *Strategic Alliance Manager* shall decide what decision has been reached and, subject to clause 1.13.5, the *Strategic Alliance Members* shall comply with that decision. The *Strategic Alliance Manager* shall take decisions under this clause in the best interests of the *Client* so as to prioritise the achievement of best value (by reference to whole life costs), excellence in design and innovation and the achievement of the *Objectives and Performance Measures*.
- 1.13.5 For the avoidance of doubt, the *Client* may overrule any decision made by the *Consensus* of all *Core Group* members under clause 1.13.3 or by the *Strategic Alliance Manager* in accordance with clause 1.13.4 if the *Client*, in its sole discretion, considers that such decision would be detrimental to the *Strategic Alliance Programme, Improved Value* and/or the achievement of any *Objectives*. The *Client* shall decide on an appropriate course of action and the *Strategic Alliance Members* shall comply with that decision.
- 1.13.6 When convening *Core Group* meetings, the *Strategic Alliance Manager* may invite the *Collaboration Manager* or *Stakeholders* to attend.

Early Warning

1.14 Each *Strategic Alliance Member* shall give *Early Warning* to the *Strategic Alliance Manager* as soon as it is aware of any matter adversely affecting

OFFICIAL

or threatening the *Strategic Alliance* or the *Strategic Alliance Programme* or its own performance or the performance of another *Strategic Alliance Member* under the *Strategic Alliance Contract* and:

- 1.14.1 the notifying *Strategic Alliance Member* shall submit as part of its *Early Warning* (within the scope of its agreed role, expertise and responsibilities) proposals for avoiding or remedying that matter; and
- 1.14.2 the *Strategic Alliance Manager* shall decide an appropriate course of action within ten *Working Days* (or such other period as otherwise agreed with the notifying *Strategic Alliance Member*) from the date of *Early Warning*, which may include convening a *Core Group* meeting.

Communications

1.15 Except as otherwise agreed in writing, all communications between *Strategic Alliance Members*:

- 1.15.1 shall be in writing with any evidence of receipt and of the authority of the sender as stated in the communication systems referred to in clause 1.15.3;
- 1.15.2 shall be effective from the date of delivery to the address of the relevant *Strategic Alliance Member* set out in the *Strategic Alliance Agreement* or in any *Joining Agreement* or to a substitute address that a *Strategic Alliance Member* shall notify to the other *Strategic Alliance Members*;
- 1.15.3 shall use the communication systems stated in the *Strategic Alliance Agreement*.

Stakeholders

1.16 The *Strategic Alliance Members* shall engage with the *Stakeholders* as stated in the *Strategic Alliance Brief* but no *Strategic Alliance Member* shall owe a *Stakeholder* a duty of care.

Additional Strategic Alliance Members

1.17 *Additional Strategic Alliance Members* as listed in the *Strategic Alliance Agreement* or as otherwise agreed by the *Strategic Alliance Members* may join the *Strategic Alliance* at the *Client's* sole discretion and:

- 1.17.1 upon receipt of notice from the *Strategic Alliance Manager*, the current *Strategic Alliance Members* shall enter into a *Joining Agreement* with an *Additional Strategic Alliance Member* based on the form set out in Appendix 2;
- 1.17.2 following execution of a *Joining Agreement*, an *Additional Strategic Alliance Member* shall be bound by and entitled to implement and enforce the terms of the *Strategic Alliance Contract* as a *Strategic Alliance Member* with the role, expertise and responsibilities stated in the *Joining Agreement*, and all the provisions of the *Strategic Alliance Contract* shall apply to the *Additional Strategic Alliance Member* as if it were separately identified in the *Strategic Alliance Contract*;
- 1.17.3 not used.
- 1.17.4 additional and amended *Strategic Alliance Documents* may be included in a *Joining Agreement* if agreed by all *Strategic Alliance Members* in order to describe the role, expertise and responsibilities of each *Additional Strategic Alliance Member* and extend the commitments described in clause 1.9;

OFFICIAL

- 1.17.5 unless otherwise agreed, an *Additional Strategic Alliance Member* shall have no rights or obligations under the *Strategic Alliance Contract* in relation to any matter arising before the effective date of its *Joining Agreement*.
- Joint Partner Board* 1.18 The *JPB* shall review and support the implementation of the *Strategic Alliance Contract* and shall fulfil the other functions stated in the *Joint Relationship Management Plan* or agreed by the *Strategic Alliance Members*, and:
- 1.18.1 the *JPB* comprises the individuals stated in the *Joint Relationship Management Plan* in Appendix 3 which are based on the *Strategic Alliance Member's Strategic Alliance Key Persons Schedule* contained in its tender as set out in Schedule 1;
- 1.18.2 each *Strategic Alliance Member* shall ensure at its own cost that any individual who is a *JPB* member or an agreed alternate shall attend *JPB* meetings and fulfil the agreed functions of a *JPB* member in accordance with the *Joint Relationship Management Plan* set out in Appendix 3.
- 2 OBJECTIVES, PERFORMANCE MEASURES AND TIMETABLE**
- Objectives* 2.1 Each *Strategic Alliance Member* shall, at the *Client* and/or *Strategic Alliance Manager's* request, enter into a *Project Contract* in the form contained in Schedule 2, based on the information contained in its tender as set out in Schedule 1 and in accordance with the process set out in Schedule 4. The *Strategic Alliance Members*, within the scope of their agreed roles, expertise and responsibilities, shall seek to achieve the *Objectives* set out in Part 1 of Schedule 3 to the *Strategic Alliance Agreement*.
- Improved Value* 2.2 Each *Strategic Alliance Member*, within the scope of its agreed roles, expertise and responsibilities, shall investigate and submit for *Core Group* approval proposals for *Supply Chain Collaboration* and/or other *Strategic Alliance Activities* intended to achieve *Improved Value* consistent with the *Objectives*.
- Performance Measures* 2.3 The performance of each *Strategic Alliance Member* shall be assessed:
- 2.3.1 in respect of the *Project Contract*, by reference to the *Project Contract Conditions*; and
- 2.3.2 in respect of the *Strategic Alliance Contract*, by reference to the *Performance Measures* as set out in Part 3 of Schedule 3.
- 2.4 If any of the *Performance Thresholds* set out in Part 2 of Schedule 3 to the *Strategic Alliance Agreement* have not been achieved by a *Strategic Alliance Member* before the date when the *Client* intends to enter into a *Project Contract* with such *Strategic Alliance Member*, then clause 23.4 shall apply.
- Incentives* 2.5 As set out in clause 8.1, there shall be no payments by the *Client* to the *Strategic Alliance Members* under the *Strategic Alliance Agreement*.
- Timetable* 2.6 Deadlines, milestones and gateways in respect of the *Strategic Alliance Programme* and achievement of the *Objectives*, and timescales for *Strategic*

OFFICIAL

Alliance Activities under clause 5, are stated in the *Timetable* set out in Schedule 6 to the *Strategic Alliance Agreement*.

- Updated *Timetable* 2.7 The *Strategic Alliance Manager* shall update the *Timetable* for *Core Group* approval to reflect the agreed effects of additional *Strategic Alliance Activities* under clause 5, of any *Joining Agreements*, of changes under clause 9.1 and of any other changes agreed in accordance with the *Strategic Alliance Documents*.
- 3 **STRATEGIC ALLIANCE MANAGER AND COLLABORATION MANAGER**
- Strategic Alliance Manager* functions 3.1 The *Strategic Alliance Manager* shall fulfil the functions as described in the *Strategic Alliance Agreement*, integrating the *Strategic Alliance* and exercising any discretion fairly and constructively, and subject to any restrictions stated in the *Strategic Alliance Agreement* shall:
- 3.1.1 administer the *Strategic Alliance Contract* in accordance with the terms contained therein;
 - 3.1.2 prepare the *Project Contracts* and administer the *Project Contract Process* in accordance with Schedule 4;
 - 3.1.3 work with the *Collaboration Manager* to monitor achievement of the *Objectives*;
 - 3.1.4 monitor the achievement of the *Performance Measures* in accordance with Part 2 of Schedule 3 to the *Strategic Alliance Agreement*;
 - 3.1.5 work with the *Collaboration Manager* to monitor achievement of deadlines, gateways and milestones in the *Timetable*, and work with the *Collaboration Manager* to prepare updates of the *Timetable* for *Core Group* approval in accordance with clause 2.7;
 - 3.1.6 call, organise, chair and minute *Core Group* meetings under clauses 1.13;
 - 3.1.7 work with the *Collaboration Manager* to organise and monitor *Strategic Alliance Activities* under clause 6;
 - 3.1.8 work with the *Collaboration Manager* to organise and monitor engagement with *Stakeholders* under clause 1.16 and notify the *Strategic Alliance Members* of the identity of *Stakeholders*;
 - 3.1.9 administer the *Resilience Mechanism* in accordance with Schedule 5;
 - 3.1.10 work with the *Collaboration Manager* to monitor and support *Risk Management* in accordance with the *Risk Register* set out in Schedule 7 and prepare updates of the *Risk Register* for *Core Group* approval in accordance with clause 9.4.
- Representation of *Client* 3.2 The *Client* authorises the *Strategic Alliance Manager* to act on behalf of it or them in those matters stated in the *Strategic Alliance Agreement* or in a *Joining Agreement*.
- Independent Adviser 3.3 Not used.
- Key Personnel 3.4 Each *Strategic Alliance Member* shall supply for the purposes of the *Strategic Alliance Contract* individuals with the necessary skills, qualifications, experience and security clearance level and shall promptly remove or replace any individual who disrupts or adversely affects the

OFFICIAL

Strategic Alliance Programme or any *Strategic Alliance Activities* or any *Project*.

- Strategic Alliance Key Persons*
- 3.5 Subject to clause 3.6, each *Strategic Alliance Member* shall supply the individuals named in the *Strategic Alliance Key Person Schedule* or a replacement person who has been approved by the *Strategic Alliance Manager* and/or the *Client*.
- 3.6 A *Strategic Alliance Member* shall only replace a *Strategic Alliance Key Person* if:
- 3.6.1 instructed to do so by the *Strategic Alliance Manager*; or
 - 3.6.2 the *Strategic Alliance Key Person* ceases to be employed by the *Strategic Alliance Member*; or
 - 3.6.3 the *Strategic Alliance Key Person* is no longer able to fulfil its required role and/or responsibilities due to ill-health, death, personal injury or personal hardship suffered by the *Strategic Alliance Key Person*.

- Collaboration Manager*
- 3.7 The *Collaboration Manager* shall fulfil the functions and responsibilities as described in the *Strategic Alliance Brief*.

4 AWARD OF PROJECT CONTRACTS

- 4.1 Notwithstanding the award of *Project Contracts* under the *Framework Contract*, *Project Contracts* shall only be executed on the instruction of the *Strategic Alliance Manager* or the *Client* following agreement in accordance with Schedule 4 and following completion of the *Project Contract Process*.

5 CCS AND OTHER FRAMEWORK AGREEMENTS

- CCS Framework Agreements*
- 5.1 Subject to clause 5.2, each *Strategic Alliance Member* (other than the *Client* and the *Strategic Alliance Manager*) acknowledges that it and the other *Strategic Alliance Members* (other than the *Client* and the *Strategic Alliance Manager*) have been appointed by the *Client* pursuant to one or more framework agreements procured by and on behalf of the Crown Commercial Service (each a '*CCS Framework Agreement*').
- Other Framework Agreements*
- 5.2 The *Client* recognises that a *Strategic Alliance Member* may have been procured and selected through any framework which is not a *CCS Framework Agreement* and that in the call-off contract they are obliged to participate in alliance activities (each an '*Other Framework Agreement*').
- 5.3 The *Client* and each *Strategic Alliance Member* individually undertakes to use all reasonable endeavours to ensure that:
- 5.3.1 it complies with the terms and conditions of any *CCS Framework Agreement* or *Other Framework Agreement* to which it is a party in the course of carrying out its obligations under this *Strategic Alliance Contract*; and
 - 5.3.2 it does not do anything or omit to do anything that will put itself or the *Client* or a *Strategic Alliance Member* in breach
- Compliance with CCS Framework Agreement*

OFFICIAL

of any *CCS Framework Agreement* or *Other Framework Agreement* to which they are a party.

- 5.4 In the event of any dispute or discrepancy between the terms of this *Strategic Alliance Contract* and any *CCS Framework Agreement* or *Other Framework Agreement* (including any call-off contract from such *CCS Framework Agreement* or *Other Framework Agreement*) that cannot be resolved by the *Core Group*, this *Strategic Alliance Contract* shall take precedence.

6 **STRATEGIC ALLIANCE ACTIVITIES, SUPPLY CHAIN COLLABORATION AND TIMETABLE**

Strategic Alliance Activities

- 6.1 The *Strategic Alliance Members* shall implement the *Strategic Alliance Activities* described in the *Strategic Alliance Agreement* and the *Strategic Alliance Brief* and otherwise agreed by *Strategic Alliance Members*, working within the timescales stated in the *Timetable* and other timescales agreed by *Strategic Alliance Members*, in order to create *Improved Value* consistent with the *Objectives*.

Supply Chain

- 6.2 The *Strategic Alliance Members* shall seek to establish and develop relationships with *Supply Chain Members* that are complementary to the relationships under the *Strategic Alliance Contract* and that assist in the achievement of the *Objectives* and *Performance Measures* and shall use *Supply Chain Contracts* that are consistent with the corresponding *Project Contracts* and the principles set out in the *Strategic Alliance Brief*.

Supply Chain Collaboration

- 6.3 If stated in the *Strategic Alliance Agreement* or the *Strategic Alliance Brief* or otherwise agreed by *Strategic Alliance Members*, the *Strategic Alliance Activities* shall include *Supply Chain Collaboration* in order to achieve *Improved Value* consistent with the *Objectives* through more consistent, longer term, larger scale *Supply Chain Contracts* and/or through other improved *Supply Chain* commitments and/or working practices by means of:

- 6.3.1 agreeing through the *Core Group*, if not already set out in the *Strategic Alliance Brief*, the basis for sharing information between *Strategic Alliance Members* in relation to their current and proposed *Supply Chain Contracts* and, if not already set out in the *Timetable*, the timescales for each stage of *Supply Chain Collaboration*;
- 6.3.2 reviewing and comparing the value offered by each *Strategic Alliance Member's* current and proposed *Supply Chain*;
- 6.3.3 reviewing the potential for more consistent, longer term, larger scale *Supply Chain Contracts* and for other improved *Supply Chain* commitments and working practices;
- 6.3.4 undertaking joint *Supply Chain* tender processes, in each case through procedures to be approved by the *Core Group*, to be led by one or more agreed *Strategic Alliance Members* and to be organised, monitored and supported by the *Strategic Alliance Manager*.

7 **QUOTATION INFORMATION**

OFFICIAL

7.1 The *Client* and each *Strategic Alliance Member* shall use the *Project Contract Process* in Schedule 4 to agree a *Project Budget* before entering into a *Project Contract*.

7.2 Not used

7.3 Not used.

7.4 Not used.

7.5 Not used.

8 PAYMENT

8.1 There shall be no payments by the *Client* to the *Strategic Alliance Members* under the *Strategic Alliance Contract*. Any payments for *Non-BAU Collaboration Hub Activities* shall be made under the *Project Contracts*.

8.2 Not used.

8.3 Not used.

8.4 Not used.

8.5 Not used.

8.6 Not used.

8.7 Not used.

8.8 Not used.

8.9 Not used.

8.10 Not used.

8.11 Not used.

9 CHANGE AND RISK MANAGEMENT

Change

9.1 The *Strategic Alliance Members* may propose changes to the *Strategic Alliance Programme* for the consideration of the *Strategic Alliance Manager* and the *Client*. *Strategic Alliance Members* shall submit evidence in support of such change, which shall include how the change would be consistent with the *Objectives* and/or achieve *Improved Value*. The *Client* shall consider the proposed changes and notify the *Strategic Alliance Member* if the proposed changes have been accepted. All other changes to the *Strategic Alliance Contract* shall be by agreement of all *Strategic Alliance Members*, subject to any requirements set out in the *Strategic Alliance Documents*.

Risk Management

9.2 The *Strategic Alliance Members* recognise the risks involved in the *Strategic Alliance Programme* and shall undertake *Risk Management* together and individually in accordance with the *Strategic Alliance Documents* in order to analyse and manage those risks using most effective methods.

Risk Register

9.3 The *Strategic Alliance Members* shall undertake the *Risk Management* actions described in the *Risk Register* within the periods statement in the *Risk Register* and as otherwise agreed by the *Strategic Alliance Members*.

Updated Risk Register

9.4 The *Strategic Alliance Manager* shall update the *Risk Register* for *Core Group* approval at the intervals stated in the *Timetable*.

10 DUTY OF CARE

OFFICIAL

- Skill and care 10.1 In all matters governed by the *Strategic Alliance Contract* the *Strategic Alliance Members* shall comply with all applicable laws and *Good Industry Practice* and use reasonable skill and care appropriate to their respective roles, expertise and responsibilities as stated in the *Strategic Alliance Documents*.
- 10.2 Not used.
- Mutual duties 10.3 A *Strategic Alliance Member* shall owe a duty of care only to the *Client* and not to the *Strategic Alliance Members*.
- 10.4 Not used.
- 10.5 Not used.
- 10.6 Not used.

11 INTELLECTUAL PROPERTY RIGHTS

- Strategic Alliance Activities and Intellectual Property Rights* 11.1 Each *Strategic Alliance Member* warrants to the other *Strategic Alliance Members* that nothing it contributes to *Strategic Alliance Activities* or any other activity contemplated under the *Strategic Alliance Contract* shall infringe any *Intellectual Property Rights*, and undertakes to indemnify the other *Strategic Alliance Members* in respect of any legal liability and related costs arising out of or in connection with any infringement.
- Pre-Contract Activities and Intellectual Property Rights* 11.2 Not used.
- Ownership and licence to copy and use 11.3 All *Intellectual Property Rights* of any nature in the results generated in the performance of work under the *Strategic Alliance Contract* and recorded in any written or other tangible form (the 'Results'), including rights in inventions, designs, computer software, databases, copyright works and information shall vest in and is the property of the *Client*. Each *Strategic Alliance Member* shall take all necessary measures to secure that vesting. On request, a *Strategic Alliance Member* shall demonstrate to the *Client's* satisfaction that, where it has sub-contracted work, it has secured that vesting in the work performed by its *Supply Chain*.
- 11.4 The *Client* may use, have used, copy and disclose the Results by itself or through third parties for any purpose whatsoever subject to the *Strategic Alliance Members'* patents and design rights (registered or unregistered) and to the rights of other parties not employed in the performance of work under the *Strategic Alliance Contract*.
- 11.5 The *Client* shall determine whether any of the Results should be protected by patent or other protection. The costs of patent or like protection are borne by the *Client*. Each *Strategic Alliance Member* shall assist the *Client* in filing and executing documents necessary to secure that protection. The *Strategic Alliance Members* shall use all commercially reasonable endeavours to secure similar assistance from their *Supply Chain* as appropriate. The costs of such patent or other protection shall be borne by the *Client*.
- 11.6 The *Strategic Alliance Members* shall mark any copyright work comprising Results with the legend: '© Crown-owned copyright [insert the year of generation of the work]'.

OFFICIAL

- 11.7 Apart from *Intellectual Property Rights* vested in the *Client* by virtue of clause 11.3, ownership of, or rights in, all other intellectual property are not transferred to the *Client* by this clause.
- 11.8 Unless otherwise agreed with the *Client*, each *Strategic Alliance Member* shall retain a copy of the Results together with records of all work done for the purposes of the *Strategic Alliance Contract* for twelve (12) years after the completion or termination of the *Strategic Alliance Contract*.
- 11.9 The *Client* has the right to require any *Strategic Alliance Member* to furnish to the *Client* copies of any and all of the Results and such records for so long as they are retained by the *Strategic Alliance Member*. A reasonable charge for this service based on the cost of providing it will be borne by the *Client*.
- 11.10 The *Strategic Alliance Members* shall treat the Results as if received in confidence from the *Client* and shall:
- 11.10.1 not copy, use or disclose to other parties any of the Results without the prior written consent of the *Client*, except that the *Strategic Alliance Members* may without prior consent, copy and use the Results, and disclose the Results in confidence to their officers, employees and *Supply Chain Members*, to such extent as may be necessary for the performance of the *Strategic Alliance Contract* or any *Supply Chain Contract* under it or in the exercise of any right granted pursuant to clause 11.14; and
- 11.10.2 take all reasonable precautions necessary to ensure that the Results are treated in confidence by those of their officers, employees and *Supply Chain Members* who receive them and are not further disclosed or used otherwise than for the purpose of performing work or having work performed for the *Client* under the *Strategic Alliance Contract* or any *Supply Chain Contract* under it.
- 11.11 The *Strategic Alliance Members* shall ensure that their employees are aware of its arrangements for discharging the obligations under clause 11.10 and take such steps as may be reasonably practical to enforce such arrangements.
- 11.12 The confidentiality provisions of clause 11.10 do not apply to the Results or any part thereof to the extent that a *Strategic Alliance Member* can show that they were or have become published or publicly available for use otherwise than in breach of any provision of the *Strategic Alliance Contract* or any other agreement between the parties.
- 11.13 A *Strategic Alliance Member* shall not be in breach of the confidentiality obligations contained in this clause where it can show that any disclosure of the Results was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the *Strategic Alliance Member* shall ensure that the recipient of the Results is made aware of and asked to respect its confidentiality and, wherever possible and permitted by law, shall notify the *Client* as soon as practicable after becoming aware that such disclosure is required. Such disclosure in no way diminishes the obligations of the *Strategic Alliance Members* under this clause.

OFFICIAL

- 11.14 The *Strategic Alliance Members* shall be entitled to request consent from the *Client* to reuse (under licence or otherwise) the Results and *Intellectual Property Rights* vested in the *Client* by virtue of clause 11.3 for other purposes including, but not limited to, tendering for other work for the *Client* or work for another UK government department. Such consent shall be properly considered by the *Client* taking into account matters such as national security and the rights of other parties.
- 11.15 The *Strategic Alliance Members* shall take all necessary measures to irrevocably and unconditionally waive in favour of the *Client* any and all moral rights and all other non-assignable rights conferred on a *Strategic Alliance Member's* employees and *Supply Chain* in respect of any copyright work created in carrying out the *Strategic Alliance Contract*. On request, a *Strategic Alliance Member* shall demonstrate to the *Client's* satisfaction that, where it has subcontracted work, it has secured that any and all moral rights in any copyright work created by the *Strategic Alliance Member's* employees and its *Supply Chain* has been irrevocably and unconditionally waived in favour of the *Client*.
- 11.16 For the purposes of clause 11.16, Background IPR means any *Intellectual Property Rights*, including patents or registered designs granted in respect of any patent or registered design applications, made before the date of issue of the *Client's* first written invitation to tender for the *Strategic Alliance Contract* and any such applications made after that date in respect of inventions or designs first reduced to writing by the inventor(s) or designer(s) before that date or any *Intellectual Property Rights* which have otherwise been developed independently of the *Strategic Alliance Contract* (whether prior to the date of the invitation to tender or otherwise). To the extent that any Results delivered in accordance with this clause 11 make any use of, or relies in any way on Background IPR supplied by the *Strategic Alliance Member* (or Background IPR supplied by the *Strategic Alliance Member* is necessary or desirable to be able to use all or any part of the Results), the *Strategic Alliance Member* hereby provides the *Client* a non-exclusive, irrevocable, worldwide, transferrable, sub-licensable, royalty-free license to use such Background IPR for the purposes of exercising its right in relation to the Results.
- 11.17 In clauses 11.17 to 11.40:
- 11.17.1 Design Right has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988.
- 11.17.2 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 and in relation to a Design Right has the meaning given in paragraph 240 of the Copyright, Designs and Patents Act 1988, as amended.
- 11.18 As a *Strategic Alliance Member* becomes aware, the *Strategic Alliance Member* promptly notifies the *Client* of:
- 11.18.1 any invention or design the subject of patent or registered design rights (or application therefor) owned by others which appears to be relevant to the performance of the

OFFICIAL

Strategic Alliance Contract and/or *Project Contract(s)* or to use by the *Client* of anything required to be done or delivered under the *Strategic Alliance Contract* and/or *Project Contract(s)*;

11.18.2 any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical information) required for the purposes of the *Strategic Alliance Contract* and/or *Project Contract(s)* or subsequent use by the *Client* of anything delivered under the *Strategic Alliance Contract* and/or *Project Contract(s)* and, where appropriate, the notification includes such information as is required by Section 2 of the Defence Contracts Act 1958;

11.18.3 any allegation of infringement of intellectual property rights made against the *Strategic Alliance Member* and which pertains to the performance of the *Strategic Alliance Contract* and/or *Project Contract(s)* or subsequent use by the *Client* of anything required to be done or delivered under the *Strategic Alliance Contract* and/or *Project Contract(s)*;

This clause 11.18 does not apply in respect of articles or services normally available from the *Strategic Alliance Member* as a commercial off the shelf (COTS) item or service.

11.19 If the information required under this clause has been notified previously, the *Strategic Alliance Member* may meet their obligations by giving details of the previous notification.

11.20 In respect of any question arising (by way of an allegation made to the *Client* or *Strategic Alliance Member*, or otherwise) that the manufacture or supply under the *Strategic Alliance Contract* and/or *Project Contract(s)* of any article or service normally available from the *Strategic Alliance Member* as a COTS item or service is an infringement of a United Kingdom patent or registered design not owned or controlled by the *Strategic Alliance Member* or the *Client*, the *Strategic Alliance Member*, subject to the agreement of others owning such patent or registered design, is 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 *Strategic Alliance Member* indemnifies the *Client*, its officers, agents and employees against any liability and cost arising from such allegation. This clause will not apply if:

11.20.1 the *Client* has made or makes an admission of any sort relevant to such question;

11.20.2 the *Client* has entered or enters into any discussions on such question with any others without prior agreement of the *Strategic Alliance Member*;

11.20.3 the *Client* 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; or

11.20.4 legal proceedings have been commenced against the *Client* or the *Strategic Alliance Member* in respect of Crown Use,

OFFICIAL

but only to the extent of such Crown Use that has been properly authorised.

- 11.21 The indemnity in clause 11.20 does not extend to use by the *Client* of anything supplied under the *Strategic Alliance Contract* and/or *Project Contract(s)* where that use was not reasonably foreseeable at the time of the *Strategic Alliance Contract* and/or *Project Contract(s)*.
- 11.22 In the event that the *Client* has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the *Client* forthwith authorises the *Strategic Alliance Member* for the purposes of performing the *Strategic Alliance 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.
- 11.23 If a relevant invention or design has been notified to the *Client* by the *Strategic Alliance Member* prior to the effective date of the *Strategic Alliance Contract* and/or prior to the *Contract Date* for a *Project Contract(s)*, 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 *Strategic Alliance Member* 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 *Strategic Alliance Contract* and/or *Project Contract(s)*.
- 11.24 If, under clause 11.18, a relevant invention or design is notified to the *Client* by a *Strategic Alliance Member* after the effective date of the *Strategic Alliance Contract* and/or prior to the *Contract Date* for a *Project Contract(s)* then:
- 11.24.1 if the owner (or its exclusive licensee) takes or threatens in writing to take any relevant action against the *Strategic Alliance Member*, the *Client* issues to the *Strategic Alliance Member* 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
- 11.24.2 in any event, unless the *Strategic Alliance Member* and the *Client* can agree an alternative course of action, the *Client* does 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.
- 11.25 The *Client* assumes all liability and indemnifies a *Strategic Alliance Member*, its officers, agents and employees against liability, including the *Strategic Alliance Member's* costs, as a result of infringement by the *Strategic Alliance Member* or its suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of effective date of the *Strategic Alliance Contract* and/or *Project Contract(s)* when such infringement arises from or is incurred by reason of the *Strategic Alliance Member* following any specification, statement of work or instruction in the contract or using, keeping or disposing of any item given by the *Client* for the purpose of the *Strategic*

OFFICIAL

Alliance Contract and/or *Project Contract(s)* in accordance with the terms therein.

- 11.26 Each *Strategic Alliance Member* assumes all liability and indemnifies the *Client*, its officers, agents and employees against liability, including the *Client's* costs, as a result of infringement by the *Strategic Alliance Member* or its *Supply Chain Members* or suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of the *Strategic Alliance Contract* and/or *Project Contract(s)* when such infringement arises from or is incurred otherwise than by reason of the *Strategic Alliance Member* following any specification, statement of work or instruction in the *Strategic Alliance Contract* and/or *Project Contract(s)* or using, keeping or disposing of any item given by the *Client* for the purpose of the contract in accordance with the terms therein.
- 11.27 *Strategic Alliance Members* are not entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the contract, where:
- 11.27.1 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, or
- 11.27.2 any obligation to make payments for intellectual property has not been promptly notified to the *Client* under clause 11.18.
- 11.28 Where an authorisation is given by the *Client* under clauses 11.22, 11.23 or 11.24, 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, a *Strategic Alliance Member* is:
- 11.28.1 released from payment whether by way of royalties, licence fees or similar expenses in respect of the *Strategic Alliance Member's* use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the *Strategic Alliance Contract* and/or *Project Contract(s)*; and
- 11.28.2 authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.
- 11.29 Each *Strategic Alliance Member* assumes all liability and indemnifies the *Client* and its officers, agents and employees against liability, including costs as a result of:
- 11.29.1 infringement or alleged infringement by the *Strategic Alliance Member* or their *Supply Chain Members* or 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 *Strategic Alliance Contract* and/or *Project Contract(s)* or otherwise in the performance

OFFICIAL

- of the *Strategic Alliance Contract* and/or *Project Contract(s)*;
- 11.29.2 misuse of any confidential information, trade secret or the like by the *Strategic Alliance Member* in performing the *Strategic Alliance Contract* and/or *Project Contract(s)*;
- 11.29.3 provision to the *Client* of any information or material which the *Strategic Alliance Member* does not have the right to provide for the purpose of the *Strategic Alliance Contract* and/or *Project Contract(s)*.
- 11.30 The *Client* assumes all liability and indemnifies a *Strategic Alliance Member*, its officers, agents and employees against liability, including costs as a result of:
- 11.30.1 infringement or alleged infringement by the *Strategic Alliance Member* or their *Supply Chain Members* or 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 *Client* for the purpose of the contract but only to the extent that the item is used for the purpose of the *Strategic Alliance Contract* and/or *Project Contract(s)*;
- 11.30.2 alleged misuse of any confidential information, trade secret or the like by the *Strategic Alliance Member* as a result of use of information provided by the *Client* for the purposes of the *Strategic Alliance Contract* and/or *Project Contract(s)*, but only to the extent that *Strategic Alliance Member's* use of that information is for the purposes intended when it was disclosed by the *Client*.
- 11.31 The above represents the total liability of a *Strategic Alliance Member* and the *Client* to the other under the *Strategic Alliance Contract* in respect of any infringement or alleged infringement of patent or other *Intellectual Property Right* owned by others.
- 11.32 Neither a *Strategic Alliance Member* nor the *Client* is 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 Right* owned by others.
- 11.33 If a claim is made or action brought against a *Strategic Alliance Member* or the *Client*, that party 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 by such other party. The notification includes particulars of the demands, damages and liabilities claimed or made of which the notifying party has notice.
- 11.34 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 provides such information as the other party may reasonably require.
- 11.35 Following a notification under clause 11.33, the party notified advises 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 does not make any

OFFICIAL

statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other party.

- 11.36 The party conducting negotiations for the settlement of a claim or any related litigation, if requested, keeps the other party fully informed of the conduct and progress of such negotiations.
- 11.37 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 a *Strategic Alliance Member* to the *Client*, the *Strategic Alliance Member* may at its own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach.
- 11.38 The *Strategic Alliance Members* and the *Client* shall co-operate with one another to mitigate any claim or damage which may arise from use of others' intellectual property rights.
- 11.39 The *Strategic Alliance Member* secures from any *Supply Chain Member*, the prompt notification to the *Client* of the information required by clause 11.18. On receipt of any such notification the *Client* issues a written authorisation to the *Supply Chain Member* in accordance with clause 11.24. Any such authorisation will be subject always to clauses 11.27, 11.28 and 11.31 to 11.36 as though the *Supply Chain Member* was the *Strategic Alliance Member*. If any claim or action relevant to such authorisation arises, it is promptly notified to the *Client*. The *Strategic Alliance Member* is not authorised to enter into any substantive correspondence in such matter nor in any way to act on behalf of the *Client* in such claim or action. Any arrangement between the *Strategic Alliance Member* and *Supply Chain Member* to enable the *Strategic Alliance Member* to underwrite its indemnities to the *Client* under clauses 11.17 to 11.40 is a matter between the *Strategic Alliance Member* and the *Supply Chain Member*.
- 11.40 Nothing in clauses 11.17 to 11.40 is to be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

Liability for use of documents

No *Strategic Alliance Member* shall be liable in respect of any document that it prepares forming part of or pursuant to the *Strategic Alliance Contract* to the extent of any use for any purpose other than the purpose for which it was agreed to be prepared as stated in, or which can reasonably be inferred from, the *Strategic Alliance Documents*.

12 CYBER

- 12.1 In this clause 12 the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

12.1.1 "Associated Company" means:

- (i) any associated company of a *Strategic Alliance Member* from time to time within the meaning of Section 449 of the Corporate Tax Act 2010 or any subordinate legislation; and
- (ii) any parent undertaking or subsidiary undertaking of a *Strategic Alliance Member* from time to time

OFFICIAL

within the meaning of section 1162 Companies Act 2006 and it is further agreed that where the ownership of shares in any such undertaking have been pledged or transferred to a third party by way of security, the original parent shall still be considered a member of the subsidiary undertaking;

- 12.1.2 “Cyber Risk Profile” means the level of cyber risk relating to the *Strategic Alliance Contract* as assessed by the *Client* or in relation to any Subcontract as assessed by the *Strategic Alliance Member*, in each case in accordance with the Cyber Security Model;
- 12.1.3 “Cyber Implementation Plan” means the plan referred to in clause 12.3;
- 12.1.4 “Security Incident” means an event, act or omission which gives rise or may give rise to:
- (i) unauthorised access to an information system or electronic communications network on which MOD Identifiable Information resides;
 - (ii) disruption or change of the operation (including but not limited to takeover of control) of an information system or electronic communications network on which MOD Identifiable Information resides;
 - (iii) unauthorised destruction, damage, deletion or the change of MOD Identifiable Information residing in an information system or electronic communications network;
 - (iv) unauthorised or unintentional removal or limiting the possibility to use MOD Identifiable Information residing in an information system or electronic communications network; or
 - (v) the appropriation, publication, dissemination or any other use of non-public MOD Identifiable Information by persons unauthorised to do so;
- 12.1.5 “Cyber Security Instructions” means DEFSTAN 05-138, together with any relevant ISN and specific security instructions relating to the *Strategic Alliance Contract* issued by the *Client* to a *Strategic Alliance Member*;
- 12.1.6 “Cyber Security Model” and “CSM” mean the process by which the *Client* ensures that MOD Identifiable Information is adequately protected from Cyber Security Incident and includes the CSM Risk Assessment Process, DEFSTAN 05-138 and the CSM Supplier Assurance Questionnaire conducted via the Supplier Cyber Protection Service;
- 12.1.7 “CSM Risk Assessment Process” means the risk assessment process which forms part of the Cyber Security Model and is used to measure the Cyber Risk Profile for the *Strategic Alliance Contract* and any Subcontract;

OFFICIAL

- 12.1.8 “CSM Supplier Assurance Questionnaire” means the supplier assessment questionnaire which forms part of the Cyber Security Model and is to be used by the *Strategic Alliance Member* to demonstrate compliance with this clause 12;
- 12.1.9 “Data” means any data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media;
- 12.1.10 “DEFSTAN 05-138” means the Defence Standard 05-138 as amended or replaced from time to time;
- 12.1.11 “Electronic Information” means all information generated, processed, transferred or otherwise dealt with under or in connection with the *Strategic Alliance Contract*, including but not limited to Data, recorded or preserved in electronic form and held on any information system or electronic communications network;
- 12.1.12 “ISN” means Industry Security Notices issued by the *Client* to the *Strategic Alliance Member* whether directly or by issue on the gov.uk website at: <https://www.gov.uk/government/publications/industry-security-notices-isns>;
- 12.1.13 “JSyCC WARP” means the Joint Security Co-ordination Centre MOD Defence Industry Warning, Advice and Reporting Point or any successor body notified by way of ISN;
- 12.1.14 “MOD Identifiable Information” means all Electronic Information which is attributed to or could identify an existing or proposed MOD capability, defence activities or personnel and which the MOD requires to be protected against loss, misuse, corruption, alteration and unauthorised disclosure;
- 12.1.15 “NSA/DSA” means, as appropriate, the National or Designated Security Client of the *Strategic Alliance Member* that is responsible for the oversight of the security requirements to be applied by the *Strategic Alliance Member* and for ensuring compliance with applicable national security regulations;
- 12.1.16 “Sites” means any premises from which a *Strategic Alliance Member* provides the works under the *Strategic Alliance Contract* or from which the *Strategic Alliance* or any relevant Subcontractor manages, organises or otherwise directs the provision of the works and/or use of any sites from which the *Strategic Alliance Member* or any relevant *Strategic Alliance Member* generates, processes stores or transmits MOD Identifiable Information in relation to the *Strategic Alliance Contract*.
- 12.1.17 “Subcontract” means a contract between the *Strategic Alliance Member* and its *Supply Chain* in which services are

OFFICIAL

provided in connection with the *Strategic Alliance Programme*;

- 12.1.18 “Subcontractor” means a subcontractor or any Associated Company of a *Strategic Alliance Member* who supplies goods or services in connection with the *Strategic Alliance Contract* but only to the extent that the Subcontractor processes, stores or transmits MOD Identifiable Information under its Subcontract;
- 12.1.19 “Supplier Cyber Protection Service” means the tool incorporating the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire.
- 12.2 The *Client*:
- 12.2.1 determines the Cyber Risk Profile appropriate to the *Strategic Alliance Contract* and shall notify the relevant *Strategic Alliance Member* of the same at the earliest possible date; and
- 12.2.2 notifies the *Strategic Alliance Member* as soon as reasonably practicable where the *Client* reassesses the Cyber Risk Profile relating to the *Strategic Alliance Contract*, in accordance with clause 12.7
- 12.3 The *Strategic Alliance Member* ensures that and procures that its Subcontractors:
- 12.3.1 comply with DEFSTAN 05-138 or, where applicable, the Cyber Implementation Plan attached to the *Strategic Alliance Contract* and for the avoidance of doubt any Cyber Implementation Plan is prepared and implemented in accordance with *Good Industry Practice* taking account of any risk-balance case and any mitigation measures required by the *Client* and ensures that any measures taken to protect MOD Identifiable Information are no less stringent than those taken to protect their own proprietary information;
- 12.3.2 complete the CSM Risk Assessment Process in accordance with the *Client’s* instructions, ensuring that any change in the Cyber Risk Profile is notified to any affected Subcontractor, and complete a further CSM Risk Assessment or CSM Supplier Assurance Questionnaire where a change is proposed to the *Strategic Alliance Member’s Supply Chain* or on receipt of any reasonable request by the *Client*;
- 12.3.3 re-perform the CSM Supplier Assurance Questionnaire no less than once in each year of the contract commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire to demonstrate continued compliance with the Cyber Security Instructions;
- 12.3.4 having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge its obligations under this clause 12 in accordance with *Good Industry Practice* provided always that where there is a conflict between the *Strategic Alliance Member’s* obligations under

OFFICIAL

- clause 12.3.1 and this clause 12.3.4 the *Strategic Alliance Member* notifies the *Client* in accordance with the notification provisions in DEFSTAN 05-138 as soon as it becomes aware of the conflict and the *Client* determines which standard or measure takes precedence;
- 12.3.5 comply with all Cyber Security Instructions notified to it by the *Client* as soon as reasonably practicable;
- 12.3.6 notify the JSyCC WARP in accordance with ISN 2017/03as amended or updated from time to time and the *Strategic Alliance Member's* NSA/DSA, and in the case of a Subcontractor also notify the *Strategic Alliance Member*, 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;
- 12.3.7 in coordination with its NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the *Client* and its agents and representatives and representatives 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 includes complying with any reasonable technical or organisational security measures deemed appropriate by the *Client* and the *Strategic Alliance Member's* NSA/DSA in the circumstances and taking into account the Cyber Risk Profile;
- 12.3.8 consent to the *Client's* recording and using information obtained via the Supplier Cyber Protection Service in relation to the contract for the purposes of the Cyber Security Model which includes any agreed Cyber Implementation Plan. For the avoidance of doubt such information includes the cyber security accreditation of the *Strategic Alliance Member* and/or Subcontractor as appropriate; and
- 12.3.9 include provisions equivalent to those contained in Part 3 to Appendix 5 (the "equivalent provisions") in all relevant Subcontracts.
- 12.4 Provided that it is reasonable in all the circumstances to do so, the *Client* agrees that each *Strategic Alliance Member* is entitled to rely upon the self-certification by a Subcontractor of its compliance with this clause 12 in accordance with clause 12.3.1.
- 12.5 Where a Subcontractor notifies a *Strategic Alliance Member* that it cannot comply with the requirements of DEFSTAN 05-138, the *Strategic Alliance Member* requires the Subcontractor 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 *Strategic Alliance Member* and ensures that any measures taken to protect MOD Identifiable Information are no less stringent than those taken to protect the proprietary

OFFICIAL

information of the Subcontractor. Where the *Strategic Alliance Member* has reasonably relied on the Subcontractor's self-certification and the Subcontractor is subsequently found to be in breach of their obligations, the *Strategic Alliance Member* is not in breach of this clause 12.

- 12.6 Each *Strategic Alliance Member* ensures, and requires that its Subcontractors include provisions equivalent to those contained in the *Strategic Alliance Contract Terms*, in all relevant Subcontracts and notifies the *Client* in the event that they become aware of any material breach of the provisions set out in the *Strategic Alliance Contract Terms* by their Subcontractor.
- 12.7 Each *Strategic Alliance Member* keeps and maintains, and ensures that any Subcontractor keeps and maintains, until twelve (12) years after termination or end of the *Strategic Alliance Contract*, or as long a period as may be agreed between *Strategic Alliance Member* and the *Client*, full and accurate records including but not limited to:
 - 12.7.1 copies of all documents required to demonstrate compliance with DEFSTAN 05-138 and this clause 12, including but not limited to any information used to inform the CSM Risk Assessment Process and to carry out the CSM Supplier Assurance Questionnaire, together with any certificates issued to the *Strategic Alliance Member* and/or Subcontractor; and
 - 12.7.2 copies of all documents demonstrating compliance with clause 12.3.5 and in relation to any notifications made under clause 12.3.6 and/or investigation under clause 12.3.6.
- 12.8 Each *Strategic Alliance Member* ensures, and ensures that any Subcontractor upon request, provides the *Client*, the *Client's* representatives and/or the *Strategic Alliance Member's* NSA/DSA such access to those records as may be required in connection with the contract.
- 12.9 In the event of a Cyber Security Incident each *Strategic Alliance Member* agrees that the *Client* and its representatives, in coordination with the *Strategic Alliance Member'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 carried out by the *Strategic Alliance Member* to resolve the Cyber Security Incident and to mitigate the effects, to ensure that the Cyber Security Incident is resolved to the satisfaction of the *Client* and the NSA/DSA.
- 12.10 In addition to the rights in clause 12.9 the *Client* or its representatives and/or a *Strategic Alliance Member's* NSA/DSA, either solely or in any combination, may at any time during a period of six (12) years after termination the *Strategic Alliance Contract* or the end of the *Strategic Alliance Contract* whichever is the later, but not more than once in any calendar year, conduct an audit for the following purposes where the *Strategic Alliance Member* continues to hold MOD Identifiable Information:
 - 12.10.1 to review and verify the integrity, confidentiality and security of any MOD Identifiable Information;

OFFICIAL

- 12.10.2 to review the *Strategic Alliance Member's* and/or any Subcontractor's compliance with its obligations under DEFSTAN 05-138 or a Cyber Implementation Plan; and
 - 12.10.3 to review any records created during the provision of the works, including but not limited to any documents, reports and minutes which refer or relate to the works for the purposes of clauses 12.7.1 and 12.7.2.
- 12.11 The *Client*, acting reasonably and having regard to the confidentiality and security obligations owed by the *Strategic Alliance Member* to others, proposes the scope of each audit in writing with a view to seeking the agreement of the *Strategic Alliance Member* but makes the ultimate decision on the scope. For the avoidance of doubt the scope of the audit does not grant the *Client* any unsupervised access to any of the *Strategic Alliance Member's* information systems or electronic communications networks. The *Client* uses its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the *Strategic Alliance Member* and/or Subcontractor or delay the provision of the works and supplier information received by the *Client* in connection with the audit is treated as confidential information.
- 12.12 The *Strategic Alliance Member* ensures, and ensures that any Subcontractor, on demand, provides the *Client* and any relevant regulatory body, including the *Strategic Alliance Member's* NSA/DSA, (and/or its agents or representatives), together "the Auditors", with all reasonable co-operation and assistance in relation to each audit, including but not limited to:
- 12.12.1 all information requested by the *Client* within the permitted scope of the audit;
 - 12.12.2 reasonable access to any Sites controlled by the *Strategic Alliance Member* or any Associated Company used to the extent required within the permitted scope of the audit and, where such Sites are outwith the control of the *Strategic Alliance Member* secures sufficient rights of access for the Auditors as is necessary to allow audits to take place; and
 - 12.12.3 access to any relevant staff.
- 12.13 The *Client* endeavours to (but is not obliged to) provide at least fifteen (15) days' notice of its intention to conduct an audit.
- 12.14 The parties agree to bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 12, unless the audit identifies a material breach of the terms of this clause by the *Strategic Alliance Member* in which case the *Strategic Alliance Member* reimburses the *Client* for all the *Client's* reasonable costs incurred in the course of the audit.
- 12.15 The *Strategic Alliance Member* in its Subcontracts procures rights for the *Client* to enforce the terms of clauses 12.12- 12.14 in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 12.16 On termination or expiry of the *Strategic Alliance Contract* the provisions of this clause 12 excepting clauses 12.3.2 and 12.3.3 continue in force so long as the *Strategic Alliance Member* and/or and

OFFICIAL

Subcontractor holds any MOD Identifiable Information relating to the *Strategic Alliance Contract*.

- 12.17 Termination or expiry of the *Strategic Alliance Contract* does not affect any rights, remedies, obligations or liabilities of the parties under this clause 12 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 *Strategic Alliance Contract* which existed at or before the date of termination or expiry.
- 12.18 Each *Strategic Alliance Member* agrees that the *Client* has absolute discretion to determine changes to DEFSTAN 05-138 or the Cyber Risk Profile or both and issue new or updated Cyber Security Instructions.
- 12.19 The *Strategic Alliance Member* does not recover any costs and/or other losses under or in connection with this clause 12 where such costs and/or other losses are recoverable or have been recovered by the *Strategic Alliance Member* elsewhere in the contract or otherwise. For the avoidance of doubt this includes but is not 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 *Strategic Alliance Member* is able to or has recovered such sums in any other provision of the contract or has recovered such costs and/or losses in other contracts between the *Strategic Alliance Member* and the *Client* or with other bodies.

13 SECURITY MEASURES

13.1 In this clause 13:

- 13.1.1 “Secret Matter” means any matter connected with the *Strategic Alliance Contract*, or its performance which is designated by the *Client* in the security aspects letter contained in Schedule 1 to the *Strategic Alliance Contract* and as amended from time to time, or otherwise in writing as "Top Secret" or "Secret", and includes any information concerning the content of such matter and anything which contains or may reveal that matter.
- 13.1.2 “Employee” includes any person who is an employee or director of the *Strategic Alliance Member* or who occupies the position of a director of the *Strategic Alliance Member*, by whatever title given.
- 13.1.3 “GovS 007”: Security means the Government Functional Standard GovS 007: Security relating to the government’s expectations for protecting:
- (i) the government’s people, information and assets;
 - (ii) visitors to government property, and third-party suppliers while engaged on government business; and
 - (iii) citizen data.

13.2 The *Strategic Alliance Member*:

OFFICIAL

- 13.2.1 takes all reasonable steps to ensure that all Employees engaged on any work in connection with the *Strategic Alliance Contract* have notice that the Official Secrets Acts 1911-1989 applies to them and will continue to apply after the completion or termination of the *Strategic Alliance Contract*; and
 - 13.2.2 if directed by the *Client*, ensures that any Employee signs a statement acknowledging that, both for the duration of the *Strategic Alliance Contract* and after the termination of the *Strategic Alliance Contract*, they are bound by the Official Secrets Acts 1911-1989 (and where applicable any other legislation).
- 13.3 Unless they have the written authorisation of the *Client* to do otherwise, neither the *Strategic Alliance Member* nor any of its Employees, either before or after the completion or termination of the *Strategic Alliance Contract*, does 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:
- 13.3.1 who is not a British citizen;
 - 13.3.2 who does not hold the appropriate authority for access to the protected matter;
 - 13.3.3 in respect of whom the *Client* has notified the *Strategic Alliance Member* in writing that the Secret Matter is not to be disclosed to or acquired by that person;
 - 13.3.4 who is not an Employee of the *Strategic Alliance Member*;
 - 13.3.5 who is an Employee of the *Strategic Alliance Member* and has no need to know the information for the proper performance of the *Strategic Alliance Contract*.
- 13.4 Unless the *Strategic Alliance Member* has the written authorisation of the *Client* to do otherwise, the *Strategic Alliance Member* and its Employees, both before and after the completion or termination of the *Strategic Alliance Contract*, take all reasonable steps to ensure that:
- 13.4.1 no photograph of, or pertaining to, any Secret Matter is taken and no copy of or extract from any Secret Matter is made except to the extent necessary for the proper performance of the *Strategic Alliance Contract*;
 - 13.4.2 any Secret Matter is at all times strictly safeguarded in accordance with the GovS 007: Security (as amended from time to time) and upon request, is delivered up to the *Client* who is entitled to retain it.
- A decision of the *Client* on the question of whether the *Strategic Alliance Member* has taken or is taking reasonable steps as required by this clause, is final and conclusive.
- 13.5 The *Strategic Alliance Member*:
- 13.5.1 provides to the *Client*:
 - (i) upon request, such records giving particulars of those Employees who have had at any time, access

OFFICIAL

to any Secret Matter that is required to be kept in accordance with clause 13.4.2;

- (ii) upon request, such information as the *Client* may from time to time require so as to be satisfied that the *Strategic Alliance Member* and its Employees are complying with its obligations under this clause, including the measures taken or proposed by the *Strategic Alliance Member* so as to comply with its obligations and to prevent any breach of them;
- (iii) full particulars of any failure by the *Strategic Alliance Member* and its Employees to comply with any obligations relating to Secret Matter arising under this clause immediately upon such failure becoming apparent;

13.5.2 ensures that, for the purpose of checking the *Strategic Alliance Member's* compliance with the obligation in clause 13.4.2, a representative of the *Client* is entitled, at any time, to enter and inspect any premises used by the *Strategic Alliance Member*, which are in any way connected with the *Strategic Alliance Contract*, and inspect any document or thing in any such premises which is being used, or made for the purposes of the *Strategic Alliance Contract*. Such representative is entitled to all such information as they may reasonably require.

13.6 If at any time either before or after the completion or termination of the *Strategic Alliance Contract* 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 *Strategic Alliance Member* forthwith informs the *Client* of the matter with full particulars thereof.

13.7 If the *Strategic Alliance Member* proposes to make a subcontract which will involve the disclosure of a Secret Matter to the subcontractor, the *Strategic Alliance Member*:

13.7.1 submits for the acceptance of the *Strategic Alliance Manager*, the name of the proposed subcontractor, a statement of the work to be carried out and any other details known to the *Strategic Alliance Member* which the *Client* reasonably requires;

13.7.2 incorporates into the subcontract the terms contained in Part 1 to Appendix 5 of the *Strategic Alliance Contract* and such secrecy and security obligations as the *Client* directs. In the Annex, "Agreement" means the "Subcontract", "First Party" means the "*Strategic Alliance Member*" and "Second Party" means the "subcontractor";

13.7.3 informs the *Strategic Alliance Manager* immediately if it becomes aware of any breach by the subcontractor of any secrecy or security obligation and, if requested to do so by the *Client*, terminates the subcontract.

OFFICIAL

13.8 The *Client* is entitled to remove the *Strategic Alliance Member* as a party to the *Strategic Alliance Agreement* immediately if:

13.8.1 the *Strategic Alliance Member* is in breach of any obligation under this clause; or

13.8.2 the *Strategic Alliance Member* is in breach of any secrecy or security obligation imposed by any other contract with the Crown, including any *Project Contract*;

the *Client* considers the circumstances of the breach jeopardises the secrecy or security of the Secret Matter and claims such damages as may have been sustained as a result of the *Strategic Alliance Member's* breach of this clause.

14 REPORTABLE OFFICIAL AND OFFICIAL-SENSITIVE SECURITY REQUIREMENTS

14.1 In this clause “Information” means information recorded in any form disclosed or created in connection with the *Strategic Alliance Contract*.

14.2 The *Strategic Alliance Member* shall protect all Information relating to the aspects designated OFFICIAL-SENSITIVE as identified in the security aspects letter contained in Schedule 1 (as amended by the *Client* from time to time), in accordance with the official security clauses contained in the *Strategic Alliance Contract* or annexed to the Security Aspects Letter.

14.3 The *Strategic Alliance Member* shall include the requirements and obligations set out in clause 14.2 in any subcontract placed in connection with or for the purposes of the *Strategic Alliance Contract* which requires disclosure of OFFICIAL-SENSITIVE Information to the subcontractor or under which any Information relating to aspects designated as OFFICIAL-SENSITIVE is created by the subcontractor. The *Strategic Alliance Member* shall also include in the subcontract a requirement for the subcontractor to flow the requirements of this clause to its subcontractors and through all levels of the *Supply Chain* to the lowest level where any OFFICIAL-SENSITIVE Information is handled.

15 TRANSPARENCY

15.1 For the purpose of this clause and Appendix 5:

15.1.1 “Sensitive Information” means the information listed in the DEFFORM 539A contained in Schedule 1 to the *Strategic Alliance Contract*, being information notified by the *Strategic Alliance Member* to the *Client*, which is acknowledged by the *Client* as being sensitive, at the point at which the *Strategic Alliance Contract* is entered into or amended (as relevant) and remains sensitive information at the time of publication;

15.1.2 “Publishable Performance Information” means any of the information in the DEFFORM 539B *KPI* Data Report as it relates to a Key Performance Indicator where it is expressed as publishable in the table in DEFFORM 539B which shall not contain any information which is exempt from disclosure which shall be determined by the *Client*; and which shall not constitute Sensitive Information;

OFFICIAL

- 15.1.3 “Transparency Information” means the content of the *Strategic Alliance Contract* in its entirety, including from time to time agreed changes to the *Strategic Alliance Contract*, except for (i) any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 (EIR), which shall be determined by the *Client*, and (ii) any Sensitive Information.
- 15.2 Notwithstanding any other term of the *Strategic Alliance Contract*, including clause 22.7 where applicable, the *Strategic Alliance Member* understands that the *Client* may publish the Publishable Performance Information and the Transparency Information to the general public.
- 15.3 Subject to clause 15.4, the *Client* 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.
- 15.4 If, in the *Client's* reasonable opinion, publication of any element of the Transparency Information and Publishable Performance Information would be contrary to the public interest, the *Client* shall be entitled to exclude such information from publication. The *Client* 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 *Client* 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.
- 15.5 The *Strategic Alliance Members* shall assist and co-operate with the *Client* as reasonably required to enable the *Client* to publish the Transparency Information and Publishable Performance Information, in accordance with the principles set out above. Where the *Client* publishes Transparency Information, it shall:
- 15.5.1 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 Sensitive Information;
- 15.5.2 taking into account the Sensitive Information set out in DEFFORM 539A, consult with the *Strategic Alliance Member* where the *Client* intends to publish information which has been identified as Sensitive Information. For the avoidance of doubt the *Client*, 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
- 15.5.3 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

OFFICIAL

a fair view on how the *Strategic Alliance Contract* is being performed.

16 STRATEGIC ALLIANCE MEMBER'S RECORDS

- 16.1 The *Strategic Alliance Members* and their *Supply Chain Members* shall maintain all records specified in and connected with the *Strategic Alliance Contract* (expressly or otherwise), and make them available to the *Client* when requested on reasonable notice.
- 16.2 The *Strategic Alliance Members* and their *Supply Chain Members* shall also permit access to relevant records that relate to contractual obligations relevant to the performance of the *Strategic Alliance Contract*, held by or controlled by them and reasonably required by the Controller and Auditor General, their staff and any appointed representative of the National Audit Office, and provide such explanations and information as reasonably necessary for the following purposes:
- 16.2.1 to enable the National Audit Office to carry out the *Client's* statutory audits and to examine and / or certify the *Client's* annual and interim report and accounts; and
- 16.2.2 to enable the National Audit Office to carry out an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* has used its resources.
- 16.3 With regard to the records made available to the *Client* under clause 16.1, and subject to the provisions of clause 22.7 the *Strategic Alliance Member* shall permit records to be examined and if necessary copied, by the *Client*, or representative of the *Client*, as the *Client* may require.
- 16.4 Unless the *Strategic Alliance Contract* specifies otherwise the records referred to in this clause 15 shall be retained for a period of at least twelve (12) years from:
- 16.4.1 *Strategic Alliance Member* ceases to be a party to the *Strategic Alliance Contract*; or
- 16.4.2 the termination of the *Strategic Alliance Contract*;
- 16.4.3 not used;
- whichever occurs latest.

17 PROTECTION OF PERSONAL DATA

- 17.1 In this clause 17:
- 17.1.1 Contractor Personnel means all directors, officers, employees, agents, consultants and contractors of a *Strategic Alliance Member* and/or of any *Supply Chain Member* engaged in the performance of its obligations under the *Strategic Alliance Contract*.
- 17.1.2 Data Loss Event means any event that results in unauthorised access to Personal Data held by the *Strategic Alliance Member* under the *Strategic Alliance Contract*, and/or actual loss and/or destruction of Personal Data in

OFFICIAL

breach of the *Strategic Alliance Contract*, including any Personal Data Breach.

- 17.1.3 Data Protection Legislation means all applicable law in force from time to time in the UK relating to the processing of personal data and privacy, including but not limited to:
- (i) UK GDPR;
 - (ii) DPA 2018; and
 - (iii) The Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) as amended,
- each to the extent that it relates to the processing of personal data and privacy.
- 17.1.4 Data Protection Impact Assessment means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
- 17.1.5 Data Subject Request means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
- 17.1.6 DPA 2018 means the Data Protection Act 2018.
- 17.1.7 Law means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the *Strategic Alliance Member* is bound to comply.
- 17.1.8 Protective Measures means appropriate technical and organisational measures which may include (as appropriate):
- (i) pseudonymising and encrypting Personal Data;
 - (ii) ensuring confidentiality, integrity, availability and resilience of systems and services;
 - (iii) ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and
 - (iv) regularly assessing and evaluating the effectiveness of such measures adopted by it, including those set out in DEFFORM 532 contained in Schedule 1.
- 17.1.9 Sub-processor means any third party appointed to process Personal Data on behalf of the *Strategic Alliance Member* related to the *Strategic Alliance Contract*.
- 17.1.10 UK GDPR means the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in UK law by the EU (Withdrawal) Act 2018 and the Data Protection, Privacy

OFFICIAL

and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019.

- 17.1.11 The following expressions have the same meanings as in Article 4 of the GDPR:
- (i) Controller;
 - (ii) Processor;
 - (iii) Data Subject;
 - (iv) Personal Data;
 - (v) Personal Data Breach; and
 - (vi) Data Protection Officer.
- 17.2 In connection with the Personal Data received under the *Strategic Alliance Contract*, each party undertakes to comply with its obligations under Data Protection Legislation and in particular, but without limitation, each party has regard to guidance issued by the Information Commissioner's Office and takes 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.
- 17.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the *Client* is the Controller and the *Strategic Alliance Member* is the Processor of the personal data contained in and/or referred to in DEFFORM 532, contained in Schedule 1. The only processing that the *Strategic Alliance Member* is authorised to do is listed in DEFFORM 532 by the *Client* and may not be determined by the *Strategic Alliance Member*.
- 17.4 The *Strategic Alliance Member* notifies the *Client* without undue delay if it considers that any of the *Client's* instructions infringe the Data Protection Legislation. The *Client* agrees that the *Strategic Alliance Member* is not required to provide legal advice to the *Client* and that no notification (or absence of notification) by the *Strategic Alliance Member* will be construed as legal advice or a representation by the *Strategic Alliance Member*.
- 17.5 The *Strategic Alliance Member* provides all reasonable assistance to the *Client* in the preparation of any Data Protection Impact Assessment prior to commencing any processing that is likely to result in a high risk to the rights and freedoms of Data Subjects. Such assistance may, at the discretion of the *Client*, include:
- 17.5.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 17.5.2 an assessment of the necessity and proportionality of the processing operations in relevant to the performance of the *Strategic Alliance Contract*;
 - 17.5.3 an assessment of the risks to the rights and freedoms of Data Subjects;

OFFICIAL

- 17.5.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 17.6 The *Strategic Alliance Member*, in relation to any Personal Data processed in connection with its obligations under the *Strategic Alliance Contract*:
- 17.6.1 processes that Personal Data only in accordance with DEFFORM 532, unless the *Strategic Alliance Member* is required to do otherwise by Law. If it is so required, the *Strategic Alliance Member* promptly notifies the *Client* before processing the Personal Data unless prohibited by Law;
- 17.6.2 ensures that it has in place Protective Measures, including those set out in DEFFORM 532, as appropriate to protect against a Data Loss Event, which the *Client* may acting reasonably reject (but failure to reject does not amount to approval by the *Client* of the adequacy of the Protective Measures), having taken account of the:
- (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- 17.6.3 ensures that:
- (i) subject to clause 17.6.1, the Contractor Personnel do not process Personal Data except in accordance with the *Strategic Alliance Contract* (and in particular DEFFORM 532);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data by ensuring that they undertake the Government's Baseline Personnel Security Standard or other standard as specified in the *Strategic Alliance Contract* and ensure that they:
 - (A) are aware of and comply with the *Strategic Alliance Member's* duties under this clause;
 - (B) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the *Client* or as otherwise permitted by the *Strategic Alliance Contract*;

OFFICIAL

- (C) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 17.6.4 does not transfer Personal Data outside of the UK (other than to/from the EU/EEA) unless the prior written consent of the *Client* has been obtained and the following conditions are fulfilled:
 - (A) the *Client* or the *Strategic Alliance Member* 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 *Client*;
 - (B) the Data Subject has enforceable rights and effective legal remedies;
 - (C) the *Strategic Alliance Member* complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the *Client* in meeting its obligations); and
 - (D) the *Strategic Alliance Member* complies with any reasonable instructions notified to it in advance by the *Client* with respect to the processing of the Personal Data;
- (ii) at the written direction of the *Client*, deletes or returns Personal Data (and any copies of it) to the *Client* on termination of the *Strategic Alliance Contract* unless the *Strategic Alliance Member* is required by Law to retain the Personal Data.
- 17.7 Subject to clause 17.6, the *Strategic Alliance Member* notifies the *Client* without undue delay if, in connection with Personal Data processed under the *Strategic Alliance Contract*, it:
 - 17.7.1 receives a Data Subject Request (or purported Data Subject Request);
 - 17.7.2 receives a request to rectify, block or erase any Personal Data;
 - 17.7.3 receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
 - 17.7.4 receives any communication from the Information Commissioner or any other regulatory authority;
 - 17.7.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

OFFICIAL

- 17.7.6 becomes aware of a Data Loss Event.
- 17.8 The *Strategic Alliance Member*'s obligation to notify under clause 17.7 includes the provision of further information to the *Client* in phases, as details become available.
- 17.9 Taking into account the nature of the processing, the *Strategic Alliance Member* provides the *Client* with reasonable assistance, insofar as possible, in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under sub-clause 17.7 (and insofar as possible within the timescales reasonably required by the *Client*) including by promptly providing:
- 17.9.1 the *Client* with full details and copies of the complaint, communication or request;
- 17.9.2 such assistance as is reasonably requested by the *Client* to enable the *Client* to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- 17.9.3 the *Client*, at its request, with any Personal Data it holds in relation to a Data Subject;
- 17.9.4 assistance as requested by the *Client* following any Data Loss Event;
- 17.9.5 assistance as requested by the *Client* with respect to any request from the Information Commissioner's Office, or any consultation by the *Client* with the Information Commissioner's Office.
- 17.10 The *Strategic Alliance Member* maintains complete and accurate records and information as necessary to fulfil its obligations under clause 17.9.
- 17.11 The *Strategic Alliance Member* allows for audits of its Data Processing activity by the *Client* or the *Client*'s designated auditor as required to demonstrate the *Client*'s compliance with its obligations as a Controller. Such audits will be conducted in accordance with general audit conditions contained in the *Strategic Alliance Contract*.
- 17.12 The *Strategic Alliance Member* Contractor designates a Data Protection Officer if required by the Data Protection Legislation.
- 17.13 Before allowing any Sub-processor to process any Personal Data related to the *Strategic Alliance Contract*, the *Strategic Alliance Member*:
- 17.13.1 notifies the *Client* in writing of the intended Sub-processor and processing;
- 17.13.2 obtains the written consent of the *Client*;
- 17.13.3 enters into a written contract with the Sub-processor which gives effect to the terms set out in this clause such that they apply to the Sub-processor; and
- 17.13.4 provides the *Client* with such information regarding the Sub-processor as the *Client* may reasonably require.
- 17.14 The *Strategic Alliance Member* remains fully liable for all acts or omissions of any Sub-processor.

OFFICIAL

- 17.15 The *Strategic Alliance Member* may, at any time on not less than thirty (30) *Working Days*' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which apply when incorporated by attachment to the *Strategic Alliance Contract*).
- 17.16 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The *Client* may on not less than thirty (30) *Working Days*' notice to the *Strategic Alliance Member* amend the *Strategic Alliance Contract* to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 17.17 Any amendments to the *Strategic Alliance Contract* resulting from clause 17.15 and/or 17.16 are conducted in accordance with clause 22.3.

18 INSURANCES

- 18.1 Each *Strategic Alliance Member*'s obligations to the *Client* in relation to insurance are contained in the *Project Contracts* and in this clause 18.
- 18.2 Each *Strategic Alliance Member* shall take out insurances of the types and for the amounts stated against its name in the *Strategic Alliance Agreement* or any *Joining Agreement* for matters governed by the *Strategic Alliance Contract*.
- 18.3 All insurances stated in the *Strategic Alliance Agreement* or any *Joining Agreement* shall be placed with insurers for those risks, with those exclusions and deductibles, and on those other terms as shall be stated in the Appendix 4 and the *Strategic Alliance Member*'s part of Schedule 1 or otherwise agreed by the *Client*, and all those insurances shall be maintained from the date of the *Strategic Alliance Agreement* or the relevant *Joining Agreement* until the expiry or earlier termination of the *Strategic Alliance Contract* and no *Strategic Alliance Member* shall do anything to invalidate those insurances.
- 18.4 Each *Strategic Alliance Member* shall provide to another *Strategic Alliance Member* upon request copies of policies or detailed certificates as evidence of its agreed insurances, subject to reasonable redaction to preserve commercially sensitive information as determined by the *Strategic Alliance Member* providing such policies and/or detailed certificates.
- 18.5 Without prejudice to its obligation to indemnify or otherwise be liable to the *Client* under a *Project Contract(s)*, the *Strategic Alliance Member*, from the effective date of the *Strategic Alliance Contract*, takes out and maintains or procures the taking out and maintenance in full force and effect insurances in accordance with the requirements specified in the *Insurance Table* (contained in Appendix 4 and the *Strategic Alliance Member*'s part of Schedule 1 of the *Strategic Alliance Agreement*) and any other insurances as may be required by law or relevant regulation (together the "Required Insurances").
- 18.6 The *Strategic Alliance Member* ensures that the Required Insurances are effective in each case not later than the date on which the relevant risk commences.
- 18.7 The Required Insurances referred to in clause 18.6 are taken out and maintained with insurers who (in the reasonable opinion of the *Client*)

OFFICIAL

- are of good financial standing, appropriately regulated and of good repute in the United Kingdom insurance market.
- 18.8 The *Strategic Alliance Member* does not (and the *Strategic Alliance Member* procures that none of its *Supply Chain Members* of any tier does not) take any action, or permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person.
- 18.9 The Required Insurances referred to in clause 18.6:
- 18.9.1 Where specified in the *Insurance Table* (at clause 18.20), names the *Client* as co-insured for its separate interest.
- 18.9.2 Where specified in the *Insurance Table* (at clause 18.20), provides for non vitiation and severability of interests protection in respect of any claim made by the *Client* as a co-insured.
- 18.9.3 Where specified in the *Insurance Table* (at clause 18.20), includes an undertaking from the relevant insurer to waive all rights of subrogation howsoever arising and/or claims against the *Client*, its employees, servants or agents which they may have or acquire, arising out of any occurrence in respect of which any claim is admitted and is insured under the Required Insurances. The provisions of this clause 18.9.3 do not apply against any *Client* officer, director, employee, agent and assign who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate nondisclosure or deliberate breach of policy clause.
- 18.9.4 Where specified in the *Insurance Table* (at clause 18.20) contains an indemnity to principals clause under which the *Client* is indemnified in respect of claims made against the *Client* arising from death or bodily injury or third party property damage for which the *Strategic Alliance Member* is legally liable in respect of the *Strategic Alliance Contract*.
- 18.9.5 Is maintained from the date referred to in clause 18.5 above and until at least the expiry or termination of the *Strategic Alliance Contract* and for such further period as may be specified in the *Insurance Table* (at clause 18.20) subject to the terms, cover features and extensions and principal exclusions as specified in the *Insurance Table* (at clause 18.20).
- 18.9.6 Is maintained from time to time (as far as is reasonably practicable), on terms no less favourable than those generally available to a contractor in respect of the risks insured in the United Kingdom insurance market from time to time.
- 18.10 The *Strategic Alliance Member*:
- 18.10.1 Without limiting any specific requirements in the *Strategic Alliance Contract* takes or procures the taking of all reasonable risk management and risk control measures in relation to the *Strategic Alliance Contract* as it would be

OFFICIAL

reasonable to expect of a contractor, acting in accordance with industry best practice, including but not limited to the investigation and reporting of its claims to insurers.

- 18.10.2 Discharges all its obligations under the Insurance Act 2015 when placing, renewing, amending or maintaining any insurances required by the *Strategic Alliance Contract* including complying with the duty of fair presentation to insurers and taking the actions needed to protect the *Client's* separate interests.
 - 18.10.3 Uses reasonable endeavours to procure that all insurance brokers through whom any Required Insurances to be effected by the *Strategic Alliance Member* are effected or maintained will maintain intact their files (including all documents disclosed and correspondence in connection with the placement of those Required Insurances and the payment of premiums and claims under such Required Insurances).
 - 18.11 The *Strategic Alliance Member* provides, on request, to the *Client*:
 - 18.11.1 evidence of the Required Insurances, in a form satisfactory to the *Client*; and
 - 18.11.2 evidence, in a form satisfactory to the *Client*, that the premiums payable under the Required Insurances have been paid and that the insurances are in full force and effect and meet the insurance requirements of the *Strategic Alliance Member* in respect thereof.
- Neither inspection, nor receipt of such evidence, constitutes acceptance by the *Client* of the terms thereof, nor is a waiver of the *Strategic Alliance Member's* liability under the *Strategic Alliance Contract*.
- 18.12 Evidence, in a form satisfactory to the *Client*, of the insurances required by clause 18.5 is obtained as and when requested and certified copies are forwarded to the *Client* as soon as possible but in any event no later than two (2) weeks following the *Client's* request or the relevant insurance policy renewal date.
 - 18.13
 - 18.13.1 Where the insurers purport to cancel, suspend or terminate the Required Insurances, the *Strategic Alliance Member* procures that the insurers, as soon as is reasonably practicable, notifies the *Strategic Alliance Member* in writing in the event of any such proposed suspension, cancellation or termination.
 - 18.13.2 Where the *Strategic Alliance Member* receives notification from insurers pursuant to clause 18.13.1 the *Strategic Alliance Member* promptly notifies the *Client* in writing of receipt of such proposed suspension, cancellation or termination.
 - 18.14 The *Strategic Alliance Member* promptly notifies to insurers any matter arising from or in relation to the *Strategic Alliance Contract* from which it may be entitled to claim under any of the Required Insurances.
 - 18.15 Except where the *Client* is the claimant party and without limiting the other provisions of this clause, the *Strategic Alliance Member* notifies

OFFICIAL

- the *Client* immediately, (such notification to be accompanied by reasonable particulars of the incident or circumstances giving rise to such claim):
- 18.15.1 Of any incident or circumstances which may give rise to any claim amounting to or in excess of seventy five thousand pounds (£75,000) in connection with the *Strategic Alliance Contract* under any of the Required Insurances.
 - 18.15.2 If the incident or circumstances may give rise to any claim in connection with the *Strategic Alliance Contract*, which may be in excess of the limits of the Required Insurances.
- 18.16 If the *Strategic Alliance Member* is in breach of clause 18.5 the *Client* may pay (at its option) any premiums, *Insurance Premium Tax* and insurance broker costs required to keep such insurance in force or itself procure such insurance, and in either case, recover such amounts from the *Strategic Alliance Member* on written demand, together with all reasonable expenses incurred in procuring such insurance.
- 18.17 Where any policy requires the payment of a premium, the *Strategic Alliance Member* is liable for such premium.
- 18.18
- 18.18.1 Where any insurance is subject to an excess or deductible below which the indemnity from the insurers is excluded, the *Strategic Alliance Member* is liable for such excess or deductible.
 - 18.18.2 The *Strategic Alliance Member* is not entitled to recover from the *Client* any sum paid by way of excess or deductible under the insurances whether under the terms of the *Strategic Alliance Contract* or otherwise.
- 18.19 Not used.
- 18.20 The *Strategic Alliance Member* puts in place the insurances in accordance with the *Insurance Table* as set out in Appendix 4 and the *Strategic Alliance Member's* part of Schedule 1 of the *Strategic Alliance Agreement*.
- 18.21 The *Client* reserves the right to require that the *Strategic Alliance Member* provides additional insurances to those contained in the *Insurance Table* in Appendix 4 and the *Strategic Alliance Member's* part of Schedule 1 of the *Strategic Alliance Agreement* based upon the insurable risk profile of the requirements.

19 STRATEGIC ALLIANCE MEMBERS' PERSONNEL AT GOVERNMENT ESTABLISHMENTS

- 19.1 Reference in this clause to:
- 19.1.1 Government Establishment or site shall be deemed to include any of Her Majesty's Ships or Vessels and Service Stations;
 - 19.1.2 Materiel is a generic term meaning equipment (including fixed assets), stores, supplies and spares;

OFFICIAL

- 19.1.3 Officer in Charge shall be deemed to include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Heads of Government Establishments
- 19.1.4 RIDDOR means Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995.
- 19.2 *Strategic Alliance Member's* Representative(s) shall be deemed to include the *Strategic Alliance Member's* employees, agents and *Supply Chain Members*.
- 19.3 The following general provisions apply:
- 19.3.1 The Officer in Charge shall provide such available administrative and technical facilities for a *Strategic Alliance Member's* Representatives employed at Government Establishments for the purpose of the *Strategic Alliance Contract* as may be necessary for the effective and economical discharge of work under the *Strategic Alliance Contract*. These facilities will be provided free of charge unless otherwise stated by the Officer in Charge. The status to be accorded to the *Strategic Alliance Member's* Representatives for messing purposes will be at the discretion of the Officer in Charge.
- 19.3.2 Any land or premises (including temporary buildings) made available to a *Strategic Alliance Member* by the *Client* in connection with the *Strategic Alliance Contract* shall be made available to the *Strategic Alliance Member* free of charge, unless otherwise stated by the Officer in Charge, and shall be used by the *Strategic Alliance Member* solely for the purposes of performing the *Strategic Alliance Contract*. The *Strategic Alliance Member* shall have the use of such land or premises as licensee and shall vacate the same upon completion of the *Project Contract*. Any utilities required by the *Strategic Alliance Member* shall be subject to the charges set out in the *Strategic Alliance Contract*.
- 19.4 The *Strategic Alliance Member* shall have no claim against the *Client* for any additional cost or delay occasioned by the closure for holidays of Government Establishments, where this is made known to them prior to entering into the *Strategic Alliance Contract* or a *Project Contract*.
- 19.5 A *Strategic Alliance Member* shall, except as otherwise provided for in the *Strategic Alliance Contract*, make good or, at the option of the *Client*, pay compensation for all damage occurring to any Government Property, which includes land or buildings, occasioned by the *Strategic Alliance Member*, or by any of their Representatives, arising from the *Strategic Alliance Member's* or their Representatives' presence on a Government Establishment in connection with the *Strategic Alliance Contract* or the *Project Contract*, provided that this clause shall not apply to the extent that the *Strategic Alliance Member* is able to show that any such damage was not caused or contributed to by any circumstances within the *Strategic Alliance Member's* or their Representatives' reasonable control.
- 19.6 Not used.

OFFICIAL

- 19.7 All property of a *Strategic Alliance Member* and their Representatives shall be at the risk of the *Strategic Alliance Member* whilst it is on any Government Establishment, and the *Client* shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby, except as follows:
- 19.7.1 where any such loss or damage was caused or contributed to by any act, neglect or default of any Government Servant, agent or *Strategic Alliance Member* then the *Client* shall accept liability therefor to the extent to which such loss or damage is so caused or contributed to as aforesaid; and
- 19.7.2 where any property of the *Strategic Alliance Member* has been taken on charge by the Officer in Charge, and a proper receipt has been given therefor, then the *Client* shall be liable for any loss or damage occurring to that property while held on such charge as aforesaid.
- 19.8 Each *Strategic Alliance Member* shall submit in writing to the *Strategic Alliance Manager* or the *Client* for approval, initially and as necessary from time to time, a list of their Representatives who may need to enter a Government Establishment for the purpose of, or in connection with, work under the *Strategic Alliance Contract*, giving such particulars as the *Strategic Alliance Manager* or the *Client* may require, including full details of birthplace and parentage of any such Representative who:
- 19.8.1 was not born in the United Kingdom; or
- 19.8.2 if they were born in the United Kingdom, were born of parents either or both of whom were not born in the United Kingdom.
- 19.9 The *Strategic Alliance Manager* or the *Client* shall issue passes for those Representatives who are approved by it in accordance with Clause 19.8 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 *Client* and shall be surrendered on demand or on completion of the work.
- 19.10 Notwithstanding the provisions of Clauses 19.8 and 19.9 hereof if, in the opinion of the *Strategic Alliance Manager* or the *Client*, any Representative of a *Strategic Alliance Member* shall misconduct themselves, or it shall not be in the public interest for any person to be employed or engaged by the *Strategic Alliance Member*, the *Strategic Alliance Member* 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.
- 19.11 The decision of the *Client* upon any matter arising under Clauses 19.8 to 19.10 inclusive shall be final and conclusive.
- 19.12 The following provisions apply:
- 19.12.1 Each *Strategic Alliance Member* shall ensure that their Representatives have the necessary probity (by undertaking the Government's Baseline Personnel Security Standard) and, where applicable, are cleared to the appropriate level of security when employed within the boundaries of a

OFFICIAL

Government Establishment and when working under the *Strategic Alliance Contract*.

- 19.12.2 Where a *Strategic Alliance Member* requires information on the Government's Baseline Personnel Security Standard (the Standard) or security clearance for their Representatives or is not in possession of the relevant rules, regulations or requires guidance on them, they shall apply in the first instance to the *Strategic Alliance Manager*.
- 19.12.3 On request, a *Strategic Alliance Member* shall be able to demonstrate to the *Strategic Alliance Manager* and/or the *Client* that the *Strategic Alliance Member's* processes to assure compliance with the standard have been carried out satisfactorily. Where that assurance is not already in place, the *Strategic Alliance Member* shall permit the *Strategic Alliance Manager* and/or the *Client* to inspect the processes being applied by the *Strategic Alliance Member* to comply with the Standard.
- 19.12.4 Each *Strategic Alliance Member* shall comply and shall ensure that their Representatives comply with the rules, regulations and requirements that are in force whilst at that Establishment which shall be provided by the *Client* on request.
- 19.12.5 Not used.
- 19.13 Not used.
- 19.14 Not used.
- 19.15 *The Strategic Alliance Members* shall report any injury, disease or dangerous occurrence at any Government Establishment arising out of the performance of the *Strategic Alliance Contract*, which is required to be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) to the Officer in Charge of the relevant Government Establishment. This would be in addition to any report, which a *Strategic Alliance Member* may be required to submit under RIDDOR to the relevant enforcing authority (e.g. Health and Safety Executive or Local Authority).
- 19.16 Not used.
- 19.17 Not used
- 19.18 Where a *Strategic Alliance Member* enters a Government Establishment for the purpose of performing work under the *Strategic Alliance Contract*:
- 19.18.1 The *Strategic Alliance Member* shall notify the Officer in Charge or the site project liaison officer or overseeing officer, whose identity is notified by the *Strategic Alliance Manager*, of:
- (i) any health and safety hazards associated with the work to be performed by them or any of their Representatives;
 - (ii) any foreseeable risks to the health and safety of all persons associated with such hazards; and

OFFICIAL

- (iii) any precautions to be taken by them as well as any precautions which, in their opinion, ought to be taken by the Client, in order to control such risks.

19.18.2 The *Client* shall notify *Strategic Alliance Members* of:

- (i) any health and safety hazards which may be encountered by a *Strategic Alliance Member* or any of their Representatives on the Government Establishment;
- (ii) any foreseeable risks to the health and safety of a *Strategic Alliance Member* or any of their Representatives, associated with such hazards; and
- (iii) any precautions to be taken by the *Client* as well as any precautions which, in its opinion, ought to be taken by a *Strategic Alliance Member*, in order to control such risks.

19.18.3 The *Strategic Alliance Members* shall notify their Representatives of and, where appropriate, provide adequate instruction in relation to:

- (i) the hazards, risks and precautions notified by them to the *Client* under clause 19.18.1;
- (ii) the hazards, risks and precautions notified by the *Client* to the *Strategic Alliance Member* under clause 19.18.2; and
- (iii) the precautions which, in their opinion, ought to be taken by their Representatives in order to control those risks.

19.18.4 The *Strategic Alliance Members* shall provide the Officer in Charge or the site project liaison officer or overseeing officer, whose identity is notified by the *Strategic Alliance Manager*, with:

- (i) copies of those sections of their own and, where appropriate, their Representatives' Safety Policies which are relevant to the risks notified under clause 19.18.1;
- (ii) copies of any related risk assessments; and copies of any notifications and instructions issued by them to their Representatives under clause 19.18.3.

19.18.5 The *Client* shall provide the *Strategic Alliance Member* with:

- (i) copies of those sections of its own safety policies which are relevant to the risks notified under clause 19.18.2;

OFFICIAL

- (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 Strategic Alliance Member* under cause 19.18.3.

20 EQUALITY

- 20.1 The *Strategic Alliance Members* 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.
- 20.2 Without prejudice to the generality of the obligation in clause 20.1 above, the *Strategic Alliance Members* 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 *Strategic Alliance Contract* is being performed.
- 20.3 Each *Strategic Alliance Member* agrees to take reasonable efforts to secure the observance of the provisions of this clause by any of its employees, agents or other persons acting under its direction or control who are engaged in the performance of the *Strategic Alliance Contract*.
- 20.4 Each *Strategic Alliance Member* agrees to take reasonable efforts to reflect this clause in any *Supply Chain Contract* that it enters into to satisfy the requirements of the *Strategic Alliance Contract* and to require its *Supply Chain Members* to reflect this clause in their *Supply Chain Contracts* that they enter into to satisfy the requirements of the *Strategic Alliance Contract*.

21 CHILD LABOUR AND EMPLOYMENT LAW

- 21.1 In this clause, “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 a *Strategic Alliance Member* in the jurisdiction(s) in which it performs the *Strategic Alliance Contract* and any *Project Contract(s)*.
- 21.2 The *Strategic Alliance Members* shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where the *Strategic Alliance Contract* and any *Project Contract* is being performed.
- 21.3 The *Strategic Alliance Members* agree to take reasonable efforts to reflect this clause in any *Supply Chain Contract* that it enters into to satisfy the requirements of the *Strategic Alliance Contract* or any *Project Contract(s)* and to require its *Supply Chain Members* to reflect this clause in their subcontracts that they enter into to satisfy the requirements of the *Strategic Alliance Contract*.

22 GENERAL

OFFICIAL

- Exclusion of Partnership 22.1 Nothing in the *Strategic Alliance Documents* creates, or shall be construed as creating, a *Partnership* between any of the *Strategic Alliance Members* and no *Strategic Alliance Member* shall conduct itself so as to create an impression that such a *Partnership* exists.
- Assignment and sub-contracting 22.2 No *Strategic Alliance Member* shall give, bargain, sell, assign, or otherwise dispose of the *Strategic Alliance Contract* or any part thereof, or the benefit or advantage of the *Strategic Alliance Contract* or any part thereof, without the prior consent in writing of the *Client*.
- 22.3 The provisions of the *Strategic Alliance Contract* shall continue to apply in all other respects after assignment of the *Strategic Alliance Contract* and shall not be amended without the prior approval of the *Client*.
- Waiver 22.4 No act or omission of any party to the *Strategic Alliance Contract* shall by itself amount to a waiver of any right or remedy unless expressly stated by that party in writing. In particular, no reasonable delay in exercising any right or remedy, shall by itself constitute a waiver of that right or remedy.
- 22.5 No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.
- Severability 22.6 If any provision of the *Strategic Alliance Contract* is held to be invalid, illegal or unenforceable to any extent then:
- 22.6.1 such provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in the *Strategic Alliance Contract* but without invalidating any of the remaining provisions of the *Strategic Alliance Contract*; and
- 22.6.2 the parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.
- Confidentiality 22.7 In this clause 22.7:
- 22.7.1 “Central Government Body” means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:
- (i) government department;
 - (ii) non-departmental public body or assembly sponsored public body (advisory, executive, or tribunal);
 - (iii) non-ministerial department; or
 - (iv) executive agency.
- 22.7.2 “Information” means any information in any written or other tangible form disclosed to one party by or on behalf of the other party under or in connection with the *Strategic Alliance Contract*, including information provided in the

OFFICIAL

tender or negotiations which preceded the *Strategic Alliance Member* joining the *Strategic Alliance*.

- 22.7.3 “The Act” means the Freedom of Information Act 2000.
- 22.7.4 “The Regulations” mean the Information Regulations 2004.
- 22.7.5 Subject to clauses 22.7.8– 22.7.12 each *Strategic Alliance Member* shall:
- (i) treat in confidence all Information it receives in connection with the *Strategic Alliance*;
 - (ii) not disclose any of that Information to other parties without the prior written consent of the *Strategic Alliance Manager* and/or the *Client*, whose consent is not unreasonably withheld, except that a *Strategic Alliance Member* may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary to perform its obligations under the *Strategic Alliance Contract*;
 - (iii) not use any of that Information otherwise than for the purpose of the *Strategic Alliance Contract* and/or a *Project Contract*; and
 - (iv) not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the *Strategic Alliance Contract* and/or a *Project Contract*.
- 22.7.6 Each *Strategic Alliance Member* shall take all reasonable precautions necessary to ensure that all Information disclosed to it by or on behalf of the *Client* under or in connection with the *Strategic Alliance Contract* and/or *Project Contract*:
- (i) is disclosed to its employees and *Supply Chain Members*, only to the extent necessary to perform its obligations under the *Strategic Alliance Contract* and/or *Project Contract*; and
 - (ii) is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing its obligations under the *Strategic Alliance Contract* and/or *Project Contract* or any *Supply Chain Contract* under it.
- 22.7.7 Each *Strategic Alliance Member* shall ensure that its employees are aware of the arrangements for discharging the obligations in clauses 22.7.5 and 22.7.6 before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.
- 22.7.8 Clauses 22.7.5 and 22.7.6 shall not apply to any Information to the extent that a *Strategic Alliance Member*:

OFFICIAL

- (i) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the *Strategic Alliance Contract*;
- (ii) has the right to use or disclose the Information in accordance with another contract; or
- (iii) can show:
 - (A) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the *Strategic Alliance Contract*, a *Project Contract* or any other agreement between the *Strategic Alliance Member* and (i) another *Strategic Alliance Member*; or (ii) the *Client*;
 - (B) 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 *Strategic Alliance Contract* or a *Project Contract*;
 - (C) that the Information was received without restriction on further disclosure from other parties who lawfully acquired it and who is under no obligation restricting its disclosure;
 - (D) from its records that the same information was derived independently of that received under or in connection with the *Strategic Alliance Contract* or a *Project Contract*;

provided the relationship to any other Information is not revealed.

22.7.9 A *Strategic Alliance Member* shall not be in breach of this clause 22.7 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 *Strategic Alliance Member* making the disclosure ensures that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure in no way acts to diminish the obligations of any *Strategic Alliance Member* under clauses 22.7 to 22.8.

22.7.10 The *Client* may disclose the Information:

- (i) on a confidential basis to any Central Government Body for any proper purpose of the *Client* or of the relevant central government body, which includes disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-

OFFICIAL

government procurement processes, including value for money and related purposes;

- (ii) to Parliament and parliamentary committees or if required by any parliamentary reporting requirement;
- (iii) to the extent that the *Client* (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (iv) on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in this clause for any purpose relating to or connected with the *Strategic Alliance Contract* or a *Project Contract*;
- (v) on a confidential basis for the purpose of exercising its rights under the *Strategic Alliance Contract* or a *Project Contract*;
- (vi) 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 *Strategic Alliance Contract* or a *Project Contract*; and
- (vii) for the purposes of the foregoing, references to disclosure on a confidential basis means disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the *Client* under this clause.

22.7.11 Before sharing any Information in accordance with clause 22.7.10, the *Client* may redact the Information. Any decision to redact Information made by the *Client* is final.

22.7.12 The *Client* is not in breach of this clause where it can show that any disclosure of Information is made solely and to the extent necessary to comply with the Act or the Regulations. To the extent permitted by the time for compliance under the Act or the Regulations, the *Client* shall consult the relevant *Strategic Alliance Member* where the *Client* is considering the disclosure of Information under the Act or the Regulations and, in any event, provides prior notification to the relevant *Strategic Alliance Member* of any decision to disclose the Information. Each *Strategic Alliance Member* shall acknowledge and accept that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the *Client* exercises its own discretion, subject always to the provisions of the Act or the Regulations. For the avoidance of doubt, nothing in this clause 22.7 affects a *Strategic Alliance Member's* rights at law.

OFFICIAL

- 22.8 Nothing in this clause 22.7 affects the obligations of confidentiality of the *Strategic Alliance Members*, the *Strategic Alliance Manager* or the *Client* where Information is disclosed orally in confidence.
- Legal Requirements 22.9 The *Strategic Alliance Members* shall comply with all laws and regulations currently in force in the country stated in the *Strategic Alliance Agreement* and with the terms of all statutory and other legally binding requirements relating to the *Strategic Alliance Programme*.
- Third party rights 22.10 Subject only to clauses 1.17.2 and 23.13 and except as otherwise agreed, nothing in the *Strategic Alliance Contract* shall confer any benefit or right to enforce any of its terms on any person who is not a party to it.

23 DURATION AND TERMINATION

- Duration 23.1 The duration of the *Strategic Alliance Contract* is stated in the *Strategic Alliance Agreement*, subject to the remainder of this clause 23 or in accordance with the procedures set out in the *Strategic Alliance Agreement*.
- 23.2 Subject to clauses 23.3, 23.6, 23.7, 23.8, 23.9 and 23.10 following *Completion* of all *Project Contracts* to which a *Strategic Alliance Member* is a party, the *Strategic Alliance Member* may remain a party to the *Strategic Alliance Contract* or it may decide to cease to be a party to the *Strategic Alliance Contract*. If the *Strategic Alliance Member* decides to cease to be a party to the *Strategic Alliance Contract*, it shall inform the *Strategic Alliance Manager* of its decision.
- 23.3 If a *Strategic Alliance Member* is not party to any *Project Contract* due to the *Client* terminating the *Strategic Alliance Member's* obligation to provide works under a *Project Contract* for any reason or reallocating a *Project Contract* to a different *Strategic Alliance Member*, the *Client* may decide to invite that *Strategic Alliance Member* to remain a party to the *Strategic Alliance Contract* or it may decide that the *Strategic Alliance Member* shall cease to be a party to the *Strategic Alliance Contract* from the date of termination of the *Project Contract*. The *Client* (acting reasonably) shall inform the *Strategic Alliance Member* of its decision.
- Resilience Mechanism* 23.4 The *Client* can use the *Resilience Mechanism* to reallocate upcoming *Projects* to different *Strategic Alliance Members*.
- Insolvency Event, Conflict of Interest and Change in Control 23.5 Not used.
- 23.6 If the *Strategic Alliance Member* suffers an Insolvency Event and the *Client* terminates the *Strategic Alliance Member's* obligation to provide works under a *Project Contract*, clause 23.3 shall apply.
- 23.7 The *Client* reserves the right to remove a *Strategic Alliance Member* as a party to the *Strategic Alliance Contract* should it not be satisfied with the *Strategic Alliance Member's* approach or response to the *Compliance Regimes*, conflicts of interest or a *Change in Control*.
- Strategic Alliance Member breach* 23.8 If any *Strategic Alliance Member* breaches the *Strategic Alliance Contract* so as to have a demonstrable adverse effect on the *Strategic Alliance* or the *Strategic Alliance Programme* or any *Project* or *Strategic Alliance Activities* and does not remedy such breach within ten *Working Days* from the date of notice from the *Strategic Alliance Manager* specifying the breach, then, after notifying the *Core Group* and allowing a period of ten *Working Days* from the date of that notification to receive and consider its recommendations, the *Client* may terminate the appointment of the *Strategic Alliance Member* in breach notice with immediate effect.

OFFICIAL

- 23.9 If any *Strategic Alliance Member* has submitted false or misleading information to the *Strategic Alliance Manager* as part of the processes set out in Schedules 4 and 5, including but not limited to, financial information and/or statements within the *Financial Viability Risk Assessment Tool (FVRA)* or in relation to any of the *Good Standing* checks as set out in the *Strategic Alliance Brief*, the *Client* may terminate the appointment of the *Strategic Alliance Member* in breach notice with immediate effect.
- Material Breach
- 23.10 In addition to any other rights and remedies, the *Client* shall have the right to remove a *Strategic Alliance Member* from the *Strategic Alliance Contract* where the *Strategic Alliance Member* is in material breach of its obligations under the *Strategic Alliance Contract*.
- 23.11 Where the *Client* has to remove a *Strategic Alliance Member* from the *Strategic Alliance Contract* under clause 23.10 the *Client* shall have the right to claim such damages as may have been sustained as a result of the *Strategic Alliance Member's* material breach of the *Strategic Alliance Contract*, including but not limited to any costs and expenses incurred by the *Client* in:
- 23.11.1 carrying out any work and/or services and/or supplies governed by the *Strategic Alliance Contract*; or
- 23.11.2 obtaining the works and/or services and/or supplies governed by the *Strategic Alliance Contract* in substitution from another supplier.
- Existing *Project Contracts*
- 23.12 Notwithstanding any termination under this clause 23 all *Project Contracts* in existence at the time of termination shall remain in full force and effect, subject to the termination rights in those *Project Contracts*.
- Other *Strategic Alliance*
- 23.13 Notwithstanding a *Strategic Alliance Member* for any reason ceasing to be a party to the *Strategic Alliance Contract*, as between all other *Strategic Alliance Members* the *Strategic Alliance Contract* shall remain in full force and effect, and, in the event of termination of the appointment of the *Strategic Alliance Manager*, the *Client* shall identify a replacement and all *Strategic Alliance Members* shall enter into a *Joining Agreement* with the replacement *Strategic Alliance Manager*.
- Accrued rights and obligations
- 23.14 Any termination under this clause 23 shall not affect the mutual rights and obligations of the *Strategic Alliance Members* under the *Strategic Alliance Contract* accrued at the date of termination.
- 23.15 Without prejudice to any other rights and obligations in the *Strategic Alliance Contract*, the *Strategic Alliance Members* shall co-operate and provide all assistance reasonably required by the *Client*, the *Strategic Alliance Manager*, the *Collaboration Manager* and/or other *Strategic Alliance Members* in the event the *Client* terminates a *Strategic Alliance Member's* appointment in accordance with this clause 23. The *Strategic Alliance Members* shall comply with any requirements relating to exit management set out in the *Strategic Alliance Documents*, including providing the *Client* and/or the *Strategic Alliance Manager* with access to:
- 23.15.1 information relating to the *Strategic Alliance Programme* in the possession or control of the *Strategic Alliance Member*; and

OFFICIAL

- 23.15.2 members of the *Strategic Alliance Member's* personnel engaged in the performance of the *Strategic Alliance Contract* who are still employed or engaged by the *Strategic Alliance Member*.

24 BANKRUPTCY AND INSOLVENCY

- 24.1 The *Client* may remove a *Strategic Alliance Member's* membership of the *Strategic Alliance Contract*, without paying compensation to the *Strategic Alliance Member*, by giving written notice of such termination to the *Strategic Alliance Member* at any time after any of the following events:

Where the *Strategic Alliance Member* is an individual or a firm

- 24.1.1 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
- 24.1.2 the court making an interim order pursuant to Section 252 of the Insolvency Act 1986; or
- 24.1.3 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 them or their creditors; or
- 24.1.4 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 3 *Working Days* from the date on which the *Strategic Alliance Member* is notified of the presentation; or
- 24.1.5 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
- 24.1.6 where the *Strategic Alliance Member* is either unable to pay their debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The *Client* shall regard the *Strategic Alliance Member* as being unable to pay their debts if:
- (i) they have failed to comply with or to set aside a Statutory demand under Section 268 of the Insolvency Act 1986 within 21 days of service of the Statutory Demand on them; or
 - (A) 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.
- 24.1.7 the presentation of a petition for sequestration in relation to the *Strategic Alliance Member's* estates unless it is withdrawn within 3 *Working Days* from the date on which the *Strategic Alliance Member* is notified of the presentation; or

OFFICIAL

24.1.8 the court making an award of sequestration in relation to the *Strategic Alliance Member's* estates.

Where the *Strategic Alliance Member* is a company registered in England:

24.1.9 the presentation of a petition for the appointment of an administrator; unless it is withdrawn within 3 *Working Days* from the date on which the *Strategic Alliance Member* is notified of the presentation; or

24.1.10 the court making an administration order in relation to the company; or

24.1.11 the presentation of a petition for the winding-up of the company unless it is withdrawn within 3 *Working Days* from the date on which the *Strategic Alliance Member* is notified of the presentation; or

24.1.12 the company passing a resolution that the company shall be wound-up; or

24.1.13 the court making an order that the company shall be wound-up; or

24.1.14 the appointment of a Receiver or manager or administrative Receiver.

Where the *Strategic Alliance Member* is a company registered other than in England, events occur or are carried out which, within the jurisdiction to which they are subject, are similar in nature or effect to those specified in clauses 24.1.9 to 24.1.14 inclusive above.

24.2 Such termination shall be without prejudice to and shall not affect any right of action or remedy which shall have accrued or shall accrue thereafter to the *Client* and the *Strategic Alliance Member*.

25 CORRUPT GIFTS AND PAYMENT OF COMMISSION

25.1 A *Strategic Alliance Member* shall not do, and warrants that in entering the *Strategic Alliance Contract* they have not done any of the following (hereafter referred to as 'prohibited acts'):

25.1.1 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.

25.1.2 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 them or on their behalf, or to their knowledge, unless before the *Strategic Alliance Contract* is

OFFICIAL

made particulars of any such commission and of the terms and clauses of any such agreement for the payment thereof have been disclosed in writing to the *Client*.

25.2 If a *Strategic Alliance Member*, their employees, agents or any *Supply Chain Member* (or anyone acting on their behalf or any of their employees) does any of the prohibited acts or commits any offence under the Bribery Act 2010 with or without the knowledge or *Client* of the *Strategic Alliance Member* in relation to the *Strategic Alliance Contract* or any other contract with the Crown, the *Client* shall be entitled:

25.2.1 to terminate the *Strategic Alliance Contract* and recover from the *Strategic Alliance Member* the amount of any loss resulting from the termination;

25.2.2 to recover from the *Strategic Alliance Member* the amount or value of any such gift, consideration or commission; and

25.2.3 to recover from the *Strategic Alliance Member* any other loss sustained in consequence of any breach of this clause, where the *Strategic Alliance Contract* has not been terminated.

25.3 In exercising its rights or remedies under this clause, the *Client* shall:

25.3.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act or committing of any offence under the Bribery Act 2010;

25.3.2 give all due consideration, where appropriate, to action other than termination of the *Strategic Alliance Contract*, including (without being limited to):

(i) requiring the relevant *Strategic Alliance Member* to procure the termination of a subcontract where the prohibited act or committing of any offence under the Bribery Act 2010 is that of a *Supply Chain Member* or anyone acting on their behalf;

(ii) requiring the relevant *Strategic Alliance Member* to procure the dismissal of an employee (whether their own or that of a *Supply Chain Member* or anyone acting on their behalf) where the prohibited act or committing of any offence under the Bribery Act 2010 is that of such employee.

25.4 Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against the *Strategic Alliance Member* pursuant to this clause.

26 TAX COMPLIANCE

26.1 In this clause 26.1:

26.1.1 "Disclosure of Tax Avoidance Scheme" (DOTAS) means the rules which require a promotor of tax schemes to:

(i) tell HM Revenue & Customs of any specified notifiable arrangements or proposals; and

OFFICIAL

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

26.1.2 “General Anti-Abuse Rules” means:

- (i) the legislation in Part 5 of the Finance Act 2013; and
- (ii) any future legislation introduced into parliament or counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.

26.1.3 “Halifax Abuse Principle” means the principle explained in the Court of Justice of the European Union Case C-255/02 Halifax and others.

26.1.4 “Relevant Tax Authority” means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction which the *Strategic Alliance Member* is established.

26.1.5 “Occasion of Tax Non-Compliance” (OOTNC) means:

- (i) any tax return of the *Strategic Alliance Member* submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
- (ii) a Relevant Tax Authority successfully challenging the *Strategic Alliance Member* under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
- (iii) the failure of an avoidance scheme which the *Strategic Alliance Member* was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; or
- (iv) any tax return of the *Strategic Alliance Member* submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax

OFFICIAL

related offences which is not spent at the date on which the *Strategic Alliance Member* became a party to the *Strategic Alliance Contract* or to a civil penalty for fraud or evasion.

- 26.2 The *Strategic Alliance Member* represents and warrants that at the it became a party to the *Strategic Alliance Contract*, it has notified the *Client* in writing of any OOTNC or any litigation that it is involved in that is in connection with any OOTNC.
- 26.3 If, at any point throughout the duration of the *Strategic Alliance Contract*, an OOTNC occurs, the *Strategic Alliance Member*:
- 26.3.1 notifies the *Client* in writing of such fact within twenty (20) *Working Days* of its occurrence; and
- 26.3.2 promptly provides to the *Client*:
- (i) details of the steps which the *Strategic Alliance Member* 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 *Client* may reasonably require.
- 26.4 For the avoidance of doubt, the obligation in clause 26.3 also applies to OOTNC in non-UK jurisdictions. If the OOTNC occurred in non-UK jurisdictions, the *Strategic Alliance Member* notifies the *Client* and provides a full explanation of the OOTNC and any relevant tax laws and administrative provisions so the *Client* can understand the nature and seriousness of the OOTNC.
- 26.5 Not used.
- 26.6 The *Client* is entitled to remove the *Strategic Alliance Member* from the *Strategic Alliance Contract* in the event that:
- 26.6.1 the warranty given by the *Strategic Alliance Member* pursuant to clause 26.2 is materially untrue; or
- 26.6.2 the *Strategic Alliance Member* commits a material breach of its obligations to notify the *Client* of any OOTNC as required by clause 26.3; or
- 26.6.3 the *Strategic Alliance Member* fails to provide details of proposed mitigating factors which in the reasonable opinion of the *Client*, are acceptable.
- 26.7 In the event that the *Client* removes the *Strategic Alliance Member* from the *Strategic Alliance Contract* in accordance with clause 26.6, the *Client* is entitled to recover from the *Strategic Alliance Member*:
- 26.7.1 the amount of any loss resulting from the termination; and
- 26.7.2 any other loss sustained in consequence of any breach of this clause 26, where the *Strategic Alliance Member* has not been removed from the *Strategic Alliance Contract*.
- 26.8 In exercising its rights or remedies under this clause 26, the *Client*:
- 26.8.1 acts in a reasonable and proportionate manner taking into account, amongst other things:

OFFICIAL

26.8.2 the gravity and duration of the OOTNC and any sanctions imposed by a court or tribunal; and

26.8.3 any remedial action taken by the *Strategic Alliance Member* to prevent reoccurrence of the OOTNC.

without prejudice to clause 26.7, seriously considers, where appropriate, action other than removing the *Strategic Alliance Member* from the *Strategic Alliance Contract* to deal with the failure by the *Strategic Alliance Member* to comply with this clause 26.

27 JURISDICTION, PROBLEM-SOLVING AND DISPUTE RESOLUTION

- Disputes 27.1 Should any *Strategic Alliance Member* consider it has a dispute or disagreement with the *Client* under or in connection with the *Strategic Alliance Contract*, it shall ask the *Strategic Alliance Manager* to attempt to resolve the dispute or disagreement.
- Escalation of dispute/
disagreement 27.2 Should the dispute or disagreement remain unresolved within twenty-eight (28) *Working Days* of having been referred to the *Strategic Alliance Manager*, the *Strategic Alliance Manager* may either:
- 27.2.1 refer the dispute or disagreement to the *Core Group* or the *JPB* as appropriate, and the *Core Group* or *JPB* as appropriate shall attempt to resolve the dispute; or
- 27.2.2 refer the dispute or disagreement to an arbitrator in accordance with clause 27.4.
- Adjudication 27.3 Although the *Strategic Alliance Members* agree that neither the *Strategic Alliance Agreement* nor the *Strategic Alliance Contract* are “construction contracts” as defined in the Housing Grants, Construction and Regeneration Act 1996, should the dispute remain unresolved twenty-eight *Working Days* after the process in clause 27.2.1, any dispute can be referred to an adjudicator appointed by the Chartered Institute of Arbitrators who shall act in accordance with the Dispute Adjudication Board Rules of the Joint Contracts Tribunal and the latest edition of the Institution of Civil Engineers Arbitration Procedure published by the Institution of Civil Engineers.
- Arbitration 27.4 Subject to clause 27.2.2, any dispute which cannot be resolved by clauses 27.1 to 27.3 can be referred to an arbitrator nominated (on the application of any *Supply Chain Member*) by the Institution of Civil Engineers, One Great George Street, London, SW1P 3AA. Any arbitrator so appointed shall be conducted in accordance with the latest edition of the Institution of Civil Engineers Arbitration Procedure published by the Institution of Civil Engineers at the time the arbitrator is appointed.
- Law and Jurisdiction 27.5 The *Strategic Alliance Contract* is governed by the laws of England and Wales as stated in the *Strategic Alliance Agreement*.

OFFICIAL

APPENDIX 1

DEFINITIONS (see clause 1.8)

In the *Strategic Alliance Documents* the following words and expressions have the following meanings, whether used in the singular or the plural and whatever their gender, and cross-references are to clauses of the *Strategic Alliance Contract Terms* unless stated otherwise:

Additional Strategic Alliance Member – an additional *Strategic Alliance Member* with which the *Strategic Alliance Members* enter into a *Joining Agreement* under clause 1.17;

Alternative Ranking Table - has the meaning given in Schedule 5 of the *Strategic Alliance Agreement*;

BAU Collaboration Hub Activities – has the meaning given in the *Collaboration Hub Brief* as set out in Annex 4 of the *Strategic Alliance Brief*;

BIM – building information modelling;

BIM Requirements – has the meaning given in the *Scope*;

Budget Agreement Document - the document contained in Part 4 to Schedule 4 of the *Strategic Alliance Agreement* and used in accordance with Schedule 4.

CCS Framework Agreement - has the meaning given in clause 5.1;

Client – the party named in the *Strategic Alliance Agreement* to fulfil the role of *Client* as described in the *Strategic Alliance Documents*;

Change in Control – a change, by means of the holding of shares, the possession of voting powers in, or in relation to, a *Supply Chain Member* and/or a change arising by virtue of any powers conferred by the constitutional, corporate or other documents regulating the *Supply Chain Member*;

Collaboration Hub - the platform set up to facilitate the undertaking and completion of *Strategic Alliance Activities* and such other activities described within the *Strategic Alliance Documents*, as set out in the *Strategic Alliance Brief*;

Collaboration Hub Activities – the *BAU Collaboration Hub Activities* and *Non-BAU Collaboration Hub Activities* set out Annex 4 to the *Strategic Alliance Brief* and undertaken within the *Collaboration Hub*;

Collaboration Hub Brief – the document contained in Annex 4 to the *Strategic Alliance Brief*;

OFFICIAL

Collaboration Manager – the party appointed by the *Client* to fulfil the role of *Collaboration Manager* as described in the *Strategic Alliance Brief*;

Collaboration Implementation Plan- the Collaboration Implementation Plan as detailed in section Part 1 of Schedule 3 of the *Strategic Alliance Agreement*;

Collaborative Relationship Objectives - the collaborative relationship objectives as set out in Part One to Schedule 3 of the *Strategic Alliance Agreement*;

Completion – has the meaning given in the *Project Contract Conditions*;

Compliance Regime – has the meaning given in the *Project Contract Conditions* and is contained in each *Strategic Alliance Member's* tender contained in Schedule 1, or such other compliance regime as a *Strategic Alliance Member* may from time to time be required to comply with in accordance with clause 1.4;

Consensus – unanimous agreement following reasoned discussion;

Contract BIM Execution Plan - the plan provided by the *Strategic Alliance Members* in accordance with Schedule 4 of the *Strategic Alliance Agreement*;

Contract Date – has the meaning given in the *Project Contract Conditions*;

Core Group – the individuals identified in the *Strategic Alliance Agreement* or in a *Joining Agreement* as *Core Group* members, subject only in each case to agreement of changes and alternates in accordance with clause 1.12.1;

Customer Satisfaction Survey - has the meaning given in the *Scope*;

Cyber Risk Assessment Questionnaire – has the meaning given in the *Project Contract Conditions* except for clause 12 where it has the meaning given therein;

Cyber Risk Profile - has the meaning given in the *Project Contract Conditions* except for clause 12 where it has the meaning given therein;

Defects - has the meaning given in the *Project Contract Conditions*;

Defects Certificate – has the meaning given in the *Project Contract Conditions*;

Defects Correction Period – has the meaning given in the *Project Contract Conditions*;

Defects Date - has the meaning given in the *Project Contract Conditions*;

OFFICIAL

Definitions – the definitions set out in this Appendix 1;

Defined Cost – has the meaning given in the *Project Contract Conditions*;

During Project Failure - has the meaning given in clause 2 Part One of Schedule 5 of the *Strategic Alliance Agreement*;

Early Warning – early warning in accordance with clause 1.14;

End of Phase Completion Documents - has the meaning given in the *Scope*;

Environment – all and any land, water and air including air within any natural or man-made structure above or below ground;

Financial Viability Risk Assessment Tool or (FVRA) - the tool that the *Strategic Alliance Member* submits as part of the *Good Standing* checks as described in the *Strategic Alliance Brief*.

Framework Contract – the Crown Commercial Service Construction Works and Associated Services 2 (CWAS2)/ProCure 23 (P23) framework alliance contract dated 21st day of March 2022 (ref. RM 6267);

Good Industry Practice - has the meaning given in the *Project Contract Conditions*;

Good Standing – has the meaning given in Schedule 4 of the *Strategic Alliance Agreement* and the *Strategic Alliance Brief*;

Improved Value – improved value consistent with the *Objectives*, which may include improved cost and/or time certainty, cost and/or time savings, improved quality, improved *Operation*, improved staff and other resources, improved health and safety and other working procedures, improved *Sustainability*, improved efficiency, improved profitability and other benefits to *Strategic Alliance Members, Users* and *Stakeholders*;

Incentive Schedule - has the meaning given in the *Project Contract Conditions*;

Incentive Schedule KPI Reporting Tool - has the meaning given in the *Project Contract Conditions*;

Initial Project Budget - means the initial project budget provided by the *Strategic Alliance Manager* to a *Strategic Alliance Member* in accordance with clause 1 of Part Two or Part 3 of Schedule 4 of the *Strategic Alliance Agreement*;

Insolvency Event – a reason identified under clause 24;

OFFICIAL

Insurance Premium Tax – has the meaning given in the *Project Contract Conditions*;

Insurance Table – the insurance table set out in Appendix 4 and the *Strategic Alliance Member's* part of Schedule 1 of the *Strategic Alliance Agreement*;

Intellectual Property Rights – all intellectual property rights (including, without limitation, patents, trademarks, designs, design rights, copyright, inventions, trade secrets, know-how and confidential information) and all applications for protection of any of those rights;

Joining Agreement – an agreement executed by the *Strategic Alliance Members* with an *Additional Strategic Alliance Member* based on the form set out in Appendix 2;

Joint Improvement Team or **JIT** - the group described in the *Joint Relationship Management Plan* and with the responsibilities as set out therein;

Joint Knowledge Management Plan – has the meaning given in the *Joint Relationship Management Plan*;

Joint Partner Board or **JPB** - the group described in the *Joint Relationship Management Plan* and with the responsibilities as set out therein;

Joint Relationship Management Plan or **JRMP**- the Joint Relationship Management Plan as detailed in Part 1 to Schedule 3 of the *Strategic Alliance Agreement* and based on the template Joint Relationship Management Plan contained in Appendix 3;

Key Dates – has the meaning given in the *Project Contract Conditions*;

Key Persons – has the meaning given in the *Project Contract Conditions*;

KPI – Key Performance Indicator;

KPI Measure – in respect of each *KPI*, the *KPI Measure* as set out in Part 3 to Schedule 3 of the *Strategic Alliance Agreement*;

KPI Performance Review Rating – means the review rating given to the *Strategic Alliance Member's* performance by the *Strategic Alliance Manager* in accordance with *Strategic Alliance Performance Measures* contained in Part 3 to Schedule 3 of the *Strategic Alliance Agreement*;

KPI Reporting Tool - has the meaning given in the *Project Contract Conditions*;

KPI Target – in respect of each *KPI*, the *KPI Target* as set out in Part 3 to Schedule 3 of the *Strategic Alliance Agreement*;

OFFICIAL

Live Pricing Workbook - each *Strategic Alliance Member's* live pricing workbook contained in Schedule 1 of the *Strategic Alliance Agreement*, based on the template contained in Part 6 of Schedule 4 of the *Strategic Alliance Agreement*, and updated in accordance with Schedule 4 and the guidance contained therein.

Major Project Packages - are the major project packages which form part of the *Strategic Alliance Programme* and are described in the *Strategic Alliance Brief*;

Non-BAU Collaboration Hub Activities – has the meaning given in the *Collaboration Hub Brief* as set out in Annex 4 of the *Strategic Alliance Brief*;

Notice to Proceed – has the meaning given in the *Project Contract Conditions*;

Notice to Proceed Criteria – has the meaning given in the *Project Contract Conditions*;

Objectives – the agreed objectives of the *Strategic Alliance* and the *Strategic Alliance Programme* and of the *Strategic Alliance Members* in respect of the *Strategic Alliance* and the *Strategic Alliance Programme* as set out in Part 1 of Schedule 3 to the *Strategic Alliance Agreement*, including the *Collaborative Relationship Objectives*, the *Joint Business Objectives* and any objectives set out within the *Strategic Alliance Brief*;

Operation – use, occupation, operation, maintenance, repair, alteration and demolition of a *Project*;

Other Framework Agreement – has the meaning given in clause 5.2;

Partnership – a business entity creating joint and several liability between its members;

Performance Measures – the *Performance Measures*, as set out in Part 2 of Schedule 3 of the *Strategic Alliance Agreement* and as set out in the *Project Contract Conditions*;

Performance Recovery Action Plan – the *Performance Recovery Plan* as detailed in Part 3 to Schedule 3 of the *Strategic Alliance Agreement*;

Performance Scores – the *Performance Scores* as set out in Part 2 to Schedule 3 of the *Strategic Alliance Agreement*;

Performance Thresholds – the *Performance Thresholds* as set out in Part 2 to Schedule 3 of the *Strategic Alliance Agreement*;

Phase 1 – has the meaning given in the *Project Contract Conditions*;

Phase 1a – has the meaning given in the *Project Contract Conditions*;

OFFICIAL

Phase 1a Fee Cap – has the meaning given in the *Project Contract Conditions*;

Phase 1b – has the meaning given in the *Project Contract Conditions*;

Phase 1b Fee Cap – has the meaning given in the *Project Contract Conditions*;

Phase 2 – has the meaning given in the *Project Contract Conditions*;

Plant and Materials – has the meaning given in the *Project Contract Conditions*;

Pre-Project Failure – has the meaning given in clause 2 Part One of Schedule 5 of the *Strategic Alliance Agreement*;

Pricing Tool - the *Pricing Tool* provided by the *Strategic Alliance Manager* to a *Strategic Alliance Member* in accordance with Part 3 to Schedule 4 of the *Strategic Alliance Agreement* based on the template pricing tool contained in Part 5 to Schedule 4 of the *Strategic Alliance Agreement*;

Pricing Workbook - the *Pricing Workbook* contained in each *Strategic Alliance Member's* tender contained in Schedule 1 of the *Strategic Alliance Agreement*;

Project – a *Project* forming part of the *Strategic Alliance Programme* as described in the *Strategic Alliance Brief*;

Project Brief – the *Project Brief* provided by the *Strategic Alliance Manager* to the *Strategic Alliance Member* in accordance with Part 2 or Part 3 of Schedule 4 of the *Strategic Alliance Agreement*;

Project Budget – the budget for a *Project* agreed in accordance with the process as set out in Schedule 4 of the *Strategic Alliance Agreement*;

Project Contract – a contract awarded by the *Client* to any *Strategic Alliance Member* in respect of a *Project* in accordance with the *Framework Contract* and based on the *Project Documents*;

Project Contract Conditions – the terms and conditions governing a *Project Contract* and as set out in Schedule 2 of the *Strategic Alliance Agreement*;

Project Contract Process – the *Project Contract Process* as set out in Schedule 4 of the *Strategic Alliance Agreement*;

Project Data Sheets – means the *Project* data sheets contained in Annex 2 of the *Strategic Alliance Brief*;

OFFICIAL

Project Documents – the documents used in creating each *Project Contract* and contained in Schedule 2 of the *Strategic Alliance Agreement* including the *Project Contract Conditions*;

Project Manager- the party named as fulfilling the role of *Project Manager* under the *Project Contract*, subject to replacement;

Project Specific Scope - the document provided to the *Strategic Alliance Member* by the *Strategic Alliance Manager* in accordance with Part 2 or Part 3 of Schedule 4 of the *Strategic Alliance Agreement*;

Quotation Information - the *Quotation Information* as set out in Part 2 and 3 to Schedule 4 of the *Strategic Alliance Agreement*;

Ranking Table – a *Ranking Table* as set out in Part 2 of Schedule 5 of the *Strategic Alliance Agreement*;

Regional Packages - are the regional packages which form part of the *Strategic Alliance Programme* and are described in the *Strategic Alliance Brief*;

Relevant Strategic Alliance Member – has the meaning given in Schedule 4 of the *Strategic Alliance Agreement*;

Required Insurances - has the meaning given in the *Project Contract Conditions* except for clause 18, Appendix 4 and the *Strategic Alliance Member's* part of Schedule 1 of the *Strategic Alliance Agreement* where it has the meaning given therein;

Resilience Mechanism – the *Resilience Mechanism* set out in Part 1 of Schedule 5 of the *Strategic Alliance Agreement* used by the *Client* to reallocate *Projects* to different *Strategic Alliance Members*;

Risk Management – a structured approach to ensure that risks are identified at the earliest opportunity, that their potential impacts are allowed for and that by agreed actions such risks and/or their impacts are eliminated, reduced, insured, shared or apportioned;

Risk Register – the *Risk Register* set out in Schedule 7 of the *Strategic Alliance Agreement* and updated in accordance with clause 9.4, describing recognised risks and agreed *Risk Management* actions in relation to the *Strategic Alliance Programme* and agreed *Strategic Alliance Activities*;

Scope – has the meaning given in the *Project Contract Conditions*;

Security Aspects Letter – has the meaning given in the *Project Contract Conditions* except for clause 13 and 14 where it has the meaning given therein;

OFFICIAL

Senior Executive Responsible or **SER** - has the meaning given in the *Joint Relationship Management Plan* and is any of the individual(s) named therein;

Service Alliance – the *Service Alliance* created between the *Service Alliance Members* and governed by the *Service Alliance Contract*;

Service Alliance Brief – the document forming part of the *Service Alliance Contract* describing the scope and nature of the *Service Alliance* including the key purposes of the *Service Alliance*, how it operates and of the *Service Projects* comprising the *Service Alliance Programme*. It also provides guidance on other aspects of the *Service Alliance Contract* as described therein;

Service Alliance Contract – the *Service Alliance Contract* created by and between the *Service Alliance Members* by executing the *Service Alliance Agreement* and any *Joining Agreements*;

Service Alliance Documents – the documents comprising the *Service Alliance Contract*;

Service Alliance Manager - the party named in the *Service Alliance Contract* to fulfil the role of *Service Alliance Manager*;

Service Alliance Members – the *Client*, the *Service Alliance Manager*, and all other parties who execute the *Service Alliance Agreement* (and any additional service alliance members who execute a joining agreement in accordance with the terms set out in the *Service Alliance Contract*);

Service Alliance Programme – the services governed by the *Service Alliance Contract*, as described in the *Strategic Alliance Brief*;

Service Collaboration Manager - the party appointed by the *Client* under the *Service Alliance Contract* to fulfil the role of *Service Collaboration Manager* as described in the *Strategic Alliance Brief*;

Service Projects - a *Service Project* forming part of the *Service Alliance Programme* as described in the *Strategic Alliance Brief*;

Stakeholder –any one or more organisations or groups of individuals, as stated in the *Strategic Alliance Agreement* by reference to clause 1.16, or as advised by the *Strategic Alliance Manager*, who are not *Strategic Alliance Members* and who have an interest relating to the *Strategic Alliance Programme*;

Strategic Alliance – the *Strategic Alliance* created between the *Strategic Alliance Members* and governed by the *Strategic Alliance Contract*;

Strategic Alliance Activities – any activities agreed to be performed by *Strategic Alliance Members* under clause 5 in order to achieve *Improved Value* consistent with the *Objectives*, including

OFFICIAL

Collaboration Hub Activities, agreed *Supply Chain Collaboration*, agreed *Non-BAU Collaboration Hub Activities* and education, agreed exchanges of information, and agreed integration, adaptation and standardisation of roles, expertise and responsibilities but not including activities in support of the *Collaborative Relationship Objectives* or activities as set out within the *Joint Relationship Management Plan*;

Strategic Alliance Activities Implementation Plan – the Strategic Alliance Activities Implementation Plan described in the *Strategic Alliance Brief*;

Strategic Alliance Agreement – the *Strategic Alliance Agreement* executed by the *Strategic Alliance Members*;

Strategic Alliance Brief – the document forming part of the *Strategic Alliance Contract* describing the scope and nature of the *Strategic Alliance* including the key purposes of the *Strategic Alliance* and how it interfaces with the *Service Alliance*, how it operates and of the *Projects* comprising the *Strategic Alliance Programme*. It also provides guidance on other aspects of the *Strategic Alliance Contract* as described therein.

Strategic Alliance Contract – the *Strategic Alliance Contract* created by and between the *Strategic Alliance Members* by executing the *Strategic Alliance Agreement* and any *Joining Agreements*;

Strategic Alliance Contract Terms – the terms of the *Strategic Alliance Contract*;

Strategic Alliance Documents – the documents comprising the *Strategic Alliance Contract* as set out in the *Strategic Alliance Agreement* subject to addition and amendment in accordance with any *Joining Agreements* and the provisions of the *Strategic Alliance Contract*;

Strategic Alliance Key Persons - a *Strategic Alliance Member's Strategic Alliance Key Persons* as set out in the *Strategic Alliance Member's Key Persons Schedule* contained in Schedule 1 of the *Strategic Alliance Agreement*;

Strategic Alliance KPI Reporting Tool - the *Strategic Alliance KPI Reporting Tool* contained in Part 4 to Schedule 3 of the *Strategic Alliance Agreement* to and used in accordance with Part Two to Schedule 3 of the *Strategic Alliance Agreement*;

Strategic Alliance Manager – the party named in the *Strategic Alliance Agreement* to fulfil the role of *Strategic Alliance Manager* as described in clauses 3.1 and 3.2, subject to replacement in accordance with clause 23.13;

OFFICIAL

Strategic Alliance Member Failure – has the meaning given in Schedule 5 of the *Strategic Alliance Agreement*;

Strategic Alliance Members – the *Client*, the *Strategic Alliance Manager*, all other parties who execute the *Strategic Alliance Agreement* and any *Additional Strategic Alliance Members* who execute *Joining Agreements*;

Strategic Alliance Performance Improvement Notice - the *Strategic Alliance Performance Improvement Notice* issued in accordance with Part 2 of Schedule 3 in the form contained in Part 5 to Schedule 3 of the *Strategic Alliance Agreement*;

Strategic Alliance Programme – the works and/or services and/or supplies governed by the *Strategic Alliance Contract*, as described in the *Strategic Alliance Documents*;

Supply Chain – any party or parties providing to one or more *Strategic Alliance Members* works or services or supplies of goods, materials or equipment;

Supply Chain Member – any party to a *Supply Chain*;

Supply Chain Collaboration –any activities agreed to be performed by *Strategic Alliance Members* under clause 6.3, in line with the supply chain principles contained in Annex 3 of the *Strategic Alliance Brief*, in order to achieve *Improved Value* through more consistent, longer term, larger scale *Supply Chain Contracts* and/or through other improved *Supply Chain* commitments and/or working practices;

Supply Chain Contract – a contract entered into between a *Strategic Alliance Member* and any of its *Supply Chain*;

Sustainability – measures intended to reduce carbon emissions, to reduce use of energy and or natural and manmade resources, to improve waste management, to improve employment and training opportunities, or otherwise to protect or improve the condition of the *Environment* or the well-being of people;

Technical Services Provider Packages – are the technical service provider packages which forms part of the *Service Alliance Programme* and are described in the *Strategic Alliance Brief*;

Tender Commitments – the commitments contained in a *Strategic Alliance Member's* tender contained in Schedule 1 of the *Strategic Alliance Agreement* and any subsequent amendments;

Timetable – the *Timetable* set out in Schedule 6 of the *Strategic Alliance Agreement* and updated in accordance with clause 2.7 stating agreed deadlines, gateways and milestones in respect of the *Strategic Alliance Programme*, achievement of the *Objectives* and the timescales for *Strategic Alliance Activities*;

OFFICIAL

User – any person or party using a *Project*;

Weighted KPI Scores - the weighted *KPI* scores as set out in Part 3 of Schedule 3 of the *Strategic Alliance Agreement* and Schedule 5 of the *Project Contract Conditions*;

Working Day – a day other than Saturdays, Sundays and public and statutory holidays in the country in which the *Project* is located, privilege days notified in writing by the *Client* to the *Strategic Alliance Members* at least 10 Working Days in advance; and such periods of holiday closure of a *Strategic Alliance Member's* premises of which the *Client* is given written notice by the *Strategic Alliance Member* at least 10 Working Days in advance.

OFFICIAL

APPENDIX 2

FORM OF JOINING AGREEMENT
(see clauses 1.17 and 23.13)

THIS JOINING AGREEMENT is made the _____ day of _____

IN RELATION TO THE DEFENCE ESTATE OPTIMISATION PORTFOLIO
(the *Strategic Alliance Programme*)

BETWEEN _____ (the *Additional Strategic Alliance Member*) and the *Strategic Alliance Members* named below to a *Strategic Alliance Contract* dated _____ (the *Strategic Alliance Contract*)

WHO AGREE that words and expressions in this *Joining Agreement* shall have the same meanings as in the *Strategic Alliance Contract*, and that with effect from _____ the *Additional Strategic Alliance Member* shall be a party to the *Strategic Alliance Contract* and that the *Additional Strategic Alliance Member's* role, expertise and responsibilities, its *Core Group* member, its agreed insurances and any additional and amended *Strategic Alliance Documents* shall be as set out in the *Project Contract*.

The role, expertise and responsibilities of the *Additional Strategic Alliance Member* are:

The *Core Group* member nominated by *Additional Strategic Alliance Member* is:

OFFICIAL

The insurances of the *Additional Strategic Alliance Member* are as set out in clause 18 of the *Strategic Alliance Contract Terms and the Project Contract*.

The additional and amended *Strategic Alliance Agreement* and other *Strategic Alliance Documents* are:

[Executed by the Client, the Additional Strategic Alliance Member and all other Strategic Alliance Members]

OFFICIAL

APPENDIX 3

JOINT RELATIONSHIP MANAGEMENT PLAN TEMPLATE

[See separate attachment]

OFFICIAL

APPENDIX 4

INSURANCES

- 1 Third Party Public and Products Liability Insurance
 - 1.1 Insured
Strategic Alliance Member
 - 1.2 Interest
To indemnify the insured (as specified in paragraph 1.1 above) in respect of all sums that the insured (as specified in paragraph 1.1 above) may become legally liable to pay whether contractually or otherwise (including claimant's costs and expenses) as damages in respect of accidental;
 - 1.2.1 death or bodily injury, illness or disease contracted by any person;
 - 1.2.2 loss or damage to property;
 - 1.2.3 interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities;
 - 1.2.4 happening during the period of insurance (as specified in paragraph 1.8 below) and arising out of or in connection with the *Strategic Alliance Contract*.
 - 1.3 Limit of indemnity
Not less than fifty million pounds (£50,000,000) in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but in the annual aggregate in respect of products or pollution liability (to the extent insured by the policy).
 - 1.4 Maximum deductible threshold
Not to exceed £ [To be determined by the parties] each and every occurrence of third party property damage.
[Maximum deductible thresholds will need to be proposed as part of the contracting process. See insurance requirements of response table.]
 - 1.5 Territorial limits
United Kingdom and elsewhere in the world in respect of non manual visits.
 - 1.6 Period of insurance
From the effective date of the *Strategic Alliance Contract* until the completion of the *Strategic Alliance Contract* and thereafter in respect of defects liability until expiry of the defects liability period.
 - 1.7 Cover features and extensions
 - 1.7.1 Munitions of war
 - 1.7.2 Cross liability clause

OFFICIAL

- 1.7.3 Contingent motor vehicle liability
- 1.7.4 Legal defence costs
- 1.7.5 Waiver of subrogation in accordance with clause 18.9.3
- 1.7.6 Indemnity to principals clause in accordance with clause 18.9.4
- 1.7.7 Health & Safety at Work Act(s) clause
- 1.7.8 Data protection legislation clause
- 1.7.9 Defence appeal and prosecution costs relating to the Corporate Manslaughter and Corporate Homicide Act 2007
- 1.8 Principal exclusions
 - 1.8.1 War and related perils.
 - 1.8.2 Nuclear/radioactive risks.
 - 1.8.3 Liability for death, illness, disease or bodily injury sustained by employees of the insured (as specified in paragraph 1.1 above) arising out of the course of their employment.
 - 1.8.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.
 - 1.8.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the insured (as specified in paragraph 1.1 above).
 - 1.8.6 Liability in respect of loss or damage to property in the care, custody and control of the insured (as specified in paragraph 1.1 above) but this exclusion is not to apply to all property belonging to the *Client* which is in the care, custody and control of the insured (as specified in paragraph 1.1 above).
 - 1.8.7 Events more properly covered under a professional indemnity insurance policy (as specified in paragraph 2 below).
 - 1.8.8 Liability arising from the ownership, possession or use of any aircraft or marine vessels.
 - 1.8.9 Liability arising from pollution and contamination unless caused by a sudden, unintended, unexpected and accidental occurrence.
 - 1.8.10 Liability arising from toxic mould.
 - 1.8.11 Liability arising from asbestos.
 - 1.8.12 Cyber risks.

2 Professional Indemnity Insurance

2.1 Insured
Strategic Alliance Member

2.2 Interest
To indemnify the insured (as specified in paragraph 2.1 above) for all sums which the insured (as specified in paragraph 2.1 above) may become legally liable to pay (including claimant's costs and expenses) as a result of any claim or claims first made against the insured (as specified in paragraph 2.1 above) during the period of insurance (as specified in paragraph 2.6 below) by reason of any act, error and/or omission arising from or in connection with professional services, advice, design and specification in relation to the *Strategic Alliance Contract*.

2.3 Limit of Indemnity
Not less than fifteen million pounds (£15,000,000) in respect of any one claim, and in the annual aggregate during the period of insurance (in paragraph 2.6 below).

2.4 Maximum deductible threshold
Not to exceed £ [To be determined by the parties] each and every claim. [Maximum deductible thresholds will need to be proposed as part of the contracting process. See insurance requirements of response table.]

2.5 Territorial limits
United Kingdom.

2.6 Period of insurance
From the effective date of the *Strategic Alliance Contract* for the duration of the *Strategic Alliance Contract* renewable on an annual basis unless agreed otherwise by the parties and a period of twelve (12) years following the expiry or termination of the *Strategic Alliance Contract* whichever occurs earlier.

2.7 Cover features and extensions

2.7.1 Legal liability assumed under the *Strategic Alliance Contract* t, duty of care agreements and collateral warranties.

2.7.2 Retroactive cover from the effective date of the *Strategic Alliance Contract* or retroactive date no later than the effective date of the *Strategic Alliance Contract* in respect of any policy provided on a claims made form of policy wording.

2.8 Principal exclusions

2.8.1 War and related perils.

2.8.2 Nuclear/radioactive risks.

2.8.3 Insolvency of the insured (as specified in paragraph 2.1 above).

OFFICIAL

2.8.4 Bodily injury, sickness, disease or death sustained by any employee of the insured (as specified in paragraph 2.1 above).

3 Contractors Pollution Liability

3.1 Insured
Strategic Alliance Member

3.2 Interest
To indemnify the insured (as specified in paragraph 3.1 above) in respect of all sums that the insured (as specified in paragraph 3.1 above) may become legally liable to pay consequent to a pollution incident and/or action by a relevant authority (including but not limited to a local authority, Environmental Agency or any judicial authority) or a third party, including the *Client*, and resulting in a claim or claims first made against the insured (as specified in paragraph 3.1 above) and reported to the insurer during the policy period. A pollution incident relates to either pollution in existence at the effective date of the *Strategic Alliance Contract* disturbed or in some way aggravated, released or made worse by the insured (as specified in paragraph 3.1 above) or pollution caused by the insured (as specified in paragraph 3.1 above) in connection with the execution of the works subsequent to the commencement of the relevant works.

3.3 Limit of indemnity
Not less than [five million £5,000,000 in respect of any one occurrence and not less than fifteen (£15,000,00)] in the aggregate during the policy period, the policy period not to exceed three years unless agreed otherwise by the parties.

3.4 Maximum deductible threshold
Not to exceed [To be determined by the parties] for each and every loss.
[Maximum deductible thresholds will need to be proposed as part of contracting process. See insurance requirements of response table.]

3.5 Territorial limits
The site and off site migration of contamination from the site.

3.6 Period of insurance
From the effective date of the *Strategic Alliance Contract* for the duration of the *Strategic Alliance Contract* (the policy period not to exceed three years unless agreed otherwise by the parties).

3.7 Cover features and extensions

3.7.1 Regulatory or third party claims for on site clean-up of pre-existing and new causes arising from the act or omission of the insured (as specified in paragraph 3.1 above above).

3.7.2 Regulatory or third party claims for off-site clean-up of pre-existing and new causes arising from the act or omission of the insured (as set out in paragraph 3.1 above).

3.7.3 Third party claims for on-site and off-site property damage from pre-existing and new causes arising from the act or omission of the insured (as set out in in paragraph 3.1 above).

3.7.4 Legal costs.

OFFICIAL

- 3.7.5 Retroactive cover from the effective date of the *Strategic Alliance Contract* or retroactive date no later than the effective date of the *Strategic Alliance Contract* in respect of any policy provided on a claims made form of policy wording.
- 3.7.6 Liability arising from the works, subject to their inclusion within the definition of covered operations under the policy.
- 3.8 Principal exclusions
- 3.8.1 War and related perils.
- 3.8.2 Nuclear/radioactive risks but this exclusion shall not apply to naturally occurring materials that may become a pollution cause as a consequence of relocation.
- 3.8.3 Asbestos (exclusion not to extend to asbestos remediation costs with respect to soil and groundwater).
- 3.8.4 Deliberate, wilful and intentional non-compliance with any statutory regulation ordinance or instruction of any government agency or body, or executive, judicial or administrative order.
- 3.8.5 Criminal fines and penalties.
- 3.8.6 Terrorism.
- 4 Policies to be taken out as required by United Kingdom law.
- Parties to the *Strategic Alliance Contract* are required to meet their statutory insurance obligations in full. Insurances required to comply with all statutory requirements including, but not limited to, Employers' Liability Insurance and Motor Third Party Liability Insurance.
 - The limit of indemnity for the Employers' Liability Insurance shall not be less than ten million pounds (£10,000,000) any one occurrence, the number of occurrences being unlimited during any annual period of insurance or such greater amount as is required by the applicable law for the duration of the *Strategic Alliance Contract* or such greater period as is required by law.
 - The statutory insurances to contain an indemnity to principals clause in respect of claims made against the *Client* arising out of the performance of the *Strategic Alliance Member* of its duties under the *Strategic Alliance Contract* in accordance with clause 18.9.4
 - The insurance will be maintained from the effective date of the *Strategic Alliance Contract* throughout the period of the *Strategic Alliance Contract*.

OFFICIAL

APPENDIX 5

PART 1

Annex to clause 13 (Security Measures)

Provisions to Be Included In Relevant Subcontracts

Definitions

1 In this Annex:

- (a) 'Secret Matter' means any matter connected with the Agreement, or its performance which the First Party informs the Second Party in writing has been designated by the Client as "TOP SECRET" or "SECRET" and includes any information concerning the content of such matter and anything which contains or may reveal that matter.
- (b) 'Employee' includes any person who is an employee or director of the Second Party or who occupies the position of a director of the Second Party, by whatever title given.
- (c) The 'Client' means the Secretary of State for Defence.
- (d) GovS 007: Security means the Government Functional Standard GovS 007: Security relating to the government's expectations for protecting:
 - (i) the government's people, information and assets;
 - (ii) visitors to government property, and third-party suppliers while engaged on government business; and
 - (iii) citizen data.
- (e) 'Strategic Alliance Manager' is the project manager who is named as such in the Agreement.

The Official Secrets Acts

2 The Second Party:

- (a) takes all reasonable steps to ensure that all Employees engaged on any work in connection with the Agreement have notice that the Official Secrets Acts 1911-1989 applies to them and will continue so to apply after the defects date or termination of the Agreement; and
- (b) if directed by the First Party or the Client, ensures that any Employee signs a statement acknowledging that, both throughout the duration of the Agreement and after the defects date or termination, it is bound by the Official Secrets Acts 1911-1989 (and where applicable any other legislation).

Security Measures

3 Unless it has the written authorisation of the Client to do otherwise, neither the Second Party nor any of its Employees, either before or after the defects date or termination of the Agreement, does or permits to be done anything which they know or ought reasonably to know

OFFICIAL

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 Client has notified the Second Party in writing that the Secret Matter is not to be disclosed to or acquired by that person;
- (d) who is not an Employee of the Second Party;
- (e) who is an Employee of the Second Party and has no need to know the information for the proper performance of the Agreement.

4 Unless it has the written permission of the Client to do otherwise, the Second Party and its Employees, both before and after the completion or termination of the Agreement, takes all reasonable steps to ensure that.

- (a) no photograph of, or pertaining to, any Secret Matter is taken and no copy of or extract from any Secret Matter is made except to the extent necessary for the proper performance of the Agreement;
- (b) any Secret Matter is at all times strictly safeguarded in accordance with the GovS 007: Security (as amended from time to time) and upon request is delivered up to the Client who is entitled to retain it.

A decision of the Client on the question of whether the Second Party has taken or is taking reasonable steps as required by this clause, is final and conclusive.

5 The Second Party:

- (a) provides to the Client:
 - (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 sub-clause 4b;
 - (ii) upon request, such information as the Client may from time to time require so as to be satisfied that the Second Party and its Employees are complying with its obligations under this clause, including the measures taken or proposed by the Second Party so as to comply with its obligations and to prevent any breach of them;
 - (iii) full particulars of any failure by the Second Party and its Employees to comply with any obligations relating to Secret Matter arising under this Annex immediately upon such failure becoming apparent;
- (b) ensures that, for the purpose of checking the Second Party's compliance with the obligation in sub-clause 4.b, a representative of the First Party or the Client is entitled at any time to enter and inspect any premises used by the Second Party which are in any way connected with the Agreement and inspect any document or thing in any such premises, which is being used or made for the purposes of the Agreement. Such representative is entitled to all such information as it may reasonably require.

OFFICIAL

- 6 If at any time either before or after completion or termination of the Agreement, the Second Party 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 Second Party forthwith informs the Client of the matter with full particulars thereof.

Subcontracts

- 7 If the Second Party proposes to make a subcontract which will involve the disclosure of Secret Matter to the subcontractor, the Second Party:
- (a) submits for acceptance of the Strategic Alliance Manager the name of the proposed subcontractor, a statement of the work to be carried out and any other details known to the Second Party which the Client reasonably requires;
 - (b) incorporates into the subcontract the terms of this clause and such secrecy and security obligations as the Client directs
 - (c) informs the Strategic Alliance Manager immediately if it becomes aware of any breach by the subcontractor of any secrecy or security obligation and, if requested to do so by the Client, terminates the Agreement.

Termination

- 8 The First Party is entitled to terminate the Agreement immediately if:
- (a) the Second Party is in breach of any obligation under this Annex; or
 - (b) the Second Party is in breach of any secrecy or security obligation imposed by any other contract with the Crown;

where the Client considers the circumstances of the breach jeopardises the secrecy or security of the Secret Matter and notifies its contractor accordingly.

OFFICIAL

PART 2

Annex to clause 15 (Transparency): Publishable Performance Information

- 1 If instructed to do so by the *Strategic Alliance Manager*, the *Strategic Alliance Member* shall within three (3) months of such instruction, provide to the *Strategic Alliance Manager* for its acceptance (such acceptance is not be unreasonably withheld or delayed) a draft Publishable Performance Information KPI Data Report consistent with the content requirements of DEFFORM 539B. The *Strategic Alliance Manager* shall provide a template of DEFFORM 539B with the instruction.
- 2 If the *Strategic Alliance Manager* or *Client* does not accept any draft Publishable Performance Information the *Strategic Alliance Member* shall submit a revised version of the relevant KPI Data Report for further acceptance by the *Strategic Alliance Manager* within five (5) *Working Days* of receipt of any notice or non-acceptance, taking account of any recommendations for revision and improvement to the report provided by the *Strategic Alliance Manager*. This process is repeated until the parties have an agreed version of the Publishable Performance Information.
- 3 The *Strategic Alliance Member* shall provide an accurate and up-to-date version of the KPI Data Report to the *Strategic Alliance Manager* for each quarter at the frequency referred to in the agreed DEFFORM 539B.
- 4 Any dispute in connection with the preparation and/or acceptance of Publishable Performance Information, other than under clause 2 of this Annex, shall be resolved in accordance with dispute resolution procedure provided for in the *Strategic Alliance Contract*.
- 5 The requirements of this Annex are in addition to any other reporting requirements in the *Strategic Alliance Contract*.

OFFICIAL

PART 3

Annex to clause 12 (Cyber)

1 Definitions

In this Annex, the following words and expressions have the following meanings:

- Associated Company means:
 - any associated company of the Subcontractor from time to time within the meaning of Section 449 of the Corporate Tax Act 2010 or any subordinate legislation; and
 - any parent undertaking or subsidiary undertaking of the Subcontractor from time to time within the meaning of section 1162 Companies Act 2006 and it is further agreed that where the ownership of shares in any such undertaking have been pledged or transferred to a third party by way of security, the original parent shall still be considered a member of the subsidiary undertaking.
- Cyber Risk Profile means the level of cyber risk relating to this Subcontract or any lower tier Subcontract assessed in accordance with the Cyber Security Model.
- Cyber Implementation Plan means the plan referred to in clause 2 of this Annex.
- Cyber Security Incident means an event, act or omission which gives rise or may give rise to:
 - unauthorised access to an information system or electronic communications network on which MOD Identifiable Information resides;
 - disruption or change of the operation (including but not limited to takeover of control) of an information system or electronic communications network on which MOD Identifiable Information resides;
 - unauthorised destruction, damage, deletion or the change of MOD Identifiable Information residing in an information system or electronic communications network;
 - unauthorised or unintentional removal or limiting the possibility to use MOD Identifiable Information residing in an information system or electronic communications network; or
 - the appropriation, publication, dissemination or any other use of non-public MOD Identifiable Information by persons unauthorised to do so.
- Cyber Security Instructions means DEFSTAN 05-138, together with any relevant ISN and specific security instructions relating to this Subcontract issued by the MOD to the Prime Contractor.
- Cyber Security Model (CSM) means the process by which the MOD ensures that MOD Identifiable Information is adequately protected from Cyber Security Incident and includes the CSM Risk Assessment Process, DEFSTAN 05-138 and the CSM Supplier Assurance Questionnaire conducted via the Supplier Cyber Protection Service.
- CSM Risk Assessment Process means the risk assessment process which forms part of the Cyber Security Model and is used to measure the Cyber Risk Profile for this Subcontract and any lower tier Subcontract.
- CSM Supplier Assurance Questionnaire means the supplier assessment questionnaire which forms part of the Cyber Security Model and is to be used by the Subcontractor to demonstrate compliance with these clauses.
- Data means any data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media.
- DEFSTAN 05-138 means the Defence Standard 05-138 as amended or replaced from time to time.
- Electronic Information means all information generated, processed, transferred or otherwise dealt with under or in connection with this Subcontract, including but not limited

OFFICIAL

to Data, recorded or preserved in electronic form and held on any information system or electronic communications network.

- Good Industry Practice means in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgment and the making of any expenditure that would reasonably be expected from a skilled person in the same type of undertaking under the same or similar circumstances.
- ISN means Industry Security Notices issued by the MOD to the Prime Contractor whether directly or by issue on the gov.uk website at: <https://www.gov.uk/government/publications/industry-security-notices-isns>.
- JSyCC WARP means the Joint Security Co-ordination Centre MOD Defence Industry Warning, Advice and Reporting Point or any successor body notified by way of ISN.
- MOD means the UK Ministry of Defence of 1 Horseguards, London acting by [XX] project team at [insert contact details].
- MOD Identifiable Information means all Electronic Information which is attributed to or could identify an existing or proposed MOD capability, defence activities or personnel and which the MOD requires to be protected against loss, misuse, corruption, alteration and unauthorised disclosure.
- Prime Contract means [contract reference] [insert details of prime contract] made between the MOD and the Prime Contractor.
- Prime Contractor means the Contractor named in the Prime Contract with MOD.
- Prime Contractor Deliverables means the works, goods and/or the services, including packaging (and certificate(s) of conformity and supplied in accordance with any quality assurance requirements if specified) which the Prime Contractor is required to provide under the Prime Contract.
- NSA/DSA means, as appropriate, the National or Designated Security Authority of the Prime or Subcontractor that is responsible for the oversight of the security requirements to be applied by the Prime or Subcontractor and for ensuring compliance with applicable national security regulations.
- Sites means any premises from which Prime Contractor Deliverables are provided in connection with this Subcontract or from which the Subcontractor or any relevant lower tier Subcontractor manages, organises or otherwise directs the provision of the Prime Contractor Deliverables and/or use of any sites from which the Subcontractor or any relevant lower tier Subcontractor generates, processes stores or transmits MOD Identifiable Information in relation to this Subcontract.
- Subcontract means any subcontract at any level of the supply chain, whether this Subcontract which is awarded directly by the Prime Contractor or any related subcontract which is awarded by the Subcontractor or any lower tier Subcontractor or Associated Company as a consequence of or in connection with this Subcontract.
- Subcontractor means a subcontractor of the Prime Contractor or any Associated Company whether a direct Subcontractor or at any lower level of the supply chain who provides any Prime Contractor Deliverables in connection with the Prime Contract but only to the extent that the Subcontractor processes, stores or transmits MOD Identifiable Information under their Subcontract;
- Supplier Cyber Protection Service means the tool incorporating the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire.

2 Subcontractor Obligations

- 2.1 the Subcontractor ensures that and procures that its lower tier Subcontractors:
- (a) comply with DEFSTAN 05-138 or, where applicable, the Cyber Implementation Plan attached to this Subcontract and for the avoidance of doubt any Cyber Implementation Plan is prepared and implemented in accordance with Good Industry Practice taking account of any risk-balance case and any mitigation measures required by the MOD and the Prime Contractor and ensures that any measures taken to protect MOD

OFFICIAL

Identifiable Information are no less stringent than those taken to protect their own proprietary information;

- (b) complete the CSM Risk Assessment Process in accordance with the MOD and the Prime Contractor's instructions, ensuring that any change in the Cyber Risk Profile is notified to the MOD, the Prime Contractor and any affected lower tier Subcontractor, and complete a further CSM Risk Assessment or CSM Supplier Assurance Questionnaire where a change is proposed to the supply chain or on receipt of any reasonable request by the MOD;
- (c) re-perform the CSM Supplier Assurance Questionnaire no less than once in each year of this Subcontract commencing on the first anniversary of completion of the CSM Supplier 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 these clauses in accordance with Good Industry Practice provided always that where there is a conflict between the Subcontractor's obligations under sub-clause 2.1a and this sub-clause 2.1d the Subcontractor notifies the Prime Contractor and the MOD in accordance with the notification provisions in DEFSTAN 05-138 as soon as it becomes aware of the conflict and the MOD determines which standard or measure takes precedence;
- (e) comply with all Cyber Security Instructions notified to it by the MOD and/or the Prime Contractor 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 Prime Contractor and the Subcontractor's NSA/DSA, immediately in writing as soon as they know or believe that a Cyber Security Incident has or may have taken place providing initial 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 MOD, the Prime Contractor and their agents and representatives 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 includes complying with any reasonable technical or organisational security measures deemed appropriate by the MOD and the relevant Prime and/or Subcontractor's NSA/DSA in the circumstances and taking into account the Cyber Risk Profile;
- (h) consent to the MOD recording and using information obtained via the Supplier Cyber Protection Service in relation to this Subcontract for the purposes of the Cyber Security Model which includes any agreed Cyber Implementation Plan. For the avoidance of doubt such information includes the cyber security accreditation of the Subcontractor and/or lower tier Subcontractor as appropriate; and
- (i) include provisions equivalent to this clause in all lower tier Subcontracts ("the equivalent provisions") and, where a lower tier Subcontractor breaches terms implementing this clause in a Subcontract, the Subcontractor procures and procures that their lower tier Subcontractors, in exercising their rights or remedies under the relevant Subcontract:

OFFICIAL

- notify the Prime Contractor and the MOD of any such breach and consult with the Prime Contractor and the MOD regarding any remedial or other measures which are proposed as a consequence of such breach, taking the MOD's views into consideration; and
- have regard to the equivalent provisions.

3 Records

- 3.1 The Subcontractor keeps and maintains, and ensures that any lower tier Subcontractor keeps and maintains, until twelve (12) years after termination or expiry of the contract or final payment under this Subcontract, 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, including but not limited to any information used to inform the CSM Risk Assessment Process and to carry out the CSM Supplier Assurance Questionnaire, together with any certificates issued to the Subcontractor and/or any lower tier Subcontractor; and
 - (b) copies of all documents demonstrating compliance with 2.1e and in relation to any notifications made under 2.1f and/or investigation under 2.1g.
- 3.2 The Subcontractor ensures, and ensures that any lower tier Subcontractor upon request, provides the MOD, the MOD's representatives and/or the relevant Prime or Subcontractor's NSA/DSA such access to those records under 3.1 as may be required in connection with the contract.

4 Audit

- 4.1 In the event of a Cyber Security Incident the Subcontractor agrees that the MOD and its representatives, in coordination with the relevant Prime or Subcontractor'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 carried out by the Subcontractor to resolve the Cyber Security Incident and to mitigate the effects, to ensure that the Cyber Security Incident is resolved to the satisfaction of the MOD and the NSA/DSA.
- 4.2 In addition to the rights in 4.1, the Subcontractor agrees that the MOD, its representatives and/or the relevant Prime or Subcontractor's NSA/DSA, either solely or in any combination, may at any time during a period of six (6) years after termination or expiry of this Subcontract or final payment under the Subcontract, whichever is the later, but not more than once in any calendar year, conduct an audit for the following purposes where the Subcontractor 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 Subcontractor's and/or any lower tier Subcontractor's compliance with its obligations under DEFSTAN 05-138 or a Cyber Implementation Plan; and
 - (c) to review any records created during the provision of the Prime Contractor Deliverables, including but not limited to any documents, reports and minutes which refer or relate to the Prime Contractor Deliverables for the purposes of sub-clauses 3.1a and 3.1b.

OFFICIAL

- 4.3 The MOD, acting reasonably and having regard to the confidentiality and security obligations owed by the Subcontractor to third parties, proposes the scope of each audit in writing with a view to seeking the agreement of the Subcontractor but makes the ultimate decision on the scope. For the avoidance of doubt the scope of the audit does not grant the MOD any unsupervised access to any of the Subcontractor's information systems or electronic communications networks. The MOD and the Prime Contractor use their reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Subcontractor and/or lower tier Subcontractor or delay the provision of the Prime Contractor Deliverables and supplier information received in connection with the audit is treated as confidential information.
- 4.4 The Subcontractor ensures, and ensures that any lower tier Subcontractor, on demand, provides the MOD and any relevant regulatory body, including the relevant Prime or Subcontractor'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 MOD within the permitted scope of the audit;
 - (b) reasonable access to any Sites controlled by the Subcontractor or any Associated Company and any lower tier Subcontractor used in the performance of the Subcontract to the extent required within the permitted scope of the audit and, where such Sites are outwith the control of the Subcontractor, secures sufficient rights of access for the Auditors as are necessary to allow audits to take place; and
 - (c) access to any relevant staff.
- 4.5 Where the Prime Contractor is provided with notice of the audit by the MOD and/or relevant NSA/DSA, the Prime Contractor endeavours to (but is not obliged to) provide at least fifteen (15) calendar days' notice of its intention to conduct an audit.
- 4.6 The parties agree to bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material breach of the terms of this clause by the Subcontractor and/or a lower tier Subcontractor in which case the Subcontractor reimburses the Prime Contractor and the MOD as appropriate for all the reasonable costs incurred in the course of the audit.
- 4.7 The Subcontractor, in their lower tier Subcontracts, procures rights for the MOD to enforce the terms of sub-clauses this clause 4 in accordance with the Contracts (Rights of Third Parties) Act 1999.

5 General

- 5.1 On termination or expiry of this Subcontract, the provisions of this Annex continue in force so long as the Subcontractor and/or and lower tier Subcontractor holds any MOD Identifiable Information relating to this Subcontract.
- 5.2 Termination or expiry of this Subcontract does not affect any rights, remedies, obligations or liabilities of the parties under this Annex that have accrued up to the date of termination or expiry, including but not limited to the right to claim damages in respect of any breach of this Subcontract which existed at or before the date of termination or expiry.
- 5.3 The Subcontractor agrees that the MOD has absolute discretion to determine changes to DEFSTAN 05-138 or the Cyber Risk Profile or both and issue new or updated Cyber

OFFICIAL

Security Instructions. In the event that there is such a change to DEFSTAN 05-138 or the Cyber Risk Profile or both, then the Subcontractor may seek an adjustment to the contract price from the Prime Contractor for any associated increase or decrease in costs and the Subcontractor may request an extension of time for compliance with such revised or amended DEFSTAN 05-138 or Cyber Risk Profile or both provided always that the Subcontractor seeks 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 are not allowed unless they are considered to be appropriate, attributable to this Subcontract and reasonable in all the circumstances.

- 5.4 The Subcontractor does not recover any costs and/or other losses under or in connection with this Annex where such costs and/or other losses are recoverable or have been recovered by the Subcontractor elsewhere in this Subcontract or otherwise. For the avoidance of doubt, this includes but is not 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 Subcontractor is able to or has recovered such sums in any other provision of this Subcontract or has recovered such costs and/or losses in other contracts between the Subcontractor and the Prime Contractor or with other bodies.