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**Defence  
Infrastructure  
Organisation**

## **BOOKLET 2**

### **CONDITIONS OF CONTRACT**

#### **IN RELATION TO**

#### **FACILITIES MANAGEMENT OPERATIONS AFRICA - FMO(A)**

**CONTRACT NUMBER: 709303453**

Facilities Management Operations Africa – FMO(A) – Contract No 709303453  
NEC4 TSC Schedule of Amendments

Dated: 13 September 2024

Booklet 2 – Conditions of Contract

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This is one of six booklets as listed below that together, comprise of the Facilities Management Operations Africa – FMO(A)

DOCUMENT No.	TITLE
Booklet 1 of 6	DEFFORM 47 ( <i>Only Included at Invitation to Tender</i> )
Booklet 2 of 6	Conditions of Contract (including Contract data) Schedule of Amendments to NEC4 TSC Option A (as amended)
Booklet 3 of 6	Requirements Information – Hard FM
Booklet 3.5 of 6	Requirements Information – Soft FM
Booklet 4 of 6	Client Supplied Data
Booklet 5 of 6	Pricing Information
Booklet 6 of 6	Contractors Plan

### Document Change Record

Version	Date	Detail	Issued
V1.0	13 Sep 24	Issued at Contract Award	13 Sep 24

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**DATED 13 September 2024**

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

**AND**

**RA International FZCO (2)**

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**INCORPORATING NEC4 TERM  
SERVICE CONTRACT 2017 OPTION  
A (AS AMENDED) AND BY THE  
SCHEDULE OF AMENDMENTS**

**IN RELATION TO  
FACILITIES MANAGEMENT  
OPERATIONS AFRICA – FMO(A)  
CONTRACT**

**CONTRACT NUMBER:  
709303453**

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Facilities Management Operations Africa – FMO(A) – Contract No 709303453  
NEC4 TSC Schedule of Amendments

Dated: 13 September 2024

Booklet 2 – Conditions of Contract

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### Booklet 2 – Annexes;

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Annex S	DEFFORM 539B (Publishable Performance Information)
Annex T	Task Order 1097/1

**Option Z: Schedule of Amendments to the core clauses  
and additional conditions**

Z1 The following is incorporated as part of the *conditions of contract* and in the event of a conflict with any other term, the terms of this Schedule take precedence:

For ease of reference, unamended clauses featuring in the standard NEC4 TSC Documentation have been included in grey. Should there be any discrepancy between these unamended clauses and those in standard NEC4 TSC Documentation (as edited October 2020) those in the standard documentation shall take precedence.

**CORE CLAUSES**

**1. GENERAL**

**10. Actions**

- 10.1 The Parties and the *Service manager* shall act as stated in this contract.
- 10.2 The Parties and the *Service manager* act in a spirit of mutual trust and co-operation.

**11 Identified and defined terms**

**11.1 In this Contract:**

- 11.1.1 terms and phrases defined in Annex A (*Identified and Defined Terms*) shall have the meanings given to them in that Annex and are used in this Contract with capital initials; and
- 11.1.2 terms defined in the Contract Data are in italics and defined terms have capital initials.

**12 Interpretation and the Law**

**12.1 In this Contract, except where the context shows otherwise:**

- 12.1.1 words in the singular also mean in the plural and the other way around and words in the one gender also mean in each other gender;
- 12.1.2 a reference to any Clause, Sub-clause, Part, paragraph, Module, Appendix, Leaflet, section, Annex or Appendix is, except where it is expressly stated to the contrary, a reference to such Clause, Sub-clause, Part, Paragraph, Module, Appendix, Leaflet, section, Annex or Appendix of this Contract;
- 12.1.3 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words;
- 12.1.4 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
- 12.1.5 the words "day" and "month" mean calendar day and calendar month unless otherwise stated;
- 12.1.6 any references to time shall be to Greenwich Mean Time (GMT), unless otherwise stated;

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- 12.1.7 the phrase “reasonable endeavours” shall be taken to mean “an obligation to do whatever could reasonably be done in the circumstances to fulfil the obligation concerned by:
- (i) a responsible and reasonably funded contractor acting in accordance with Good Industry Practice (in the case of the *Contractor*); or
  - (ii) a responsible customer receiving the *services* (in the case of the *Client*);
- 12.1.8 references to any treaties, statutes or statutory provisions, legislation or legislative provisions will be construed as references to the same as they may be amended from time to time amended, modified or re-enacted; and
- 12.1.9 headings of Clauses, Sub-clauses, Part, paragraph, Module, Appendix, Leaflet, section or Annex are for convenience only and do not affect the interpretation of this Contract.
- 12.2 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the Law of England and Wales.
- 12.3 Without prejudice to Clause 96 (*Dispute Resolution Procedure*), each Party hereby irrevocably submits and agrees to the exclusive jurisdiction of the courts of England and Wales to resolve any actions, proceedings, controversy or claim (including non-contractual disputes or claims) of whatever nature arising out of or relating to this Contract or breach thereof.
- 12.4 Other jurisdictions may apply solely for the purpose of giving effect to this Clause and for the enforcement of any judgement, order or award given under English jurisdiction.
- 12.5 This Contract constitutes the entire agreement between the Parties and supersedes any previous agreements, assurances, warranties, representations and understandings between the Parties for the *services*. Any *services* or Works undertaken by the *Contractor* prior to the date of this Contract will be deemed to have been undertaken pursuant to the terms of this Contract.
- 12.6 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.

### **International Nature**

- 12.7 If any provision of this Contract is inconsistent to any extent with any provision of an international treaty to which the United Kingdom is a party, then:
- 12.7.1 such provision shall (to the extent that it is inconsistent with such international treaty) be given no effect and shall be deemed not to be included in this Contract but without invalidating any of the remaining provisions in this Contract; and
  - 12.7.2 the Parties shall endeavour to replace the relevant provision with a substitute provision which is not inconsistent with the international treaty in question and the effect of which is as close as possible to the intended effect of the provision deemed not to be included in this Contract.

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### 12.8 Where the context requires:

- 12.8.1 any reference to a statute, or statutory provisions, legislation or legislative provisions will be construed as a reference to the substantially equivalent statute, statutory provision, or legislative provision or common law in Host Nation Law; and
- 12.8.2 any reference to a regulatory body will be construed as a reference to a body performing the substantially equivalent role in the Host Nation.

### 12.9

- 12.9.1 The Contract shall be governed by and interpreted in accordance with English law.
- 12.9.2 Any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all foreign jurisdictions save that a foreign jurisdiction may apply solely for the purposes of giving full effect to this Clause and for the enforcement of any judgement order or award given under the English jurisdiction. Each Party to the Contract irrevocably submits to the jurisdiction provided for under this Clause.
- 12.9.3 Each Party hereby warrants to each other that entry into the Contract does not and performance thereof will not in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it; and that the Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.
- 12.9.4 Each Party hereby agrees with each other Party that the provisions of this Clause shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.
- 12.9.5 The *Contractor* irrevocably appoints the solicitors or other persons in England and Wales, specified in the Contract as its agents to accept on its behalf service of all process and other documents of whatever description to be served on the *Contractor* in connection with any litigation or arbitration within the English jurisdiction arising out of or relating to the Contract or any issue connected therewith.

## 13 **Communications**

- 13.1 Each notice, instruction, certificate, submission, proposal, record, acceptance, notification, reply and other communication relating to this Contract (a “**Communication**”) shall be communicated in a form which can be read, copied and recorded. Writing will be in the language of this Contract.
- 13.2 A Communication will be effective when it is deemed to have been received in accordance with Clause 13.3.
- 13.3 A Communication shall be deemed to have been received:



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- 13.3.1 if sent by registered post (or airmail, if appropriate), on the third (3<sup>rd</sup>) Working Day (or on the tenth (10<sup>th</sup>) Working Day, in the case of airmail) after the day of posting;
- 13.3.2 if sent by email:
- (i) if transmitted between 09.00 and 17:00 hours on a Working Day (recipient's time); or
  - (ii) if transmitted at any other time, at 09.00 on the first (1st) Working Day (recipient's time) following the transmission.
- 13.4 The addresses (including email addresses) of each Party to which all Communications shall be sent are those specified in the Contract Data, or such other address as either Party may by written Communication specify to the other for the purpose of this Clause 13 (*Communications*).
- 13.5 If this Contract requires the *Service Manager* or the *Contractor* to reply to a communication, unless otherwise stated in this Contract and/or an alternative period is stated by the *Service Manager*, the reply shall be due within the *period for reply*.
- 13.6 The *Service Manager* shall reply to a Communication submitted or resubmitted to the *Service Manager* by the *Contractor* for acceptance. If the *Service Manager's* reply is not acceptance, the *Service Manager* shall state the reasons and the *Contractor* shall resubmit the Communication within the *period for reply* taking account of these reasons. A reason for withholding acceptance may include that more information is needed in order to assess the *Contractor's* submission fully.
- 13.7 The *Service Manager* may extend the *period for reply* to a Communication if the *Service Manager* and the *Contractor* agree to the extension before the reply is due. The *Service Manager* shall notify the *Contractor* of the extension which has been agreed.
- 13.8 The *Service Manager* issues the certificates to the *Client* and the *Contractor*.
- 13.9 A notification which this Contract requires will be communicated separately from other Communications.
- 13.10 The *Service Manager* may withhold acceptance of a submission by the *Contractor*. Withholding acceptance for a reason stated in this Contract is not a Compensation Event in accordance with Clause 60 (*Compensation Events*).

## 14 The Service Manager

- 14.1 The *Service Manager's* acceptance of a Communication from the *Contractor* or of its work does not change the *Contractor's* responsibility to Provide the Service or its liability for its plan or its design.
- 14.2 Save for actions under Clause 19D (*Contract Changes and Additional Services*), Clause 19 (*Task Order Management Process*), Clause 45 (*Defects Liability*) and Annex B (*Change Management Process*) (unless, in respect of such provisions, the *Client* has given its prior written approval), the *Service Manager* may, after notifying the *Contractor*, delegate any of its actions and may cancel any delegation. A reference to an action of the *Service Manager* in this Contract includes an action by its delegate.

- 14.3 The *Service Manager* may give an instruction to the *Contractor* in accordance with the Contract Change Management Process which changes the Service Information (including removing a Level 1 Asset and/or Level 2 Asset from the *services*). This does not constitute a Compensation Event in accordance with Clause 60 (*Compensation Events*) but the effect on the Prices (if any) will be determined in accordance with Booklet 5 and the Contract Change Management Process.
- 14.4 The *Client* may replace the *Service Manager* after it has notified the *Contractor* in writing of the name of the replacement.

## 15 **Early Warnings**

- 15.1 The *Contractor* and the *Service Manager* shall issue an Early Warning in accordance with this Clause 15 (*Early Warnings*) as soon as either becomes aware of any matter which could:
- 15.1.1 increase the total of the Prices;
  - 15.1.2 cause a delay to the date for carrying out and completing the *service* or any part of the *service*;
  - 15.1.3 be a Compensation Event;
  - 15.1.4 impair the effectiveness of the *services* or any part of the *service*;
  - 15.1.5 result in a Contract Change and/or Additional Services.

The *Service Manager* or the *Contractor* may give an early warning by notifying the other of any other matter which could increase the *Contractor's* total cost. The *Service Manager* enters early warning matters in the Early Warning Register. Early warning of a matter for which a compensation event has previously been notified is not required.

- 15.2 The *Service Manager* prepares a first Early Warning Register and issues it to the *Contractor* within one week of the starting date. The *Service Manager* instructs the *Contractor* to attend a first early warning meeting within two weeks of the starting date.

Later early warning meetings are held;

- if either the *Service Manager* or *Contractor* instructs the other to attend an early warning meeting, and, in any case,
- at no longer interval than the interval stated in the Contract Data until the end of the *Service Period*.

The *Service Manager* or *Contractor* may instruct other people to attend an early warning meeting if the other agrees. A *Subcontractor* attends an early warning meeting if its attendance would assist in deciding the actions to be taken.

- 15.3 At an early warning meeting, those who attend co-operate in
- making and considering proposals for how the effects of each matter in the Early Warning Register can be avoided or reduced,
  - seeking solutions that will bring advantage to all those who will be affected,
  - deciding on the actions which will be taken and who, in accordance with the contract, will take them,

- deciding which matters can be removed from the Early Warning Register and
  - reviewing actions recorded in the Early Warning Register and deciding if different actions need to be taken and who, in accordance with the contract, will take them.
- 15.4 The Service Manager revises the Early Warning Register to record the decisions made at each early warning meeting and issues the revised Early Warning Register to the Contractor within one week of the early warning meeting. If a decision needs a change to the Scope, the Service Manager instructs the change at the same time as the revised Early Warning Register is issued.

**16 Contractor's proposals [Not Used]**

**17 Ambiguities and Inconsistencies**

- 17.1 The *Service Manager* or the *Contractor* shall notify the other as soon as either becomes aware of any ambiguity, mistake, inaccuracy, discrepancy or omission in the design of the *services* or in the Service Information or any other document forming part of this Contract.
- 17.2 The *Service Manager* shall give an instruction as to how the ambiguity, mistake, inaccuracy, discrepancy or omission is to be dealt with. Compliance with such an instruction by the *Contractor* shall not constitute a Compensation Event.
- 17.3 The *Contractor* shall not be entitled to any additional payment or reimbursement in respect of:
- 17.3.1 any instruction given pursuant to Clause 17.1 or
  - 17.3.2 the ambiguity, mistake, inaccuracy, discrepancy or omission in relation to which such instruction was given.

**18 Fraud and Prevention of Corruption**

- 18.1 Without prejudice to Clause 19M (*Disclosure of Information*), Clause 19Y (*Security Measures*) and Annex E (*Fraud Prevention Manual*) and associated appendices, the *Contractor* shall immediately report to the *Client* any circumstances within its own organisation, that of any Sub-Contractor, the Guarantor or the *Client* or otherwise in relation to this Contract which:
- 18.1.1 gives or may give rise to Fraud; and/or
  - 18.1.2 indicates the possibility of Fraud,
- and shall provide all such relevant information which may assist the *Client* in dealing with such report efficiently and effectively.
- 18.2 The *Contractor* shall immediately report to the *Client* any act or omission, whether fraudulent, inadvertent or accidental, which has resulted or could result in the *Client* being charged for Works and/or *services* which have not been carried out.

- 18.3 The *Client* shall be entitled to terminate the *Contractor's* employment under this Contract in accordance with Clause 90 (*Termination*) in the event that the *Contractor*, any Contractor Related Party, the Parent Company and/or any other Party for whom it is responsible commits an act of Fraud or Theft or, without prejudice to any other right of the *Client* to terminate this Contract, the *Contractor* has fraudulently misreported KPIs under the Performance Management Regime.
- 18.4 The *Contractor* shall:
- 18.4.1 immediately notify the *Client* in writing if any investigations are instituted into the affairs of the *Contractor*, its partners or key managers under the Companies, Financial Services and Markets or Banking Acts and/or in the event that there are any UK, MOD or Host Nation police or Serious Fraud Office enquiries into possible Fraud, any involvement in the Department for Business, Energy and Industrial Strategy ("**BEIS**") investigations, and enquiries into the affairs of others or any investigations by the professional or regulatory body of the *Contractor* which might result in public criticism of the *Contractor*; and
  - 18.4.2 fully co-operate and comply with any investigations and enquiries referred to in Clause 18.4.1 (*Fraud and Prevention of Corruption*) and any other investigations or enquiries initiated by the *Client*, the Defence Fraud Unit, the National Audit Office, the police, or any other organisation identified by the *Client* and/or any organisation acting on behalf of them.
- 18.5 The *Client* will be entitled to set-off, deduct, abate or recover as a debt against the *Contractor* all monies and losses howsoever arising in connection with or sustained as a consequence of Fraud including all associated investigation costs.
- 18.6 Any Fraud related actions under this Clause 18 (*Fraud and Prevention of Corruption*) may be brought by the *Client* or such other appropriate body by civil or criminal proceedings. Such proceedings will be brought in the English courts unless the Parties otherwise agree.
- 18.7 The *Contractor* shall and shall ensure that any Sub-Contractor shall comply with its obligations set out in section 6 (*Fraud Prevention*) of Module A-01 of the Requirements Information - Booklet 3.

#### **Corrupt Gifts and Payments of Commission**

- 18.8 In addition to Clause 18 (*Fraud and Prevention of Corruption*), the *Contractor* shall not do, and warrants that in entering this Contract it has not done any of the following (hereafter referred to as "**Prohibited Acts**"):
- 18.8.1 offer, promise, give or agree to give to any Crown servant any gift or financial 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;
  - 18.8.2 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 it or on its behalf, or to its knowledge, unless before the contract is made particulars of any such commission and of the terms and conditions of any such

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agreement for the payment thereof have been disclosed in writing to the *Client*.

- 18.9 If the *Contractor*, a Contractor Related Party or anyone acting on its behalf does any of the Prohibited Acts or commits any offence under the Bribery Act 2010 and/or any bribery and/or anti-corruption legislation of the Host Nation with or without the knowledge or authority of the *Contractor* in relation to this Contract or any other contract with the Crown, the *Client* shall be entitled:
- 18.9.1 to terminate the *Contractor's* employment under this Contract in accordance with Clause 90 (*Termination*) and recover from the *Contractor* the amount of any loss resulting from the termination;
  - 18.9.2 to recover from the *Contractor* the amount or value of any such gift, consideration or commission; and
  - 18.9.3 to recover from the *Contractor* any other loss sustained in consequence of any breach of this Clause 18.8 (*Corrupt Gifts and Payments of Commission*), where this Contract has not been terminated.
- 18.10 In exercising its rights or remedies under this Clause 18.8 (*Corrupt Gifts and Payment of Commission*), the *Client* shall:
- 18.10.1 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 and/or any bribery and/or anti-corruption legislation of the Host Nation;
  - 18.10.2 give all due consideration, where appropriate, to action other than termination of the *Contractor's* employment under this Contract, including;
    - (i) requiring the *Contractor* to procure the termination of a Sub-Contract where the Prohibited Act or committing of any offence under the Bribery Act 2010 and/or any bribery and/or anti-corruption legislation of the Host Nation is that of a Sub-Contractor or anyone acting on its or their behalf; or
    - (ii) requiring the *Contractor* to procure the dismissal of an employee (whether its own or that of a Sub-Contractor or anyone acting on its behalf) where the Prohibited Act or committing of any offence under the Bribery Act 2010 and/or any bribery and/or anti-corruption legislation of the Host Nation is that of such employee.
- 18.11 Recovery action taken against any person in His Majesty's service will be without prejudice to any recovery action taken against the *Contractor* pursuant to this Clause 18.8 (*Corrupt Gifts and Payments of Commission*).

## 19 **Task Order Management Process**

### **Approval of Task Order Proposals**

- 19.1 The provisions of this Clause 19 (*Task Order Management Process*) and the Requirements Information - Booklet 3, Module F, section F18 (*F1097/1 Process*) shall apply in relation to the proposal, review and, where applicable, approval of Task Order Proposals in relation to the provision of Additional Services and/or adjustments to any Exercised Option.

- 19.2 All Task Order Proposals shall be prepared and delivered by the *Contractor* in accordance with the provisions of this Clause 19 (*Task Order Management Process*) and the Requirements Information - Booklet 3, Module F, paragraph F18 (*F1097/1 Process*).
- 19.3 Where a Task Order Proposal has been approved by the *Client* pursuant to this Clause 19 (*Task Order Management Process*) and the Requirements Information - Booklet 3, Module F, section F18 (*F1097/1 Process*), then the Additional Services to be carried out and performed by the *Contractor* as set out in the approved Task Order shall (unless otherwise directed by the *Service Manager*) be deemed to become part of the *services* and the *Contractor* shall update the relevant parts of this Contract to reflect the agreed changes to this Contract as permitted in accordance with this Clause 19 (*Task Order Management Process*) and Booklet 2, Annex B (*Change Management Process*).
- 19.4 The *Client* requires that any Additional Services having an estimated value in excess of the threshold value as determined in Booklet 5 – Pricing Information must be competed in accordance with Booklet 3, Module L. In addition, the *Client* reserves the right to require the *Contractor* to subject any Additional Services of any value to competition. The *Client* reserves the right at any time to instruct the *Contractor* to provide evidence demonstrating the use of the competition in obtaining the Task Order Price for the Additional Services.
- 19.5 The *Client* has no obligation to instruct Additional Services and reserves absolutely the right to have any such Works and/or services carried out or supplied by other contractors or with its own labour, or not to carry out such Work or services at all. Further, the *Client* accepts no obligations as to the actual amount of Additional Services which may be instructed pursuant to this Clause 19 (*Task Order Management Process*) and does not guarantee minimum or maximum amount of Additional Services or the instruction of any Additional Services at all.
- 19.6 The *Service Manager* shall provide such information as may be reasonably required by the *Contractor* to enable it to develop any Task Order Proposal, provided that the *Service Manager* shall not be obliged to provide such information:
- 19.6.1 where this may cause the *Client* to be in breach of Law; and/or
- 19.6.2 where such information is otherwise confidential to the *Client*.
- 19.7 The *Contractor* acknowledges and agrees that where the *Service Manager* provides such information pursuant to Clause 19.6, the *Service Manager's* agreement to provide such information may be subject to such conditions as the *Service Manager* may require
- 19.8 Without prejudice to Clause 20 (*Providing the Service*), the *Client* gives no warranty or undertaking of whatever nature in respect of such information provided pursuant to Clauses 19.6 and/or 19.7, nor does the *Client* warrant that such information represents all of the information in its possession or power relevant or material to the development of a Task Order Proposal and the *Client* shall not be liable to the *Contractor* for any failure to make available such information to the *Contractor* or update such information or of any inaccuracy, error, defect, inadequacy or omission in relation to such information.

**19A Contractor Presence on the Affected Property**

- 19A.1 The *Client* shall provide to the *Contractor* access to the facilities at the Affected Property as set out in Booklet 4 (*Client Supplied data*) for the purpose of Providing the Service.
- 19A.2 The facilities referred to in Clause 19A.1 (*Contractor Presence on the Affected Property*) may, at the discretion of the Head of Establishment and subject to any consents that may be required from the Host Nation, be made available to the *Contractor* under:
- 19A.2.1 a licence to occupy in accordance with Clause 19A.3 (*Contractor Presence on the Affected Property*); or
- 19A.2.2 such documents as the *Client* requires in relation to the Host Nation.
- 19A.3 Where the Head of Establishment determines that facilities will be made available to the *Contractor* under licence in accordance with Clause 19A.2 (*Contractor Presence on the Affected Property*), the *Client* shall grant (by this Contract) to the *Contractor* a non-exclusive right to occupy the facilities on the Affected Property (the “**Licensed Facilities**”) during the Service Period solely for the purposes of Providing the Service (and not, for the avoidance of doubt, for any other purpose), in common with the *Client* and all others authorised by the *Client* and on the following terms:
- 19A.3.1 the *Contractor* shall:
- (i) before taking occupation of the Licensed Facilities, prepare at its own cost a schedule of condition of the Licensed Facilities in such format and detail as is approved by the Head of Establishment (such approval not to be unreasonably withheld or delayed) (the “**Schedule of Condition**”). The *Contractor* shall repair and maintain the Licensed Facilities throughout the Service Period and shall hand back the Licensed Facilities in no worse state of repair than is evidenced by the Schedule of Condition;
  - (ii) use the Licensed Facilities solely for the purposes of Providing the Service (and not, for the avoidance of doubt, for any other purpose) and shall not use the Licensed Facilities for carrying out any other aspect of the *Contractor's* business;
  - (iii) not apply for, or implement, any planning permission relating to the Licensed Facilities;
  - (iv) within fourteen (14) days of receipt (or sooner if necessary) produce to the *Client* a certified copy of any notice, order, permission or proposal affecting the Licensed Facilities, and, without delay, take all necessary steps to comply with any such notice, direction or order (notwithstanding that the same may not be enforceable against a Crown body) but only insofar as relating to the use by the *Contractor* of the Licensed Facilities and, at the request and cost of the *Client*, to make or join with the *Client* in making such objections or representations in respect of it as the *Client* may reasonably require;
  - (v) not cause any damage to the Licensed Facilities or Conduits or overload them;

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- (vi) comply at all times with any instructions from the *Service Manager* and/or the *Client* and any authorised staff;
- (vii) not hold any auction or public exhibition or political meeting, or use the Licensed Facilities for any illegal or immoral use;
- (viii) not, without the prior written consent of the *Client* (which consent may be withheld at the absolute discretion of the *Client* or may be granted subject to such conditions as the *Client* in its absolute discretion may impose), use the Licensed Facilities or any part thereof for any purposes that will permit members of the public to have access to the Licensed Facilities;
- (iv) use only approved radio frequencies or other approved systems of communication which have been approved for use by the *Client* and/or the *Service Manager* (such approval not to be unreasonably withheld or delayed) and so as not to cause any interference with the *Client's* communication network;
- (v) observe all regulations made by the *Client* from time to time in accordance with the principles of good estate management and notified to the *Contractor* relating to the use of the Licensed Facilities and the Affected Property;
- (vi) permit the *Client* or its servants and agents, for reasons of security, to search any vehicles, containers and other premises owned by the *Contractor*, or in its custody or control, or belonging to or in the custody of the *Contractor's* servants or agents, entering or on the Affected Property;
- (vii) ensure that electricity, gas, heating fuel, water, sewage, telecommunications, data and other services and utilities are not used improperly by the *Contractor* and are used responsibly for the purposes of this Contract, and the *Contractor* will not dispose of any oil or deleterious matter into any Conduits likely to cause a blockage or to exceed the capacity of such systems;
- (viii) comply with all Law relating to:
  - (A) the Licensed Facilities and the occupation and use of the Licensed Facilities by the Tenant;
  - (B) the use of all Service Media and machinery and equipment at or serving the Licensed Facilities;
  - (C) any works carried out at the Licensed Facilities; and
  - (D) all materials kept at or disposed from the Licensed Facilities;
- (ix) not:
  - (A) permit firearms or weapons to be taken on to the Licensed Facilities by the Personnel;
  - (B) (other than with the express prior written consent of the *Service Manager*) take (or permit to be taken) dogs (except working dogs assisting disabled staff or visitors) onto the Licensed Facilities or the Affected Property;



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- (C) affix or permit to be affixed any wireless or television aerial brackets stays or ancillary wiring on or to the exterior of the Licensed Facilities until written approval has been given by the *Service Manager* and then only in accordance with any conditions it may impose;
- (D) take or allow to be taken any photographs of or within the Affected Property; or
- (E) erect any pole or mast (whether in connection with telegraphic, telephonic, radio or television communication or otherwise) or other matter or thing upon the Licensed Facilities;
- (x) act in a manner consistent with the requirements of the Host Nation;
- (xi) comply with Booklet 3 (Requirements Information), Module A, section 2.7 (Publicity, Names, Insignia, Badges and Signage);

19A.3.2 the *Contractor* acknowledges that:

- (i) it will occupy the facilities at the Affected Property (or any part thereof) as a licensee and that no relationship of landlord and tenant is created between the *Client* and the *Contractor* pursuant to this Contract;
- (ii) it will occupy the facilities at the Affected Property (or any part thereof) subject to any Host Nation requirement with which the *Client* must comply;
- (iii) the *Client* retains control, possession and management of the Affected Property during the Service Period and the *Contractor* has no right to exclude the *Client* from the Affected Property;
- (iv) nothing in the licence to occupy granted by this Contract shall impose or be deemed to impose any restriction on the use by the *Client* of any other part of the Affected Property or any neighbouring premises, provided always that the *Client* shall not carry on, or permit to be carried on in any part of the Affected Property or neighbouring premises, any activities which are inconsistent with the performance by the *Contractor* of its rights and obligations under this Contract;
- (v) the licence to occupy granted by this Contract is personal to the *Contractor* and is not assignable and/or transferrable and the right given in this Clause 19A.3 (*Contractor Presence on the Affected Property*) may only be exercised by the *Contractor* and any Sub-Contractor (to the extent only that the exercise of such right by any Sub-Contractor is necessary solely for the provision of the service); and
- (vi) the *Client* shall be entitled at any time during the Service Period on giving reasonable notice to require the *Contractor* to transfer to comparable space and the *Contractor* shall comply with such requirement. The *Client* shall submit such a requirement in accordance with the Contract Change Management Process and any additional costs associated with such a transfer by the

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*Contractor* will be agreed in accordance with the Contract Change Management Process;

- (vii) the *Contractor* shall not have or make any claim against the Crown or the *Client* in respect of any personal injury (including without prejudice to the generality of the foregoing injury resulting in death) or loss of or damage to the Licensed Facilities which may be suffered by the *Contractor* in the exercise of the user permitted by the licence to occupy or any rights granted by the licence to occupy whatever the cause of such loss damage or injury may be and whether or not the same shall have been caused by any negligent act omission or default on the part of the *Client* or any officer servant or agent of the Crown; and

19A.3.3 notwithstanding anything to the contrary in this Contract, the licence to occupy granted by this Contract shall terminate on the earlier of:

- (i) the expiry of this Contract;
- (ii) the termination of the *Contractor's* employment under this Contract; and
- (iii) the date on which the Licensed Facilities are no longer required for the performance of this Contract,

19A.3.4 provided that where such licence is terminated under Clause 19A.3.3(iii) (*Contractor Presence on the Affected Property*), the termination shall become effective upon the service of notice in writing on the *Contractor* by the *Client*.

19A.4 The status to be accorded to the Personnel for messing purposes will be at the discretion of the Head of Establishment.

19A.5 Except as otherwise stated in this Contract or in any licence granted pursuant to Clause 19A.2 (*Contractor Presence on the Affected Property*):

19A.5.1 any land or premises (including compound and temporary buildings) made available to the *Contractor* by the *Client* in connection with this Contract will be made available to the *Contractor* free of charge;

19A.5.2 use by the *Contractor* of services and utilities including water, wastewater, gas, electricity, heating fuel and other services serving the Affected Property will be free of charge,

provided that all such land, premises, services and utilities and any other fittings, equipment and consumables provided to the *Contractor* by the *Client* will be used by the *Contractor* solely for the purposes of Providing the Service and will remain vested in the name of the *Client*.

19A.6 The *Contractor* will have no right under this Contract to a Compensation Event or any other relief or remedy whatsoever against the *Client* for any additional cost or delay occasioned by the closure of any of the Affected Property over any planned holiday periods, all public holidays (including statutory and/or public holidays in the Host Nation) and/or where the *Contractor* has been given reasonable notice of such closure.

19A.7 Without prejudice to the provisions of Clause 19A.3.1(i), Clause 71 (*Issued Property*) and Clause 72 (*Accounting for the Property of the Client*), the *Contractor* shall, except as otherwise provided for in this Contract, make good or, at the option of the *Client*,

pay compensation for all damage occurring to the property of the *Client* (as defined in Clause 72 (*Accounting for the Property of the Client*)) by the *Contractor* or any Contractor Related Party, arising from its or their presence on such property in connection with this Contract.

***Contractor's conduct on the Affected Property***

- 19A.8 The *Contractor* shall, and/or shall procure that, in Providing the Service it and/or any Contractor Related Party shall:
- 19A.8.1 not act or omit to act in any way which shall give rise to a right for any person to obtain title to or any right or interest over the Affected Property or any part of it (save in accordance with the terms of this Contract);
  - 19A.8.2 not use or occupy the Affected Property for any purpose other than the provision of the *services*;
  - 19A.8.3 not deposit or manufacture on any part of the Affected Property any materials which are not required for the provision of the *services*;
  - 19A.8.4 not store materials or park vehicles in the immediate external vicinity of the boundaries of any Affected Property other than for reasonable periods necessary for loading and unloading;
  - 19A.8.5 not discharge any oil, grease or deleterious, dangerous, poisonous, explosive or radioactive matter from any of the Affected Property onto any land or into any groundwater, rivers, sea, ocean or any ditches or Conduits on the Affected Property and/or any adjoining property and not permit or suffer the blockage of any of such rivers, ditches and Conduits by reason of anything done or omitted on the Affected Property by the *Contractor* or any Contractor Related Party, and shall comply at the *Contractor's* expense with any requirements of the Environment Agency (or any equivalent or analogous body or agency in the Host Nation) or any other relevant authority which are required to remedy the breach of this Clause 19A.8 (*Contractor's conduct on the Affected Property*). The *Client* shall allow the *Contractor* access to environmental systems for inspection to confirm they meet the necessary standards;
  - 19A.8.6 procure that those parts of the Affected Property which are from time to time occupied by the *Contractor* and/or any Contractor Related Party for the purpose of carrying out the *services* are maintained in a clean and tidy state so far as practicable having regard to the nature of the *services*; and
  - 19A.8.7 not without the written consent of the *Service Manager* (not to be unreasonably withheld or delayed) erect any temporary structure.
- 19A.9 The *Contractor* shall at all times:
- 19A.9.1 prevent any nuisance (including any noisy working operations) or other interference with the rights of any adjoining landowner, tenant or occupier or any statutory undertaker arising out of the carrying out of the *services* and shall assist the *Client* in defending any action or proceeding which may be instituted in relation thereto; and
  - 19A.9.2 ensure that there is no trespass by the *Contractor* or by any Personnel on or over any adjoining or neighbouring property arising out of, or in the course of, or caused by the carrying out of the *services* and the *Contractor* shall take all reasonable safety and other measures to prevent damage or

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injury to any persons (including the occupiers of adjoining or neighbouring property and members of the public).

- 19A.10 The *Contractor* shall be responsible for and shall indemnify the *Client* from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the *Contractor* in performing its obligations under Clause 19A.8 (*Contractor's Conduct on the Affected Property*).

### **Contractor's property**

- 19A.11 All property of the *Contractor*, the *Contractor's* Representatives and any *Contractor* Related Party shall be at the risk of the *Contractor* 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:

19A.11.1 where any such loss or damage was caused or contributed to by any act, neglect or default of any HM Government servant, agent or contractor (other than the *Contractor*, the *Contractor's* Representatives and/or any *Contractor* Related Party) 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

19A.11.2 where any property of the *Contractor* has been taken on charge by the *Service Manager*, 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.

## **19B      Decoupling and Subcontracting with the Crown**

### **Decoupling**

- 19B.1 If the *Contractor* shall enter into any other contract with the Crown relating in any way to the subject matter of this Contract, then no breach by the Crown of that other contract nor any other act or omission nor any written or oral statement nor any representation whatsoever of or by the Crown its servants or agents or other contractors relating to or connected with any other contracts as aforesaid shall, regardless of any negligence on its part or their part:

19B.1.1 give the *Contractor* any right under this Contract to a Compensation Event or any other relief or remedy whatsoever against the *Client*;

19B.1.2 affect, modify, reduce or extinguish either the obligations of the *Contractor* or the rights or remedies of the *Client*; (including without limitation the rights and remedies of the *Client* under and pursuant to the Performance Management Regime); or

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

## **19C      Changes and Amendments to Contract**

### **Formal Amendments to Contract**

- 19C.1 Other than the changes permitted in accordance with Clause 19 (*Task Order Management Process*) and Annex B (*Change Management Process*), amendments to this Contract may not be made except by the written agreement of the duly authorised representatives of the Parties in accordance with Clause 19D (*Contract*

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*Changes and Additional Services*) and, where applicable, Annex B (*Change Management Process*), provided always that any such amendments shall come into force only when the *Contractor* has issued:

19C.1.1 in the case of a Contract Change proposed in a *Client* Change Notice, the form set out in Annex B (*Change Management Process*); and

19C.1.2 in the case of a Contract Change proposed in a *Contractor* Change Notice, the form set out in Annex B (*Change Management Process*),

as an unqualified Estimate and the *Client* agrees to all the terms of such Estimate and, following such agreement, a written agreement shall be produced for agreement of the duly authorised representatives of the parties. This written agreement will be obtained only by;

19C.1.3 serially numbered amendment being issued to the *Contractor* by the *Client*. The amendment will come into force only when the *Contractor* has despatched to the *Client* on a DEFFORM 10B an unqualified acceptance of the *Client's* offer; or

19C.1.4 the despatch by the *Client* of a serially numbered amendment letter as an unqualified acceptance of an offer from the *Contractor*.

19C.2 Where required by the *Client* in connection with any such amendment, the *Contractor* shall (as so required) confirm that any existing Parent Company Guarantee is sufficiently comprehensive so as to cover and support all of the *Contractor's* liabilities and obligations under and in connection with this Contract (as amended by such amendment) or provide a revised Parent Company Guarantee to achieve the same purposes.

### **Change and Configuration Control Procedure**

19C.3 All Contract Changes other than those pursuant to Clauses 19C.6 to 19C.14 (inclusive) (*Specification Changes*) shall be the subject of an amendment to this Contract issued and accepted in accordance with Clause 19C.1 (*Formal Amendments to Contract*).

19C.4 The *Contractor* shall use a configuration control system to control changes to the Specification, as defined in Clause 19C.6 (*Specification Changes*). The configuration control system shall be compatible with ISO 9001 (latest published version) or as specified in Booklet 3 (Requirements Information) and/or Booklet 4A (*Client Supplied data*).

19C.5 For the avoidance of doubt, any changes to the Specification under the provisions of Clauses 19C.6 to 19C.14 (*Specification Changes*), will be classed as a minor change and all other changes under Clause 19C.1 (*Formal Amendments to Contract*) shall be classed as a formal Contract Change.

### **Specification Changes**

19C.6 For the purposes of this Contract "the **Specification**" shall include any document or item which, individually or collectively, is referenced in Booklet 3 (Requirements Information) and/or Booklet 4 (*Client Supplied data*).

19C.7 The Specification forms part of this Contract.

19C.8 All Articles or *services* to be supplied under this Contract shall conform in all respects with the Specification.

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- 19C.9 The *Contractor* shall use a configuration control system to control changes to the Specification. The configuration control system shall be compatible with ISO 9001 (latest published version) or as otherwise specified in Booklet 3 (Requirements Information) and/or Booklet 4 (*Client Supplied data*).
- 19C.10 The *Client* or the *Service Manager* may alter the Specification. Any alterations shall not alter the fit, form, function or characteristics of the Articles or *services* to be supplied under this Contract.
- 19C.11 The changes to the Specification pursuant to Clause 19C.10 will be provided in writing and shall apply from the date specified by the *Client*. The *Client* shall provide an updated Specification. The Articles or *services* shall be delivered in accordance with the altered Specification. These alterations shall not constitute a formal amendment of this Contract and shall be implemented upon receipt, or at the date specified in the *Client's* notice.
- 19C.12 Any alterations that cause a change to:
- 19C.12.1 fit, form, function or characteristics of the Articles or *services*;
  - 19C.12.2 the cost;
  - 19C.12.3 delivery dates;
  - 19C.12.4 period required for the production or completion; or
  - 19C.12.5 other *services* and/or Works caused by the alteration,
- shall be subject to Clause 19C.1 (*Formal Amendments to Contract*). Each amendment under Clause 19C.1 (*Formal Amendments to Contract*) shall be classed as a formal Contract Change.
- 19C.13 In the event that either Party considers that there may be any conflict within the Specification it shall immediately notify the other Party.
- 19C.14 Any documentation provided by the *Client* outside of Clauses 19C.6 to 19C.14 (*Specification Changes*) shall not alter the Specification.

### **19D Contract Changes and Additional Services**

- 19D.1 On the occurrence of any event which either Party considers may result in a Contract Change and/or Additional Services, that Party may issue an Early Warning pursuant to and in accordance with Clause 15 (*Early Warnings*) shall be followed.
- 19D.2 Any Contract Change resulting from agreements at the Service Manager Risk Reduction Meetings shall be made in accordance with the Contract Change Management Process and the Parties shall comply with the provisions of Annex B (*Change Management Process*) for the management of such Contract Change.
- 19D.3 Any Additional Service resulting from agreements at the Service Manager Risk Reduction Meetings shall be undertaken in accordance with Clause 19 (*Task Order Management Process*) and Annex B (*Change Management Process*).
- 19D.4 If the scope of the *services* is reduced (including by the removal of any Level 1 Asset and/or Level 2 Asset) as a result of a Contract Change, the *Client* may appoint another contractor to carry out any part of the *services* that has been so reduced or removed.

- 19D.5 Any purported amendment to this Contract which does not satisfy the terms of this Clause 19D (*Contract Changes and Additional Services*) will be of no effect.
- 19D.6 The *Contractor* acknowledges that where a Contract Change meets the criteria set out in Sub-Sections (a) to (c) of s.14(5) of the Defence Reform Act 2014 (the “**DRA**”), as interpreted in accordance with the Single Source Contract Regulations 2014 (the “**SSC Regulations**”), the *Client* is entitled to request that following the Contract Change this Contract is to be a “qualifying defence contract” for the purposes of the DRA and that the terms of the DRA and the SSC Regulations (each as amended from time to time) apply accordingly.

**19E      Collaborative Business Relationships**

- 19E.1 Each Party agrees to co-operate with the other Party in the fulfilment of the purposes and intent of this Contract. Neither Party shall be under any obligation to perform any of the other’s obligations under this Contract.
- 19E.2 As part of the *Contractor’s* compliance with its obligations under this Clause 19E (*Collaborative Business Relationships*) and Booklet 3 paragraph 3.3 (*Relationship*), the *Contractor* shall:
- 19E.2.1 obtain ISO 44001 accreditation and implement its principles, within 12 (twelve) months of the Contract Date; and
- 19E.2.2 work with the *Client* during Mobilisation to develop and, prior to the In Service Date, agree the final form of, the Relationship Management Plan (which shall include a charter of appropriate behaviour to be applied in the Provision of the Service) with the *Client*.

**19F      Approval by the Client or Service Manager**

- 19F.1 Except for a confirmation of a Contract Change pursuant to the Contract Change Management Process which expressly changes the *Contractor’s* obligations or liabilities or the *Client’s* or the *Service Manager’s* rights under this Contract, no review, comment or approval by the *Client* or *Service Manager* shall operate to exclude or limit the *Contractor’s* obligations or liabilities or the *Client’s* or the *Service Manager’s* rights under this Contract.
- 19F.2 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the *Client* or the *Service Manager* shall, unless otherwise expressly stated in this Contract, relieve the *Contractor* of any of its obligations under this Contract or of any duty which the *Contractor* may have under this Contract to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

**19G      DEFCON 697 (Contractors on Deployed Operations)**

- 19G.1 The operation of this contract shall be subject to DEFCON 697, Contractors on Deployed Operations, as detailed at Annex L for the purposes of which references therein to “the Authority” shall mean “*the Client*” as defined in Annex A (*Identified and Defined Terms*).

**19H The PPM Programme**

- 19H.1 The *Contractor* shall submit to the *Service Manager* for acceptance a PPM Programme pursuant to and in accordance with Booklet 3 (Requirement Information) and Booklet 3 Module D (Mobilisation and De-Mobilisation).
- 19H.2 Within four (4) weeks of the *Contractor* submitting the PPM Programme for acceptance, the *Service Manager* shall either accept the PPM Programme or notify the *Contractor* its reasons for not accepting it. A reason for not accepting the PPM Programme is that:
- 19H.2.1 the PPM Programme is not practicable;
- 19H.2.2 it does not show the information which this Contract requires; and/or
- 19H.2.3 it does not comply with the Service Information.
- 19H.3 If the *Contractor* fails to provide an acceptable PPM Programme within the time limits specified in Clause 19H (*The PPM Programme*) then (without prejudice to any other rights of the *Client*) the *Client* may employ another *Contractor* to produce the missing PPM Programme and/or to carry out that part of the service to which the missing PPM Programme relates. Any costs, losses and expenses incurred by the *Client* in employing such a *Contractor* which exceed the amount that would otherwise have been payable to the *Contractor* under this Contract for such tasks may be deducted from the sums due to the *Contractor* under this Contract and/or recovered from the *Contractor* as a debt.
- 19H.4 The *Contractor* shall submit a revised PPM Programme for the Establishment to the *Service Manager* for acceptance to show the impact on the *services* of Compensation Events and Contract Changes in accordance with the Contract Change Management Process

**19I Financial Management Information**

- 19I.1 For the purposes of this Clause 19I.1, Financial Management Information shall mean the value of work completed at a given point in time.
- 19I.2 As a minimum the *Contractor* shall report the Financial Management Information to the *Client* as detailed in Annex N (*Financial Management Information*). The *Contractor* shall provide Financial Management Information in the format at Annex N (*Financial Management Information*) to the addresses specified in the Contract within:
- 19I.2.1 twenty (20) Working Days of the Contract Date;
- 19I.2.2 after a change that exceeds either five percent (5%) of the value of this Contract; and
- 19I.2.3 at a frequency specified in the contract and, if unspecified, for contracts with a value of:
- a) £5Mil up to under £10Mil = annual reports only;
- b) £10Mil up to under £20Mil = quarterly reports only; and
- c) £20Mil and over = monthly reports only.
- 19I.3 The *Contractor* shall retain the Financial Management Information and evidence on activity completed to support the financial management information in accordance



with Clause 19J.2 (*The Contractor's Records*). This evidence must be released to the *Client* if requested within ten (10) Working Days.

**19J     The Contractor's Records**

- 19J.1     The *Contractor* and its Sub-Contractors shall maintain all records specified in and connected with this Contract (expressly or otherwise and including such records referred to in Booklet 3, Module G (*Support Services*) and make them available to the *Client* when requested on reasonable notice.
- 19J.2     The *Contractor* and its Sub-Contractors shall also permit access to relevant records that relate to the contractual obligations to supply Articles and/or services under the Contract, held by or controlled by them and reasonably required by the Comptroller 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:
- 19J.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
- 19J.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.
- 19J.3     With regard to the records made available to the *Client* under Clause 19J.2.1, and subject to the provisions of Clause 19M (*Disclosure of Information*), the *Contractor* shall permit records to be examined and if necessary copied, by the *Client*, or Representative of the *Client*, as the *Client* may require.
- 19J.4     Unless this Contract specifies otherwise the records referred to in this Clause 19J.2 shall be retained for a period of at least six (6) years from:
- 19J.4.1     the end of the Service Period;
- 19J.4.2     the termination of this Contract; or
- 19J.4.3     the final payment,
- whichever occurs latest (for the purposes of this Clause 19J.4 (*The Contractor's Records*), the "**Relevant Date**"), provided always that, notwithstanding the generality of this Clause 19J.4 (*The Contractor's Records*), all Contract Records executed under seal or expressed to be executed as deeds shall be retained by the *Contractor* for a minimum period of twelve (12) years from the Relevant Date.

**19K     Information Provisions**

- 19K.1     Not Used.<sup>1</sup>
- 19K.2     Both parties acknowledge there is no processing of Personal Data associated with or intrinsic to the performance of the Contract. The incidental exchange of Personal Data for the purposes of communication to give effect to the Contract or the business

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<sup>1</sup> Note to bidders – Clause 19K.1 is expressed as Not Used in order to preserve the Condition numbering of DEFCON 532A. The defined terms of DEFCON 532A are set out in Annex A.

relationship is not considered to be processing of Personal Data by either party on behalf of the other.

- 19K.3 The *Contractor* shall notify the *Client* promptly if it considers that any of the *Client's* instructions obligate the *Contractor* to take on the role of Processor under the Data Protection Legislation beyond that which is contemplated in clause 19K.2. The *Client* agrees that the *Contractor* shall not be required to provide legal advice to the *Client* and that such notification (or absence of notification) by the *Contractor* will not be construed as legal advice or representation by the *Contractor*.
- 19K.5 Should the Contract be amended to require the *Contractor* to process Personal Data as a Processor on behalf of the *Client* as a result of clause 19K.3 or otherwise the Contract will be amended to include DEFCON 532B and DEFFORM 532 (or narrative conditions of such DEFCONs and DEFFORMs) in accordance with the provisions of Clause 19C (Amendments to Contract). Where the Contract is amended to include processing of Personal Data as a Joint Controller, the Parties agree that they shall amend the Contract to include appropriate contractual clauses, including but not limited to clauses dealing with notification in the event of a Personal Data Breach and requests from Data Subjects for access to their Personal Data.
- 19K.6 Notwithstanding clause 19K.2, each Party undertakes to comply with its obligations as Controller under the Data Protection Legislation.

## **19L Transparency**

- 19L.1 Notwithstanding any other term of the Contract, including DEFCON 531 where applicable, the *Contractor* understands that the *Client* may publish the Publishable Performance Information and the Transparency Information to the general public.
- 19L.2 Subject to Clause 19L.3, 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.
- 19L.3 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.
- 19L.4 The *Contractor* 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, including through compliance with the requirements relating to the preparation of Publishable Performance Information set out in the Annex to this Condition. Where the *Client* publishes Transparency Information, it shall:

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- 19L.4.1 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;
- 19L.4.2 taking into account the Sensitive Information set out in DEFFORM 539A, consult with the *Contractor* 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
- 19L.4.3 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 a fair view on how the Contract is being performed.

### **19M      Disclosure of Information**

- 19M.1 Not Used.<sup>2</sup>
- 19M.2 Subject to Clauses 19M.5 to 19M.10, each Party:
  - 19M.2.1 shall treat in confidence all Information it receives from the other;
  - 19M.2.2 shall not disclose any of that Information to any Third Party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the *Contractor* may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of this Contract
  - 19M.2.3 shall not use any of that Information otherwise than for the purpose of this Contract; and
  - 19M.2.4 shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under this Contract.
- 19M.3 The *Contractor* shall take all reasonable precautions necessary to ensure that all Information disclosed to the *Contractor* by or on behalf of the *Client* under or in connection with this Contract:
  - 19M.3.1 is disclosed to its Employees and Sub-Contractors only to the extent necessary for the performance of this Contract; and
  - 19M.3.2 is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing work or having work performed for the *Client* under this Contract or any Sub-Contract.
- 19M.4 The *Contractor* shall ensure that its Employees are aware of its arrangements for discharging the obligations at Clauses 19M.2 and 19M.3 before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.

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<sup>2</sup> Note – numbering revised to align with DEFCON 531. The defined term (*Information*) is contained in Annex A.

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19M.5 A Party shall not be in breach of Clauses 19M.2, 19M.3, 19M.7, 19M.8 and 19M.9 to the extent that either Party:

19M.5.1 exercises rights of use or disclosure granted otherwise than in consequence of, or under, this Contract

19M.5.2 has the right to use or disclose the Information in accordance with other provisions of this Contract; or

19M.5.3 can show:

- (i) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of this Contract or any other agreement between the Parties;
- (ii) that the Information was already known to it (without restrictions on disclosure or use) prior to it receiving it under or in connection with this Contract;
- (iii) that the Information was received without restriction on further disclosure from a third party who lawfully acquired it and who is himself under no obligation restricting its disclosure; or
- (iv) from its records that the same information was derived independently of that received under or in connection with this Contract;

provided the relationship to any other Information is not revealed.

19M.6 Neither Party shall be in breach of this Clause 19M.2 (*Disclosure of Information*) where it can show that any Disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this Clause 19M.2 (*Disclosure of Information*).

19M.7 The *Client* may disclose the Information:

19M.7.1 to any Central Government Body for any proper purpose of the *Client* or of the relevant Central Government Body, which shall include disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes. Where such a disclosure is made the *Client* shall ensure that the recipient is made aware of its confidentiality;

19M.7.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

19M.7.3 subject to Clause 19M.8, to the extent that the *Client* (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

19M.7.4 subject to Clause 19M.8, on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in this Contract (including benchmarking organisations) for any purpose relating to or connected with this Contract;

19M.7.5 on a confidential basis for the purpose of the exercise of its rights under this Contract; or

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19M.7.6 on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the *Client* under this Clause 19M.2 (*Disclosure of Information*).

- 19M.8 Where the *Client* intends to disclose Information to a commercial entity which is not a Central Government Body in accordance with Clauses 19M.7.3 or 19M.7.4, the *Client* will endeavour to provide the *Contractor* with three (3) Working Days' notice in advance of such disclosure. In relation to a Disclosure of Information made under Clause 19M.7.3, if reasonably requested by the *Contractor* within two (2) Working Days of such notice being given, where the *Client* has not already done so, it will endeavour to procure from the intended recipient of the Information an agreement containing confidentiality terms the same as, or substantially similar to, those placed on the *Client* under this Clause 19M.2 (*Disclosure of Information*).
- 19M.9 Before sharing any Information in accordance with Clause 19M.7 (*Disclosure of Information*), the *Client* may redact the Information. Any decision to redact information made by the *Client* shall be final.
- 19M.10 The *Client* shall not be in breach of this Contract where it can show that any Disclosure of Information is made solely and to the extent necessary to comply with the FOIA or the Environmental Information Regulations. To the extent permitted by the time for compliance under the FOIA or the Environmental Information Regulations, the *Client* shall consult the *Contractor* where the *Client* is considering the Disclosure of Information under the FOIA or the Environmental Information Regulations and, in any event, shall provide prior notification to the *Contractor* of any decision to disclose the Information. The *Contractor* acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the FOIA or the Environmental Information Regulations is a matter in which the *Client* shall exercise its own discretion, subject always to the provisions of the FOIA or the Environmental Information Regulations. For the avoidance of doubt, nothing in this Clause 19M.10 shall affect the *Contractor's* rights at law
- 19M.11 Nothing in this Clause 19M (*Disclosure of Information*) shall affect the Parties' obligations of confidentiality where information is disclosed orally in confidence.
- 19M.12 The *Contractor* agrees that damages may not be an adequate remedy for any breach of this Clause 19M.2 (*Disclosure of Information*) and that the *Client* may be entitled to remedies of injunction, specific performance and any other appropriate equitable relief for any threatened or actual breach of this Clause 19M.2 (*Disclosure of Information*).

## 19N Freedom of Information Act

19N.1 For the purposes of this Clause 19N (*Freedom of Information Act*):

"**Information**" has the meaning given under Section 84 of the FOIA; and

"**Requests for Information**" means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

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- 19N.2 The *Contractor* acknowledges that the *Client* is subject to the requirements of the code of practice on access to government information, the FOIA and the Environmental Information Regulations and shall assist and co-operate with the *Client* to enable the *Client* to comply with its Information disclosure obligations.
- 19N.3 The *Contractor* shall:
- 19N.3.1 forward (and procure that the Contractor Related Parties forward) to the *Service Manager* all Requests for Information that it receives as soon as practicable and in any event within five (5) Working Days of receiving a Request for Information;
  - 19N.1.2 provide (and procure that the Contractor Related Parties provide) the *Service Manager* with a copy of all Information in its possession or power in the form that the *Service Manager* requires within five (5) Working Days (or such other period as the *Service Manager* may specify) of the *Service Manager's* request; and
  - 19N.1.3 provide (and procure that the Contractor Related Parties provide) all necessary assistance as reasonably requested by the *Service Manager* to enable the *Client* to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 19N.4 The *Client* is responsible for determining in its absolute discretion whether:
- 19N.4.1 the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Access to Government Information, the FOIA or the Environmental Information Regulations; and
  - 19N.4.2 whether Information is to be disclosed in response to a Request for Information.
- 19N.5 The *Contractor* shall not respond directly to a Request for Information unless expressly authorised to do so by the *Client*.
- 19N.6 The *Contractor* acknowledges that the *Client* may be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the *Contractor* or the *services* without consulting the *Contractor* or having taken their views into account. Where the *Client* does not consult with the *Contractor*, the *Client* shall take reasonable steps, where appropriate, to give the *Contractor* advanced notice or draw the disclosure to the *Contractor's* attention after any such disclosure.
- 19N.7 The *Contractor* shall ensure that all Information is retained for disclosure in accordance with Annex J (*Sensitive Information*) and permit the *Service Manager* and/or the *Client* to inspect such records as requested from time to time.
- 19N.8 The *Contractor* acknowledges that the Commercially Sensitive Information listed in Annex J (*Sensitive Information*) is of indicative value only and that the *Client* may be obliged to disclose Information, with or without consultation.

### **19N Requirement for a Certificate of Conformity**

- 19O.1 The *Contractor* shall provide a Certificate of Conformity ("**CofC**") in accordance with Booklet 3 (Requirements Information) and any applicable Quality Plan. One copy of

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the CofC shall be sent to the *Client* (Box 2 DEFFORM 111) upon delivery and one copy shall be provided with the Articles or to the *Service Manager*.

- 19O.2 Each CofC should include the wording “**Certificate of Conformity**” in the title of the document to allow for easy identification. One CofC is to be used per NSN/part number; a CofC must not cover multiple line items.
- 19O.3 The CofC shall be considered by the *Contractor* as a record and Clause 19J.2 (*The Contractor’s Records*) shall apply.
- 19O.4 The information provided on the CofC shall include:
- 19O.4.1 *Contractor* name and address;
  - 19O.4.2 *Contractor* unique CofC reference number;
  - 19O.4.3 Contract number and where applicable Contract Amendment number;
  - 19O.4.4 Details of any approved concessions;
  - 19O.4.5 Acquirer name and organisation;
  - 19O.4.6 Delivery address;
  - 19O.4.7 Contract Item Number from the Service Information;
  - 19O.4.8 Description of Article or Service including part number, Specification and configuration status;
  - 19O.4.9 NATO Stock Number (“**NSN**”) (where allocated);
  - 19O.4.10 Identification marks, batch and serial number(s) in accordance with the Specification;
  - 19O.4.11 Quantities;
  - 19O.4.12 a signed and dated statement by the *Contractor* that Articles or Contractor Deliverables provided comply with the requirements of this Contract, and approved concessions.

Exceptions or additions to the above are to be documented.

- 19O.5 Where the Service Information and any applicable Deliverable Quality Plan requires demonstration of traceability and design provenance through the supply chain, the *Contractor* shall include in any relevant Sub-Contract the requirement for the information called for at Clause 19O.4. The *Contractor* shall ensure that this information is available to the *Client* through the supply chain, upon request in accordance with Clause 19J.2 (*The Contractor’s Records*).

### 19P Not Used

### 19Q Shared Data Environment System Transfer Arrangements

- 19Q.1 In the event that the *Client* wishes to appoint another contractor to provide a SDE Service on completion or termination of the Contract, the *Client* shall have the right to require the *Contractor* to grant the following licenses under their intellectual property rights:
- 19Q.1.2 a licence for the *Client*, with the right to sub-license, to utilise the SDE System for continued Project Implementation; and

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- 19Q.1.3 a licence for the *Client*, with the right to sub- license, to allow another SDE Service provider to utilise, maintain and modify the SDE System for continued Project Implementation.
- 19Q.2 The licence to be granted under Clause 19Q shall not require the *Contractor* to permit retention by the *Client* or any other User, or the transfer, of any computer hardware or network infrastructure owned by them or a third party, nor shall the licence extend to any standard commercial computer software owned by them or a third party.
- 19Q.3 In the event that the *Contractor* can demonstrate that they have wholly or partly funded the development of any part of the SDE System to be licensed under Clause 19Q, fair and reasonable financial terms for the licence shall be agreed with the *Client* reflecting the respective funding contributions; otherwise the licence shall be free of payment.
- 19Q.4 The *Client* shall consult the *Contractor* before engaging another SDE Service provider under any licence secured under the provisions of Clause 19Q and shall pay due regard to any representations they may make concerning conflicts of interest.

## 19R General Contract Provisions

### 19R.1 **Change of Control.**

19R.1.1 The *Contractor* shall notify the *Client* at the address given in Clause 19R.1.2, as soon as practicable, in writing of any intended, planned or actual Change of Control of the Contractor or any Sub-Contractor. The *Contractor* shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the *Contractor* in the UK or other jurisdictions where the *Contractor* may be subject to legal sanction arising from issuing such a notice.

19R.1.2 Each notice given pursuant to Clause 19R.1 (*Change of Control*) shall be taken to apply to all contracts with the *Client*. Notices shall be submitted to:

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

and emailed to: [DefComrcISSM-MergersandAcq@mod.gov.uk](mailto:DefComrcISSM-MergersandAcq@mod.gov.uk)

19R.1.3 The representative of the *Client* shall consider the notice of Change of Control and advise the *Contractor* in writing of any concerns the *Client* may have. Such concerns may include but are not limited to potential threats to national security, a threat to the security of the Host Nation, relations with the Host Nation, the ability of the *Client* to comply with its Statutory Compliance obligations or matters covered by the declarations made by the *Contractor* prior to Contract Award.

19R.1.4 The *Client* may terminate this Contract by giving written notice to the *Contractor* within six (6) months of the *Client* being notified in accordance



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with Clause 19R.1.1 (*Change of Control*). The *Client* shall act reasonably in exercising its right of termination under this Clause 19R.1.4.

- 19R.1.5 If the *Client* exercises its right to terminate in accordance with Clause 19R.1.4. (*Change of Control*) the *Contractor* shall be entitled to request the *Client* to consider making a payment representing any commitments, liabilities or expenditure incurred by the *Contractor* in connection with this Contract up to the point of termination. Such commitments, liabilities or expenditure shall be reasonably and properly chargeable by the *Contractor* and shall otherwise represent an unavoidable loss by the *Contractor* by reason of the termination of this Contract. Any payment under this Clause 19R.1.5 (*Change of Control*) must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the *Client's* sole discretion.
- 19R.1.6 Notification by the *Contractor* of any intended, planned or actual Change of Control shall not prejudice the existing rights of the *Client* or the *Contractor* under this Contract nor create or imply any rights of either the *Contractor* or the *Client* additional to the *Client's* rights set out in this Clause 19R.1 (*Change of Control*).
- 19R.1.7 If at any time the Guarantor ceases to be the parent company of the *Contractor*, following a Change of Control, the *Contractor* shall, within twenty (20) Working Days of the request by the *Client*:
- (i) procure that a replacement Parent Company Guarantee substantially in the form set out in Annex C (*Parent Company Guarantee*) is executed by the *Contractor's* new parent company (the "**New Parent Company**"); and
  - (ii) where the New Parent Company is incorporated outside of the United Kingdom, a legal opinion in a form reasonably acceptable to the *Client* from a legal advisor qualified to practice in the jurisdiction in which the New Parent Company is established and has its office, the content of which shall include:
    - (A) the corporate status of the New Parent Company;
    - (B) the capacity and authority of the New Parent Company to execute and perform the replacement Parent Company Guarantee;
    - (C) confirmation of the legal validity and enforceability of the replacement Parent Company Guarantee; and
    - (D) confirmation of the validity of the governing law and jurisdiction of the replacement Parent Company Guarantee.
- 19R.1.8 Without prejudice to Clause 19R.1.4 (*Change of Control*), where the Change of Control is to an Unsuitable Third Party or where the *Contractor* is in breach of the provisions of this Clause 19R.1 (*Change of Control*), the *Client* may terminate the employment of the *Contractor* under this Contract in accordance with Clause 90 (*Termination*) at any time during the Contract Period.

**19S      Waiver**

- 19S.1    No act or omission of either Party will by itself amount or be deemed to amount to a waiver of any right or remedy provided under this Contract or otherwise at Law unless expressly stated by that Party in writing, nor will it prevent or restrict the future exercise of that or any other right or remedy. In particular, no reasonable delay in exercising any right or remedy will by itself constitute a waiver of that right or remedy.
- 19S.2    No waiver in respect of any right or remedy will operate as a waiver in respect of any other right or remedy.

**19T      Severability**

- 19T.1    If any provision of this Contract is held to be invalid, illegal or unenforceable to any extent then:
- 19T.1.1    such provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and will be deemed not to be included in this Contract but without invalidating any of the remaining provisions of this Contract; and
- 19T.1.2    the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

**19U      Rights of Third Parties**

- 19U.1    Except as provided in Clause 19U (*Third Party Rights*) and notwithstanding anything to the contrary elsewhere in this Contract, no right is granted to any person who is not a Party to this Contract to enforce any term of this Contract in its own right and the Parties to this Contract declare that they have no intention to grant any such right.
- 19U.2    Where, and only where, a Clause in this Contract expressly states that a Third Party will be entitled to enforce a term of this Contract:
- 19U.2.1    the said Third Party will be entitled to enforce that term in its own right;
- 19U.2.2    the *Contractor* shall inform the said Third Party as soon as is reasonably practicable of the existence of the relevant right together with any other terms (including the terms of this Clause 19U (*Rights of Third Party*)) relevant to the exercise of that right;
- 19U.2.3    the Third Party's rights will be subject to any provision in this Contract that:
- (i)      provides for the submission of disputes under this Contract generally or the said rights in particular to arbitration; or
- (ii)     stipulates the Law and jurisdiction that will govern this Contract.
- 19U.3    The Parties' rights to rescind or agree any variation under this Contract are not subject to the consent of any other party.

**19V      Status of Contractual Relationship**

- 19V.1 Nothing in this Contract or otherwise shall be held, implied or deemed to constitute a partnership, joint venture or other association between the Parties.
- 19V.2 Save as otherwise expressly provided in this Contract, the *Contractor* shall not be deemed to be an agent of the *Client* and the *Contractor* shall not hold itself out as having authority or power to bind the *Client* in any way.
- 19V.3 For the avoidance of doubt the *Contractor* shall not have the benefit of any Crown immunity, state immunity or equivalent under Host Nation Law and, unless otherwise agreed by the *Client*, shall apply for and obtain all Necessary Consents which the *Contractor* would otherwise be obliged to obtain under any Law on the basis that the *Contractor* does not have the benefit of any Crown immunity.

**19W      Cyber**

19W.1 Not Used.<sup>3</sup>

**19W.2      Client obligations – Cyber**

19W.2.1 The *Client* shall:

- (i) determine the Cyber Risk Profile appropriate to this Contract and notify the *Contractor* of the same at the earliest possible date; and
- (ii) notify the *Contractor* as soon as reasonably practicable where the *Client* reassesses the Cyber Risk Profile relating to this Contract, which shall be in accordance with Clause 91W.7 (*General*).

**19W.3      Contractor obligations – Cyber**

19W.3.1 The *Contractor* shall, and shall procure that its Sub-contractors shall:

- (i) comply with DEFSTAN 05-138 or, or, where applicable, the Cyber Implementation Plan attached to this Contract and for the avoidance of doubt any Cyber Implementation Plan shall be prepared and implemented in accordance with Good Industry Practice taking account of any risk-balance case and any mitigation measures required by the *Client* and shall ensure that any measures taken to protect MOD Identifiable Information are no less stringent than those taken to protect their own proprietary information;
- (ii) 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 Sub-contractor, and complete a further CSM Risk Assessment or CSM Supplier Assurance Questionnaire where a change is proposed to the *Contractor's* supply chain or on receipt of any reasonable request by the *Client*;

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<sup>3</sup> Note - all DEFCON 658 Edition 09/21 (*Cyber*) defined terms are set out in Annex A. Clause 19W.1 is Not Used to preserve the Condition numbering of the DEFCON.

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- (iii) re-perform the CSM Supplier Assurance Questionnaire no less than once in each year of the Contract Period commencing on the first anniversary of the completion of the CSM Supplier Assurance Questionnaire to demonstrate continued compliance with the Cyber Security Instructions;
- (iv) 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 19W (Cyber) in accordance with Good Industry Practice provided always that where there is a conflict between the *Contractor's* obligations under Clause 19W.3.1(i) and this Clause 19W.3.1;
- (v) the *Contractor* shall notify the *Client* in accordance with the notification provisions in DEFSTAN 05-138 as soon as it becomes aware of the conflict and the *Client* shall determine which standard or measure shall take precedence;
- (vi) comply with all Cyber Security Instructions notified to it by the *Client* as soon as reasonably practicable;
- (vii) notify the JSyCC WARP in accordance with ISN 2017/03 as amended or updated from time to time and the *Contractor's* NSA/DSA, and in the case of a Sub-contractor also notify the Contractor, immediately in writing as soon as they know or believe that a Cyber Security Incident has or may have taken place providing 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;
- (iix) 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 to take all steps to mitigate the impact of the Cyber Security Incident and minimise the likelihood of any further similar Cyber Security Incidents. For the avoidance of doubt, this shall include complying with any reasonable technical or organisational security measures deemed appropriate by the *Client* and the *Contractor's* NSA/DSA in the circumstances and taking into account the Cyber Risk Profile; and
- (ix) consent to the *Client* recording and using information obtained via the Supplier Cyber Protection Service in relation to this Contract for the purposes of the Cyber Security Model which shall include any agreed Cyber Implementation Plan. For the avoidance of doubt such information shall include the cyber security accreditation of the *Contractor* and/or Sub-contractor as appropriate; and
- (x) include provisions equivalent to those set out in Clause 19X.1 to 19X.5 (*Cyber Provisions to Be Included in relevant Sub-Contracts*) (the “**equivalent provisions**”) in all relevant Sub-contracts.

### 19W.4 Management of Sub-contractors

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- 19W.4.1 Provided that it is reasonable in all the circumstances to do so, the *Client* agrees that the *Contractor* shall be entitled to rely on the self-certification by the Sub-contractor of its compliance with its obligations pursuant to this Clause 19W (*Cyber*) in accordance with Clause 19W.3.1(i).
- 19W.4.2 Where a Sub-Contractor notifies the *Contractor* that it cannot comply with the requirements of DEFSTAN 05-138, the *Contractor* shall require a Sub-contractor to prepare and implement a Cyber Implementation Plan in accordance with Good Industry Practice taking account of any risk-balance case and any mitigation measures required by the *Contractor* and shall ensure that any measures taken to protect MOD Identifiable Information are no less stringent than those taken to protect the proprietary information of the Sub-contractor. Where the *Contractor* has reasonably relied on the Sub-contractor's self-certification and the Sub-contractor is subsequently found to be in breach of its obligations, the *Contractor* shall not be in breach of this Clause 19W (*Cyber*).
- 19W.4.3 The *Contractor* shall, and shall require its Sub-contractors to, include provisions equivalent to those set out in Clause 19X (*Provisions to be Included in Sub-Contracts*) in all relevant Sub-contracts and shall notify the *Client* in the event that it becomes aware of any material breach of the provisions set out in Clause 19X by its Sub-contractor.

### 19W.5 Records

- 19W.5.1 The *Contractor* shall keep and maintain, and shall ensure that any Sub-contractor shall keep and maintain, until six (6) years after the termination or expiry of or final payment under this Contract, or as long a period as may be agreed between the Parties, full and accurate records including but not limited to:
- (i) copies of all documents required to demonstrate compliance with DEFSTAN 05-138 and this Clause 19W (*Cyber*), including but not limited to any information used to inform the CSM Risk Assessment Process and to carry out the CSM Supplier Assurance Questionnaire, together with any certificates issued to the *Contractor* and/or Sub-contractor; and
  - (ii) copies of all documents demonstrating compliance with Clauses 19W.3.1(v) and in relation to any notifications made under Clause 19W.3.1(vi) and/or investigation under Clause 19W.3.1(vii).
- 19W.5.2 The *Contractor* shall and shall ensure that any Sub-contractor shall on request provide the *Client*, the *Service Manager* and/or the *Contractor's* NSA/DSA such access to those records under Clause 19W.5.1 as may be required in connection with this Contract.

### 19W.6 Audit

- 19W.6.1 In the event of a Cyber Security Incident, the *Contractor* agrees that the *Client* and its representatives, in coordination with the *Contractor's* NSA/DSA, may conduct such audits 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

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- (iv) the work carried out by the *Contractor* 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 Authority and the NSA/DSA.

19W.6.2 In addition to the rights in Clause 19W.6.1, the *Client* or its representatives and/or the *Contractor's* NSA/DSA, either solely or in any combination, may at any time during a period of six (6) years after the Termination Date or the end of the Contract Period or final payment under this Contract whichever is the later, but not more than once in any calendar year conduct an audit for the following purposes where the *Contractor* continues to hold MOD Identifiable Information:

- (i) to review and verify the integrity, confidentiality and security of any MOD Identifiable Information; and
- (ii) to review the Contractor's and/or any Sub-contractor's compliance with their obligations under DEFSTAN 05-138 or a Cyber Implementation Plan; and
- (iii) to review any records created during the provision of the Contractor Deliverables, including but not limited to any documents, reports and minutes which refer or relate to the Contractor Deliverables for the purposes of Clauses 19W.5.1 and 19W.5.2.

19W.6.3 The *Client*, acting reasonably and having regard to the confidentiality and security obligations owed by the *Contractor* to Third Parties, shall propose the scope of each audit in writing with a view to seeking the agreement of the *Contractor* but shall make the ultimate decision on the scope. For the avoidance of doubt the scope of the audit shall not grant the *Client* any unsupervised access to any of the *Contractor's* information systems or electronic communications networks. The *Client* shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the *Contractor* and/or Sub-contractor or delay the provision of the Contractor Deliverables and supplier information received by the *Client* in connection with the audit shall be treated as confidential information.

19W.6.4 The *Contractor* shall, and shall ensure that any Sub-contractor shall on demand provide the *Client* and any relevant regulatory body, including the *Contractor's* NSA/DSA, (and/or their agents or representatives) (together "**the Auditors**"), with all reasonable co-operation and assistance in relation to each audit, including but not limited to:

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

- 19W.6.5 The *Client* shall endeavour to (but is not obliged to) provide at least fifteen (15) calendar days' notice of its intention to conduct an audit.
- 19W.6.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 19W (*Cyber*), unless the audit identifies a material breach of the terms of this Clause 19W (*Cyber*) by the *Contractor* in which case the *Contractor* shall reimburse the *Client* for all the *Client's* reasonable costs incurred (which shall be evidence to the *Contractor*) in the course of the audit.
- 19W.6.7 The *Contractor* shall in its Sub-contracts procure rights for the *Client* to enforce the terms of Clause 19W.6 (*Audit*) in accordance with the Contracts (Rights of Third Parties) Act 1999.

**19W.7 General**

- 19W.7.1 On termination or expiry of this Contract the provisions of this Clause 19W (*Cyber*) excepting Clauses 19W.3.1(ii) and 19W.3.1(iii) shall continue in force so long as the *Contractor* and/or any Sub-contractor holds any MOD Identifiable Information relating to this Contract.
- 19W.7.2 Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Clause 19W (*Cyber*) that have accrued up to the date of termination or expiry, including but not limited to the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination or expiry
- 19W.7.3 The *Contractor* 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. In the event that there is such a change to DEFSTAN 05-138 or the Cyber Risk Profile or both, then either Party may seek an adjustment to the Prices for any associated increase or decrease in costs and the *Contractor* may request an extension of time for compliance with such revised or amended DEFSTAN 05-138 or Cyber Risk Profile or both, provided always that the *Contractor* shall seek to mitigate the impact on time and cost to the extent which it is reasonably practicable to do so and further provided that such costs shall not be allowed unless they are considered to be appropriate, attributable to this Contract and reasonable in all the circumstances.
- 19W.7.4 Subject to Clause 19W.7.3, where the *Contractor* seeks such adjustment or extension, the *Client* will proceed in accordance with the Contract Change Management Process to determine the request for adjustment or extension. The *Contractor* must deliver a Contractor Change request to the *Client* within eight (8) weeks (or other period agreed by the Parties) of the occurrence of the change in DEFSTAN 05-138 or Cyber Risk Profile or both, identifying the impact of that change and accompanied by full details of the request for adjustment. For the avoidance of doubt, the *Client* shall not be required to withdraw any *Client* Change Notice which may have been issued insofar as it relates to DEFSTAN 05-138 or the Cyber Risk Profile or both whether or not the Contractor Change request is rejected. If the *Contractor* does not agree with the *Client's* determination, then the Dispute Resolution Procedure shall apply.

19W.7.5 The *Contractor* shall not recover any costs and/or other losses under or in connection with this Clause 19W (*Cyber*) where such costs and/or other losses are recoverable or have been recovered by the *Contractor* elsewhere in this Contract or otherwise. For the avoidance of doubt this shall include but not be limited to the cost of implementing any upgrades or changes to any information system or electronic communications network whether in response to a Cyber Security Incident or otherwise, where the *Contractor* is able to or has recovered such sums in any other provision of this Contract or has recovered such costs and/or losses in other contracts between the *Contractor* and the *Client* or with other bodies.

## **19X      Cyber Provisions to Be Included in Sub-Contracts**

### **19X.1    Definitions**

19X.1.1 In this Clause 19X, the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

**“Associated Company”** means:

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

**“Contract”** means the FMO(A) Total Facilities Management Contract Number 709303453 made between MOD and the *Contractor* dated 13 September 2024;

**“Contractor”** means the *Contractor* named in the Contract with MOD;

**“Cyber Risk Profile”** means the level of cyber risk relating to this Sub-contract or any lower tier Sub-contract assessed in accordance with the Cyber Security Model;

**“Cyber Implementation Plan”** means the plan referred to in Clause 19X.2;

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

- (a) unauthorised access to an information system or electronic communications network on which MOD Identifiable Information resides;
- (b) 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;
- (c) unauthorised destruction, damage, deletion or the change of MOD Identifiable Information residing in an information system or electronic communications network;



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- (d) unauthorised or unintentional removal or limiting the possibility to use MOD Identifiable Information residing in an information system or electronic communications network; or
- (e) the appropriation, publication, dissemination or any other use of non-public MOD Identifiable Information by persons unauthorised to do so.

**“Cyber Security Instructions”** means DEFSTAN 05-138, together with any relevant ISN and specific security instructions relating to this Sub-contract issued by the *Client* to the *Contractor*;

**“Cyber Security Model”** and **“CSM”** mean 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 Sub-contract and any lower tier Sub-contract;

**“CSM Supplier Assurance Questionnaire”** means the supplier assessment questionnaire which forms part of the Cyber Security Model and is to be used by the Sub-contractor to demonstrate compliance with this Clause;

**“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 Sub-contract, including but not limited 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 *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 Horse Guards, London acting by the Defence Infrastructure Organisation, Overseas Prime Contract project team at [diocomrcl-opc@mod.gov.uk](mailto:diocomrcl-opc@mod.gov.uk)

**“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;

**“NSA/DSA”** means, as appropriate, the National or Designated Security Authority of the Prime or Sub-contractor that is responsible for the oversight of the security requirements to be applied by the Prime or Sub-contractor and for ensuring compliance with applicable national security regulations;

**“Sites”** means any premises from which Contractor Deliverables are provided in connection with this Sub-contract or from which the Sub-contractor or any relevant lower tier Sub-contractor manages, organises or otherwise directs the provision or the use of the Contractor Deliverables and/or any sites from which the Sub-contractor or any relevant lower tier Sub-contractor generates, processes, stores or transmits MOD Identifiable Information in relation to this Sub-contract;

**“Sub-contract”** means any sub-contract at any level of the supply chain, whether this Sub-contract which is awarded by the *Contractor* or any related Sub-contract which is awarded by the Sub-Contractor or any lower tier Sub-contractor or Associated Company, which is entered into as a consequence of or in connection with this Sub-contract;

**“Sub-contractor”** means a sub-contractor of the *Contractor* or any Associated Company whether a direct Sub-contractor or at any lower level of the supply chain who provides any Contractor Deliverables in connection with the Contract but only to the extent that the Sub-contractor processes, stores or transmits MOD Identifiable Information under their Sub-contract;

**“Supplier Cyber Protection Service”** means the tool incorporating the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire;

## 19X.2 Sub-Contractor Obligations

19X.2.1 The Sub-Contractor shall, and shall procure that their lower tier Sub-contractors shall:

- (i) comply with DEFSTAN 05-138 or, where applicable, the Cyber Implementation Plan attached to this Sub-contract and for the avoidance of doubt any Cyber Implementation Plan shall be prepared and implemented in accordance with Good Industry Practice taking account of any risk-balance case and any mitigation measures required by the MOD and the Prime Contractor and shall ensure that any measures taken to protect MOD Identifiable Information are no less stringent than those taken to protect their own proprietary information;
- (ii) 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 Sub-contractor, 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;
- (iii) re-perform the CSM Supplier Assurance Questionnaire no less than once in each year of this Sub-contract commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire to demonstrate continued compliance with the Cyber Security Instructions;

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- (iv) having regard to the state of technological development, implement and maintain all appropriate technical and organizational security measures to discharge their obligations under this Clause 19X in accordance with Good Industry Practice provided always that where there is a conflict between the Sub-contractor's obligations under Clause 19X.2.1(i) above and this 19X.2.1(iv) the Sub-contractor shall notify the Prime Contractor and the MOD in accordance with the notification provisions in DEFSTAN 05-138 as soon as they become aware of the conflict and the MOD shall determine which standard or measure shall take precedence;
- (v) comply with all Cyber Security Instructions notified to them by the MOD and/or the Prime Contractor as soon as reasonably practicable;
- (vi) notify the JSyCC WARP in accordance with ISN 2017/03 as amended or updated from time to time and the Prime Contractor and the Sub-contractor'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;
- (vii) in coordination with their 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 shall include complying with any reasonable technical or organisational security measures deemed appropriate by the MOD and the relevant Prime and/or Sub-contractor's NSA/DSA in the circumstances and taking into account the Cyber Risk Profile; and
- (viii) consent to the MOD recording and using information obtained via the Supplier Cyber Protection Service in relation to the Sub-contract for the purposes of the Cyber Security Model which shall include any agreed Cyber Implementation Plan. For the avoidance of doubt such information shall include the cyber security accreditation of the Sub-contractor and/or lower tier Sub-contractor as appropriate; and
- (iv) include provisions equivalent to this Clause 19X in all lower tier Sub-contracts (the "**equivalent provisions**") and, where a lower tier Sub-contractor breaches terms implementing this Clause 19X in a Sub-contract, the Sub-contractor shall, and shall procure that their lower tier Sub-contractors shall, in exercising their rights or remedies under the relevant Sub-contract:
- (v) 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
- (vi) have regard to the equivalent provisions.

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**19X.3 Records**

19X.3.1 The Sub-contractor shall keep and maintain, and shall ensure that any lower tier Sub-contractor shall keep and maintain, until six (6) years after termination of the Contract Period or final payment under this Sub-contract, or as long a period as may be agreed between the Parties, full and accurate records including but not limited to:

- (i) copies of all documents required to demonstrate compliance with DEFSTAN 05-138 and this Clause 19X., 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 Sub-contractor and/or any lower tier Sub-contractor.
- (ii) copies of all documents demonstrating compliance with 19X.2.1(v) and in relation to any notifications made under 19X.2.1(vi) and/or investigation under 19X.2.1(vii).

19X.3.2 The Sub-contractor shall and shall ensure that any lower tier Sub-contractor shall, on request provide the MOD, the MOD's representatives and/or the relevant Prime or Sub-contractor's NSA/DSA such access to those records under 19X.3.1 as may be required in connection with this Sub-contract.

**19X.4 Audit**

19X.4.1 In the event of a Cyber Security Incident the Sub-contractor agrees that the MOD and its representatives, in coordination with the relevant Prime or Sub-contractor's NSA/DSA, may conduct such audits as are required to establish (i) the cause of the Cyber Security Incident, (ii) the impact of the Cyber Security Incident, (iii) the MOD Identifiable Information affected, and (iv) the work carried out by the Sub-contractor 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.

19X.4.2 In addition to the rights in 19X.4.1, the Sub-contractor agrees that the MOD, its representatives and/or the relevant Prime or Sub-contractor's NSA/DSA, either solely or in any combination, may at any time during a period of six (6) years after termination of this Sub-contract or the end of the Sub-contract term or final payment under the Sub-contract whichever is the later, but not more than once in any calendar year, conduct an audit for the following purposes where the Sub-contractor continues to hold MOD Identifiable Information:

- (i) to review and verify the integrity, confidentiality and security of any MOD Identifiable Information;
- (ii) to review the Sub-contractor's and/or any lower tier Sub-contractor's compliance with their obligations under DEFSTAN 05-138 or a Cyber Implementation Plan; and
- (iii) to review any records created during the provision of the Contractor Deliverables, including but not limited to any documents, reports and minutes which refer or relate to the Contractor Deliverables for the purposes of 19X.3.1(i) and 19X.3.1(ii).

- 19X.4.3 The MOD, acting reasonably and having regard to the confidentiality and security obligations owed by the Sub-contractor to Third Parties, shall propose the scope of each audit in writing with a view to seeking the agreement of the Sub-contractor but shall make the ultimate decision on the scope. For the avoidance of doubt the scope of the audit shall not grant the MOD any unsupervised access to any of the Sub-contractor's information systems or electronic communications networks. The MOD and the Prime Contractor shall use their reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Sub-contractor and/or lower tier Sub-contractor or delay the provision of the Contractor Deliverables and supplier information received in connection with the audit shall be treated as confidential information.
- 19X.4.4 The Sub-contractor shall, and shall ensure that any lower tier Sub-contractor shall, on demand provide the MOD and any relevant regulatory body, including the relevant Prime or Sub-contractor's NSA/DSA, (and/or their agents or representatives), together the "**Auditors**", with all reasonable co-operation and assistance in relation to each audit, including but not limited to:
- (i) all information requested by the MOD within the permitted scope of the audit;
  - (ii) reasonable access to any Sites controlled by the Sub-contractor or any Associated Company and any lower tier Sub-contractor used in the performance of the Sub-contract to the extent required within the permitted scope of the audit and, where such Sites are out with the control of the Sub-contractor, shall secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and
  - (iii) access to any relevant staff.
- 19X.4.5 Where the Prime Contractor is provided with notice of the audit by the MOD and/or the relevant NSA/DSA, the Prime Contractor shall endeavour to (but is not obliged to) provide at least fifteen (15) calendar days' notice to the Sub-contractor of the intention to conduct an audit.
- 19X.4.6. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 19X, unless the audit identifies a material breach of the terms of this Clause by the Sub-contractor and/or a lower tier Sub-contractor in which case the Sub-contractor shall reimburse the Prime Contractor and the MOD as appropriate for all the reasonable costs incurred in the course of the audit.
- 19X.4.7 The Sub-contractor shall in their lower tier Sub-contracts procure rights for the MOD to enforce the terms of this Clause 19X.4 of this Clause 19X in accordance with the Contracts (Rights of Third Parties) Act 1999.

## 19X.5 General

- 19X.5.1. On termination or expiry of this Sub-contract the provisions of this Clause 19X shall continue in force so long as the Sub-contractor and/or any lower tier Sub-contractor holds any MOD Identifiable Information relating to this Sub-contract.

- 19X.5.2. Termination or expiry of this Sub-contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Clause 19X. 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 Sub-contract which existed at or before the date of termination or expiry.
- 19X.5.3. The Sub-contractor 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 Security Instructions. In the event that there is such a change to DEFSTAN 05-138 or the Cyber Risk Profile or both, then the Sub-contractor may seek an adjustment to the contract price from the Prime Contractor for any associated increase or decrease in costs and the Sub-contractor 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 Sub-contractor shall seek to mitigate the impact on time and cost to the extent which it is reasonably practicable to do so and further provided that such costs shall not be allowed unless they are considered to be appropriate, attributable to this Sub-contract and reasonable in all the circumstances.
- 19X.5.4. The Sub-contractor shall not recover any costs and/or other losses under or in connection with this Clause 19X where such costs and/or other losses are recoverable or have been recovered by the Sub-contractor elsewhere in this Contract or otherwise. For the avoidance of doubt this shall include but not be limited to the cost of implementing any upgrades or changes to any information system or electronic communications network whether in response to a Cyber Security Incident or otherwise, where the Sub-contractor is able to or has recovered such sums in any other provision of this Sub-contract or has recovered such costs and/or losses in other contracts between the Sub-contractor and the Prime Contractor or with other bodies.

## **19Y     Security Measures**

- 19Y.1 In this Clause 19Y, “Secret Matter”, “Employee” and “GovS 007: Security” shall have the meanings given to them in Annex A, except where the context requires a different meaning.

### **The Official Secrets Act (“OSA”)**

- 19Y.2 The *Contractor* shall:
- 19Y.2.1 take all reasonable steps to ensure that all Employees engaged on any work in connection with this Contract have notice that the Official Secrets Acts 1911-1989 (“OSA”) apply to them and will continue so to apply after the completion or termination of this Contract; and
- 19Y.2.2 if directed by the *Client*, ensure that any Employees sign a statement acknowledging that, both during the Contract Period and after its expiry or termination, it is bound by the OSA (and where applicable by any other Law).

### **Security Measures**

- 19Y.3 Unless the *Contractor* has the written authorisation of the *Client* to do otherwise, neither the *Contractor* nor any of their Employees shall, either before or after the

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completion or termination of this Contract, do or permit to be done anything which they know or ought reasonably to know may result in a Secret Matter being disclosed to or acquired by a person in any of the following categories:

- 19Y.3.1 who is not a British citizen;
  - 19Y.3.2 who does not hold the appropriate authority for access to the protected matter;
  - 19Y.3.3 in respect of whom the *Client* has notified the *Contractor* in writing that the Secret Matter will not be disclosed to or acquired by that person;
  - 19Y.3.4 who is not an Employee of the *Contractor*;
  - 19Y.3.5 who is an Employee of the *Contractor* and has no need to know the information for the proper performance of this Contract.
- 19Y.4 Unless the *Contractor* has the written authorisation of the *Client* to do otherwise, the *Contractor* and its Employees shall, both before and after the expiry or termination of this Contract, take all reasonable steps to ensure that:
- 19Y.4.1 no photograph of, or pertaining to, any Secret Matter will be taken and no copy of or extract from any Secret Matter will be made except to the extent necessary for the proper performance of this Contract;
  - 19Y.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 will be entitled to retain it.

A decision of the *Client* on the question of whether the *Contractor* has taken or is taking reasonable steps as required by this Clause 19Y (*Security Measures*) will be final and conclusive.

- 19Y.5 The *Contractor* shall:
- 19Y.5.1 provide 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 Clause 19Y.4.2 (*Security Measures*);
    - (ii) upon request, such information as the *Client* may from time to time require so as to be satisfied that the *Contractor* and its Employees are complying with their obligations under this Clause 19Y (*Security Measures*), including the measures taken or proposed by the *Contractor* so as to comply with its obligations and to prevent any breach of them;
    - (iii) full particulars of any failure by the *Contractor* and its Employees to comply with any obligations relating to Secret Matter arising under this Clause 19Y (*Security Measures*) immediately upon such failure becoming apparent;
  - 19Y.5.2 ensure that, for the purpose of checking the *Contractor's* compliance with the obligation in Clause 19Y.4.2 (*Security Measures*), a representative of the *Client* will be entitled at any time to enter and inspect any premises used by the *Contractor* which are in any way connected with this Contract and inspect any document or thing in any such premises which is being

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used or made for the purposes of this Contract. Such representative will be entitled to all such information as it may reasonably require.

- 19Y.6 If at any time either before or after the expiry or termination of this Contract, the Contractor or any of its Employees discovers or suspects that an unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the *Contractor* shall forthwith inform the *Client* of the matter with full particulars thereof.

### **Sub-Contracts in relation to OSA**

- 19Y.7 If the *Contractor* proposes to make a Sub-Contract which will involve the disclosure of Secret Matter to the Sub-Contractor, the *Contractor* shall:

- 19Y.7.1 submit for approval of the *Client* the name of the proposed Sub-Contractor, a statement of the work to be carried out and any other details known to the *Contractor* which the *Client* will reasonably require;
- 19Y.7.2 incorporate into the Sub-Contract the terms of Annex P (*Security Measures*) and such secrecy and security obligations as the *Client* shall direct. In Annex P (*Security Measures*), "Agreement" shall mean the "Sub-Contract", "First Party" shall mean the "Contractor" and "Second Party" shall mean the "Sub-Contractor"; and
- 19Y.7.3 inform the *Client* immediately if it becomes aware of any breach by the Sub-Contractor of any secrecy or security obligation and, if requested to do so by the *Client*, terminate the Sub-Contract.

### **Termination in relation to OSA**

- 19Y.8 The *Client* shall in accordance with Clause 90 (*Termination*) be entitled to terminate the *Contractor's* employment under this Contract immediately if:

- 19Y.8.1 the *Contractor* is in breach of any obligation under this Clause 19Y.2 (*Security Measures*); or
- 19Y.8.2 the *Contractor* 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 jeopardise the secrecy or security of the Secret Matter and claim such damages as may have been sustained as a result of the *Contractor's* breach of this Clause 19Y (*Security Measures*).

## **19Z Personnel**

- 19Z.1 The *Contractor* shall submit in writing to the *Service Manager* for approval, initially and as necessary from time to time, a list of those Personnel who may need to enter any Establishment in connection with the *services* and, giving such particulars as the *Service Manager* and/or issuing Host Nation (HN) may require, including full details of birthplace and parentage of any such Personnel who:

- 19Z.1.1 was not born in the United Kingdom; or
- 19Z.1.2 if such Personnel was born in the United Kingdom, was born of parents either or both of whom were not born in the United Kingdom.

- 19Z.2 The *Contractor* acknowledges that Personnel will not be admitted to an Establishment unless in possession of a valid pass. Passes will remain the property of the *Client*



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and/or the issuing Host Nation (HN) and the *Contractor* shall procure that they are surrendered on demand or on completion of the work.

- 19Z.3 Notwithstanding the provisions of Clauses 19Z.1 and 19Z.2 (*Personnel*) if, in the opinion of the *Client*, any of the Personnel will misconduct itself, or it will not be in the public interest for any person to be employed or engaged by the *Contractor*, the *Contractor* shall remove such person immediately on being requested to do so by the *Client* and shall cause the work to be performed by such other person as may be necessary. Any such removal or replacement of any of the Personnel will not constitute a Compensation Event and the cost of compliance with any instruction in relation to the same shall be borne by the *Contractor*.
- 19Z.4 Where any of the Personnel is removed pursuant to a request from the *Client* pursuant to Clause 19Z.3 (*Personnel*), the *Contractor* shall arrange that such Personnel has no further connection with the *services*.
- 19Z.5 The decision of the *Client* or the *Service Manager* (as the case may be) upon any matter arising under Clauses 19Z.3 to 19Z.4 (*Personnel*) (inclusive) will be final and conclusive and without any liability to the *Client*.
- 19Z.6 Without prejudice to Clauses 19Z.1 to 19Z.5 (*Personnel*) (inclusive), the *Contractor* shall ensure that all Personnel:
- 19Z.6.1 have an appropriate level of qualification and experience for their role in Providing the Services; and
  - 19Z.6.2 are fully competent to carry out the tasks assigned to them.

### Observance of Security Regulations

#### Personnel Security

- 19Z.7 The *Contractor* shall comply with the Personnel security requirements detailed in Booklet 3 (Requirements Information) Module A, paragraph A8. The *Client* shall in accordance with Clause 90 (*Termination*) be entitled to terminate the *Contractor's* employment under this Contract immediately if there is a breach of these Personnel security requirements.

### 19AA Official-Sensitive Security Requirements

- 19AA.1 In this Clause 19AA (*Official-Sensitive Security Requirements*), “**Information**” means information recorded in any form disclosed or created in connection with this Contract.
- 19AA.1.1 The *Contractor* shall protect all Information relating to the aspects designated as “OFFICIAL SENSITIVE” as identified in Annex F (Security Aspects Letter) in accordance with the official security conditions contained in this Contract or annexed to the Security Aspects Letter.
  - 19AA.1.2 The *Contractor* shall include the requirements and obligations set out in Clause 19AA (*Official-Sensitive Security Requirements*) in any Sub-Contract placed in connection with or for the purposes of this Contract which requires disclosure of OFFICIAL-SENSITIVE Information to the Sub-Contractor or under which any Information relating to aspects designated as OFFICIAL-SENSITIVE is created by the Sub-Contractor. The *Contractor* shall also include in the Sub-Contract a requirement for the Sub-Contractor to flow the requirements of this Clause 19AA (*Official-Sensitive*

*Security Requirements*) to its Sub-Contractors and through all levels of the supply chain to the lowest level where any OFFICIAL-SENSITIVE Information is handled.

**19BB Staff Transfer Arrangements on Entry and Exit, Pensions and Employment and Intermediaries**

**Staff Transfer Arrangements on Entry and Exit, Pensions and Employment**

19BB.1 “The terms of Annex G shall apply and bind the Parties notwithstanding that as a matter of law the Transfer Regulations (as defined in Annex G), or other legislation referenced in Annex G, may not apply within the Host Nation. Rights and obligations under Annex G which arise from or in the context of such legislation are to be construed as if such legislation did apply in the Host Nation. The Parties shall comply with their respective obligations under Annex G accordingly.”

**Intermediaries**

19BB.2 The Off-Payroll Rules (Intermediaries Legislation – IR35) for working in the Public Sector are in place to ensure that where a worker would have been an employee if they were providing their services directly, they are broadly paying the same tax and National Insurance Contributions (NICs) as an employee.

19BB. 3 The table below shows the *Client’s* decision on the status of each item of work (detailed in Booklet 3 (*Requirements Information*) and Booklet 4 (*Client Supplied Data*)) in respect of IR35 legislation.

	Description of work	Work in or out of scope for IR35	Dates of employment status review
Booklet 3 ( <i>Requirements Information</i> ) and Booklet 4 ( <i>Client Supplied Data</i> )	HFM for Broader Middle East (BME) Estate	Out of Scope	[ ] <sup>4</sup>

19BB.4 Where the worker is supplied through a contractor rather than being employed directly then the provisions of this Clause 19BB.2 (*Intermediaries*) must be included in any terms between the *Contractor* and such worker.

19BB.5 Periodic reviews will be implemented to re-assess determination. These will be undertaken if any part of the requirement changes from in-scope to out of scope or vice versa and prior to contract amendments being issued.

**19CC Conflicts of interest**

19CC.1 The *Contractor* shall take appropriate steps to ensure that neither the *Contractor* nor any Contractor Related Party is placed in a position where, in the reasonable opinion of the *Client*:

19CC.1.1 there is or may be an actual conflict or potential conflict, between the pecuniary or personal interests of the *Contractor* and the duties owed to the Client under the provisions of this Contract; or

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- 19CC.1.2 the behaviour of the *Contractor* or the Contractor Related Party is not in the *Client's* best interest or might adversely affect the *Client's* reputation.
- 19CC.2 The *Contractor* shall, as soon as reasonably practicable, disclose to the *Client* full particulars of any behaviour which might give rise to an actual or potential conflict.
- 19CC.3 The *Client* may, in accordance with Clause 91 (*Reasons for Termination*), terminate all or part of the *Contractor's* employment under this Contract and/or take such other steps it deems necessary where, in the reasonable opinion of the *Client*, there is or may be an actual conflict or potential conflict, between the financial or personal interests of the *Contractor* or the Contractor Related Party and the duties owed to the *Client* under the provisions of this Contract. The actions of the *Client* pursuant to this Clause 19CC.3 (*Conflicts of Interest*) do not prejudice or affect any right of action or remedy which has accrued or will accrue to the *Client*.
- 19CC.4 In exercising its rights or remedies under this Clause 19CC.3 (*Conflicts of Interest*), the *Client* shall:
- 19CC.4.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the nature of the interests that is or may be an actual conflict or potential conflict;
- 19CC.4.2 give all due consideration, where appropriate, to action other than termination of this Contract, including:
- (i) requiring the *Contractor* to procure the termination of the interest or activity that is or may be an actual conflict or potential conflict (including terminating any relevant Sub-Contract or procuring the dismissal of any relevant Personnel); and/or
  - (ii) requiring the *Contractor* to put in place appropriate and reasonable procedures (including ethical walls) for the purposes of managing the interest or activity that is or may be an actual conflict or potential conflict.

## **2. THE CONTRACTOR'S MAIN RESPONSIBILITIES**

### **20 Providing the Service**

- 20.1 The *Contractor* shall Provide the Service in accordance with:
- 20.1.1 Law;
  - 20.1.2 all applicable treaty obligations of the United Kingdom;
  - 20.1.3 all applicable Host Nation Law;
  - 20.1.4 Booklet 3 (Requirements Information) and Booklet 4 (Client Supplied data);
  - 20.1.5 all MOD Mandated Documents;
  - 20.1.6 British and/or Host Nation standards which are relevant to the service;
  - 20.1.7 Good Industry Practice;
  - 20.1.8 all Necessary Consents;
  - 20.1.9 all responsibilities of the *Contractor* in this Contract; and
  - 20.1.10 subject to compliance with Clauses 20.1.1 to 20.1.9:
    - (i) the Accepted Plan; and
    - (ii) the PPM Programme,
- Provided always that Host Nation Law and standards will take precedence to Law and/or British standards if more robust.
- 20.2 In Providing the Service, the *Contractor* shall minimise the interference caused to the Affected Property and the activities taking place in it.
- 20.3 The *Contractor* shall provide continual supervision of the *services* and perform and provide everything necessary for the organisation and co-ordination of the *services* between the Contractor Related Parties and Others.
- 20.4 Unless otherwise agreed by the *Service Manager* in writing, the *Contractor* shall perform all Contractor Deliverables in the MOD Infrastructure Requirement Schedules (MIRS) at the indicative frequency stated therein or more frequently.
- 20.5 The *Contractor* shall indemnify and keep indemnified the *Client* (for itself and for any future service provider) against:
- 20.5.1 any losses, costs, expenses, demands and liabilities; and
  - 20.5.2 any claim or claims (and all costs and expenses thereof) by any future contractor against the *Client* or any future contractor,
- arising out of or in connection with the provision (or failure to provide) and/or accuracy of the Estate Information that the *Contractor* has provided (or is obliged to provide) pursuant to, and in accordance with Booklet 3 (Requirements Information) Module A on or prior to the expiry or termination of this Contract or otherwise pursuant to the Exit Strategy.

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- 20.6 The obligations in Clauses 20.1.1 to 20.1.10 (inclusive) and Clauses 20.2 to 20.4 (inclusive) (*Providing the Service*) are independent obligations and the fact that the *Contractor* has complied with one or more of such obligations will not be a defence to an allegation that the *Contractor* has not satisfied any other obligation.
- 20.7 Except as expressly provided for in this Contract, the *Contractor* acknowledges that:
- 20.7.1 the *Client* has delivered or made available to the *Contractor* all the information and documents that the *Contractor* considers necessary or relevant for the performance of its obligations under this Contract;
  - 20.7.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to the *Contractor* by or on behalf of the *Client* prior to the Contract Date;
  - 20.7.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the *Client* before the Contract Date of all relevant details relating to:
    - (i) the requirements of the *services*;
    - (ii) the suitability of the Affected Property;
    - (iii) the operating processes and procedures and the working methods of the *Client*;
    - (iv) the ownership, functionality, capacity, condition and suitability for use in the *services* of the Government Furnished Equipment provided at the Contract Date;
    - (v) any existing contracts (including any licences, support, maintenance and other agreements relating to the Affected Property) which may be managed by the *Contractor*, or which the *Contractor* may require the benefit of, in order to Provide the Service;
    - (vi) all risks, conditions, contingencies and circumstances; and
  - 20.7.4 it will not be entitled to rely upon any survey, report or other document prepared by or on behalf of the *Client* and the *Client* makes no representation or warranty as to the accuracy or completeness of any such survey, report or document or any representation or statement whether negligently or otherwise made therein.
- 20.8 The *Contractor* shall not be excused from the performance of any of its obligations under this Contract on the grounds of, nor shall the *Contractor* be entitled to a Compensation Event or any other relief or remedy whatsoever against the *Client* as a result of:
- 20.8.1 any unsuitable aspects of the Affected Property;
  - 20.8.2 any misinterpretation of the requirements of the *services*;
  - 20.8.3 any failure by the *Contractor* to discover or foresee any condition, risk, contingency or circumstance (whether the same ought reasonably to have been discovered or foreseen or not) which may influence or affect the *services*; and/or

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- 20.8.4 any failure by the *Contractor* to satisfy itself as to the accuracy and/or adequacy of any information supplied to the *Contractor* by or on behalf of the *Client* prior to the Contract Date.
- 20.9 The *Contractor* acknowledges that nothing in this Contract shall operate to prevent the *Client* from instructing any Third Party to provide services at/on any Affected Property which are the same or similar to the *services*.
- 20.10 The *Client* warrants, on the Contract Date, the accuracy of the master list of Level 1 Assets and Level 2 Assets set out in Booklet 4 (*Client Supplied data*) and the usage codes and operational need applicable to such Level 1 Assets and Level 2 Assets. The condition of Level 2 Assets is described within the Technical Building Inspection reports set out in Booklet 4 (*Client Supplied data*). For the avoidance of doubt, the *Client* provides no warranty on the condition or state of repair of Assets.

### **Contractor Related Parties**

- 20.11 The *Contractor*, and not the *Client*, shall be responsible and liable for the acts and omissions of Contractor Related Parties as if they were the acts and omissions of the *Contractor*.
- 20.12 Without limitation to its actual knowledge, the *Contractor* shall for all purposes of this Contract be deemed to have such knowledge in respect of the *services* as is held (or ought reasonably to be held) by any Contractor Related Party.
- 20.13 The *Contractor* shall not Provide the Service otherwise than through itself or a Contractor Related Party.

## **21 Design of Equipment**

- 21.1 The *Contractor* submits particulars of the design of an item of Equipment to the *Service Manager* for acceptance if the *Service Manager* instructs him to. A reason for not accepting is that the design of the item will not allow the *Contractor* to Provide the Service in accordance with:
- 21.1.1 this Contract;
  - 21.1.2 the Service Information;
  - 21.1.3 the Contractor's Plan and/or any ESTS; or
  - 21.1.4 the applicable Law.

## **22 People**

### **Key Personnel**

- 22.1 The Contractor shall not remove or replace any Key Personnel unless:
- 22.1.1 requested to do so by the *Client*;
  - 22.1.2 the person concerned resigns, retires or dies or is on maternity, parental leave or long-term sick leave;

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- 22.1.3 the person's employment or contractual arrangement with the Contractor or a Sub-Contractor is terminated for material breach of contract by the employee; or
- 22.1.4 the Contractor obtains the *Client's* prior written consent (such consent not to be unreasonably withheld or delayed).
- 22.2 The Contractor shall:
  - 22.2.1 immediately after any Key Personnel is removed or replaced in accordance with Clause 22.1 (*Key Personnel*), the Contractor shall then immediately arrange that such Key Personnel has no further connection with delivery of the services and no further access to the *Client's* Establishment;
  - 22.2.2 notify the *Client* promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Contractor shall ensure appropriate temporary cover for that Key Role);
  - 22.2.3 ensure that any Key Role is not vacant for any longer than ten (10) Working Days, unless otherwise agreed with the Service Manager;
  - 22.2.4 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill-health or a material breach of the Key Personnel's employment contract, this will mean at least sixty (60) Working Days' notice;
  - 22.2.5 ensure that all arrangements for planned changes in the Key Personnel provide adequate periods during which incoming and outgoing Personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the services; and
  - 22.2.6 ensure that any replacement for a Key Role:
    - (i) has a level of qualifications and experience appropriate to the relevant Key Role;
    - (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom it has replaced; and
    - (iii) has been approved by the Service Manager.

### **Working with Children and Vulnerable Adults Present**

- 22.3 Where any Personnel may be expected in the course of Providing the Service to have access to children or vulnerable adults, the Contractor shall (at its own expense and to the extent permitted by Law) procure that such Personnel completes a police check form or consents to an application for a certificate under Part V of the Police Act 1997 (or obtains any equivalent required under the Host Nation Law to work with children and vulnerable adults present) before such Personnel attends the Establishment.
- 22.4 The Contractor shall procure that no person who discloses any convictions, or who is found to have any convictions following completion of a police check or an application for a certificate under Clause 22.3 (*Working with Children and Vulnerable Adults Present*), in either case of which the Contractor or any Sub-Contractor is aware or ought to be aware, is engaged in Providing the Service without the *Client's* prior written consent (such consent not to be unreasonably withheld or delayed).
- 22.5 The Contractor shall procure that the *Client* is kept advised at all times of any Personnel engaged in Providing the Service who, subsequent to the commencement of such engagement, receives a conviction of which the Contractor or any Sub-Contractor becomes aware or whose previous convictions become known to the Contractor or any Sub-Contractor and shall, promptly on becoming aware of such a conviction, procure that no such person continues to be engaged in Providing the Service without the *Client's* prior written consent (such consent not to be unreasonably withheld or delayed).

**Non-Solicitation**

- 22.6 Subject to Clause 22.7 (*Non-Solicitation*), the Contractor undertakes that during the Contract Period and for the period of six (6) months after the expiry or, if earlier, the termination of this Contract, it shall not directly solicit or attempt to directly solicit services from any personnel of the *Client* or entice or attempt to entice any personnel away from the *Client*.
- 22.7 Where a member of the *Client's* personnel responds on their own account to an advertisement made to the wider public, such response shall not be construed as directly soliciting or attempting to directly solicit services from any personnel of the *Client* or enticing or attempting to entice any personnel away from the *Client*.

**Modern Slavery, Child Labour & Inhumane Treatment**

- 22.8 The *Client* has a zero-tolerance approach to modern slavery and human trafficking, and it is committed to acting ethically in its business dealings and relationships and to implement and enforce effective procedures and controls to prevent modern slavery and human trafficking in its business dealings and relationships. The *Client* expects the same high standards from all its consultants, contractors, suppliers, employees and agents. The Contractor undertakes and warrants that it:
- 22.8.1 shall not use, nor allow its Sub-Contractors to use, forced, bonded or involuntary prison labour;
- 22.8.2 shall not require any Personnel to lodge deposits or identity papers with the *Client* and shall be free to leave their employer after reasonable notice;
- 22.8.3 has not been convicted of any slavery or human trafficking offences anywhere around the world;



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- 22.8.4 to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;
  - 22.8.5 shall make reasonable enquiries to ensure that its officers, employees and Sub-Contractors have not been convicted of slavery or human trafficking offences anywhere around the world;
  - 22.8.6 shall have and maintain throughout the Contract Period its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 (and, to the extent applicable, the Host Nation Law) and include in its Sub-Contracts anti-slavery and human trafficking provisions;
  - 22.8.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under this Contract;
  - 22.8.8 shall prepare and deliver to the *Client* an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business and an annual certification of compliance with this Clause 22.8 (*Modern Slavery, Child Labour & Inhumane Treatment*);
  - 22.8.9 shall not use, nor allow its Personnel or Sub-Contractors to use, physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its Personnel or Sub-Contractors;
  - 22.8.10 shall not use or allow child or slave labour to be used by its Sub-Contractors; and
  - 22.8.11 shall report the discovery or suspicion of any slavery or trafficking by it or its Sub-Contractors to the *Client*, the Modern Slavery Helpline <https://www.modernslaveryhelpline.org/> (Telephone (08000 121 700) and to the United Kingdom Police Force and to the Host Nation Police Force.
- 22.9 If the Contractor, a Contractor Related Party or anyone acting on its behalf commits any offence under the Modern Slavery Act 2015 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown, the *Client* will be entitled to terminate the Contractor's employment under this Contract in accordance with Clause 90 (*Termination*) and recover from the Contractor the amount of any loss resulting from the termination.

### Child Labour Legislation

- 22.10 The Contractor shall comply in all material respects with Child Labour Legislation and applicable employment Law of those jurisdictions(s) where this Contract is being performed.

## **23 Working with Others**

- 23.1 The Contractor shall:

- 23.1.1 co-operate and liaise in good faith with Others, as required by the *Client*, in obtaining and providing information which they need in connection with the services;
- 23.1.2 co-operate with Others and share the Affected Property with them as stated in the Service Information; and
- 23.1.3 comply with its obligations set out in Booklet 3 (Requirements Information), Module A.

- 23.2 In performing its obligations under this Contract, the Contractor shall have regard to the obligations of the *Client* under any other contracts, agreement, treaties or arrangements entered into in relation to the Affected Property insofar as the Contractor has been given notice of any such obligations at any time and shall not by any act, omission or default do anything to cause or contribute to any breach by the *Client* of any such obligations.

- 23.3 At the request of the *Client*, the Contractor shall enter into good faith discussions with the *Client* and any other relevant contractor of the *Client* to agree an interface agreement on such terms to be agreed between the *Client* and the Contractor (each acting reasonably).

- 23.4 The *Client* and the Contractor shall provide facilities, equipment, materials and such other items stated in Booklet 3 (Requirements Information). Any cost incurred by the *Client* as a result of the Contractor not providing such provide facilities, equipment, materials and other items the Contractor is to provide will be assessed by the Service Manager and shall be paid by the Contractor.

## **24 Sub-Contracting**

- 24.1 The Contractor shall in relation to any Sub-Contract:

- 24.1.1 ensure that the following Clauses (as a minimum) of this Booklet 2 (*Conditions of Contract*) are included, mutatis mutandis:
  - (i) subject to Clause 22.10 (*Child Labour Legislation*), Clause 22.8 (*Modern Slavery, Child Labour and Inhumane Treatment*);
  - (ii) Clause 29B (*Access and Facilities provided by the Contractor*);
  - (iii) Clause 29C (*Import and Export Licences*);
  - (iv) Clause 29F (*Discrimination*);
  - (v) Clause 72 (*Accounting for the Property of the Client*);
  - (vi) Clause 94 (*Termination for Convenience*);
  - (vii) Clause 18 (*Fraud and Prevention of Corruption*);
  - (viii) Clause 29S (*Measures in a Crisis*);

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- (ix) Clause 29T (*Client Step-In*);
- (x) Clause 19J (*The Contractor's Records*);
- (xi) Clause 19W.6 (*Audit*);
- (xii) Clause 19M (*Disclosure of Information*);
- (xiii) Clause 19N (*Freedom of Information Act*);
- (xiv) Clause 19O (*Requirement for a Certificate of Conformity*);
- (xv) Clause 19W (*Cyber*);
- (xvi) Clause 19Y (*Security Measures*);
- (xvii) Clause 19Z (*Personnel*);
- (xviii) Clause 19AA (*Official-Sensitive Security Requirements*);
- (xix) Clause 29Q (*Timber and Wood-Derived Products*); and
- (xx) Clause 29R (*Intellectual Property Rights*);

24.1.2 procure that it will in all respects be compatible with the terms of this Contract;

24.1.3 provide to the *Client* on demand certified copies of such Sub-Contract, notwithstanding which, the *Contractor* shall remain liable to the *Client* for the due observance of the terms of this Contract by any Contractor Related Party.

24.2 The *Contractor* shall submit each proposed Sub-Contract to the *Service Manager* for acceptance unless the *Service Manager* has agreed that no submission is required, and the *Contractor* shall not appoint a Sub-Contractor without prior written consent from the *Service Manager* (which he shall be entitled to withhold in his absolute discretion).

24.3 The *Contractor* shall in each key Sub-Contract and, at the *Client's* request, any other Sub-Contract include a clause obliging the Sub-Contractor to provide a Sub-Contractor Warranty (Annex H) to the *Client* and the *Contractor* shall procure that each relevant Sub-Contractor executes such Sub-Contractor Warranty prior to commencing any work under the relevant Sub-Contract.

## 25 **Other Responsibilities**

25.1 The *Contractor* shall obtain approval from Others where necessary.

25.2 The *Contractor* shall provide access to work being done and to any assets belonging to the *Client* (including Government Furnished Equipment) being stored in connection with this Contract for the *Service Manager* and Others notified to it by the *Service Manager*.

25.3 The *Contractor* shall comply with an instruction which is in accordance with this Contract and is given to it by the *Service Manager*.

25.4 The *Contractor* acts in accordance with the health and safety requirements stated in Booklet 3 – Requirements Information.

25.5 The *Contractor* will at all times prevent any nuisance (including, but without limitation, any noisy working operations) or other interference with the rights of any adjoining landowner, tenant or occupier or any statutory undertaker arising out of the carrying

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out of the *service* and will assist the *Client* in defending any action or proceeding which may be instituted in relation thereto.

- 25.6 Without prejudice to the obligations of the *Contractor* under clause 25.5 above, the *Contractor* will at all times ensure that there is no trespass by the *Contractor* or its Personnel on or over any adjoining or neighbouring property arising out of, or in the course of, or caused by the carrying out of the *service* and the *Contractor* will take all reasonable safety and other measures to prevent damage or injury to any persons (including but without limitation) the occupiers of adjoining or neighbouring property and members of the public.
- 25.7 The *Contractor* will be responsible for and will indemnify the *Client* from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the *Contractor* in performing his obligations under clause 25.5 or 25.6.
- 25.8 The contractor will be required to organise space allocation (operational footprint) in the UN compound at Baidao to support the project.

## 26 Assignment

- 26.1 The *Contractor* shall not give, bargain, sell, assign, or otherwise dispose of this Contract or any part thereof, or the benefit or advantage of this Contract or any part thereof, without the previous consent in writing of the *Client*. The *Client* may assign the benefit of the whole or any part of this Contract at any time without the prior consent of the *Contractor*.

## 27 Not Used

## 28 Works

- 28.1 Where there are Works carried out in connection with this Contract, the provisions of this Clause 28 (*Works*) shall apply.
- 28.2 Prior to commencing any Works, the *Contractor* shall submit the particulars of the design for the proposed Works to the *Service Manager* in accordance with this Clause 28 (*Works*) within the period stated in Booklet 3 (Requirements Information).
- 28.3 The *Service Manager* may raise such questions as it requires for the purpose of considering whether the design submitted to the *Service Manager* in accordance with Clause 28.2 (*Works*) is appropriate for the intended purpose, is in accordance with the Service Information and whether it complies with the requirement of this Contract. The *Contractor* shall not be entitled to proceed to commence the Works to which such design relates unless and until the *Service Manager* confirms in writing that:
- 28.3.1 it has no comments to make nor any questions to raise in respect of the design submitted; or
- 28.3.2 (the *Service Manager* having made comments or raised questions in respect of the design submitted to which the *Contractor* has responded) it does not wish to make or raise any further comments or questions.

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- 28.4 The *Contractor* shall respond within the period as stated by the *Service Manager*, to any comments made or questions raised by the *Service Manager* in relation to any design particulars submitted by the *Contractor*.
- 28.5 Notwithstanding any queries raised or comments made by the *Service Manager* under Clause 28.3 (*Works*) or any other provision to the contrary in this Contract, the *Contractor* accepts entire responsibility for the design of the Works (including any design work prepared before or after the Contract Date and whether carried out by or on behalf of the *Client* or the *Contractor*), any documentation relating to such Works and for any mistake, inaccuracy, omission or discrepancy in such design or such documents.
- 28.6 Nothing in this Clause 28 (*Works*) or any other provision of this Contract shall relieve the *Contractor* of any liability under this Contract for any defect in any design of the Works for any inconsistency between any design documents and no design shall be deemed to satisfy the requirements of this Contract by virtue of having been submitted to and/or considered by the *Service Manager* (or *Client*) pursuant to the terms of this Clause 28 (*Works*).
- 28.7 Without prejudice to any other term of this Contract, the *Contractor* warrants and undertakes that:
- 28.7.1 the Works have been carried out or will be carried out and completed using Good Industry Practice and in a good and workmanlike manner and using only good quality and sound materials consistent with the intended use of the Affected Property;
  - 28.7.2 the Works comprise or will comprise only materials and goods which are new and of good and satisfactory quality and all workmanship, manufacture or fabrication will be to the standards necessary for completion of the services in accordance with this Contract;
  - 28.7.3 the Works will comply with, and the *Contractor* shall comply with all appropriate requirements of any public authority and the Law; and
  - 28.7.4 the *Contractor* shall design the Works with the reasonable skill, care and diligence of a competent designer with experience of works of a similar size, scope, duration and complexity as the Works.
  - 28.7.5 the *Contractor* shall take out Contractor's "All Risks" insurance in respect of the Works in accordance with Clause 84.3 (*Contractor's "All Risks" Insurance (CAR)*).
  - 28.7.6 Restrictions on work site working hours are to be investigated by the contractor so there is no effect on the programme.

## 29 **Health & Safety and the Environment**

- 29.1 The *Contractor* will Provide the Service in accordance with the *Client's* health and safety and sustainable development and environmental management requirements and in compliance with Booklet 3 – Requirements Information t.–The *Contractor* will indemnify and keep the *Client* indemnified from and against any direct claims, actions, liabilities, losses, costs, expenses and damages arising as a result of the *Contractor's* negligence in complying with its obligations under this clause 29. The *Contractor* may be required to attend safety training at any Establishment, which may be arranged from time to time by the *Client*.

- 29.2 Prior to the In Service Date the *Contractor* will provide the *Service manager* with full details of all known hazardous materials and substances used or stored on the Affected property and of any such materials which are not clearly labelled or appropriately stored, and will inform the *Service manager* whether the Affected property contains any toxic, hazardous or carcinogenic substances along with its procedures for dealing with and carrying out the disposal of any hazardous or toxic waste as required within Booklet 3 – Requirements Information.
- 29.3 The *Contractor* notifies the *Service manager* of any health and safety hazards of which it is aware or ought reasonably to be aware, which may arise in connection with the performance of this Contract. The *Contractor* will also draw these hazards to the attention of the *Client* and Others and any other persons engaged by the *Contractor* in the performance of the *service* at any Affected property, or any other person who may be affected by these hazards.
- 29.4 The *Contractor* will procure that all Personnel will familiarise themselves with the emergency procedures laid down by the *Service manager* and the *Contractor* and any other relevant Health and Safety policies and procedures adopted by the *Contractor* in accordance with Booklet 3 – Requirements Information.
- 29.5 The *Contractor* must and will procure that the Personnel at all times comply with all legal requirements including but not limited to the "Duty of Care" provisions contained in part II of the Environmental Protection Act 1990, Part II of the Waste and Contaminated Land (Northern Ireland (Order) 1997 and any relevant regulations made under that Act or Order as the case maybe and must ensure that all Personnel, perform their duties in accordance with the Health and Safety Acts.
- 29.6 All property of the *Contractor* and his Personnel will be at the risk of the *Contractor* whilst it is on any Government Establishment, and the *Client* will accept no liability for any loss or damage howsoever occurring thereto or caused thereby, except as follows:
- 29.6.1 where any such loss or damage was caused or contributed to by any act, neglect or default of any of the *Client's* Personnel then the *Client* will accept liability for it to the extent to which such loss or damage is so caused or contributed to as aforesaid; and
- 29.6.2 where any property of the *Contractor* has been taken on charge by the Head of Establishment, and a proper receipt has been given for it, then the *Client* will be liable for any loss or damage occurring to that property while held on such charge as aforesaid, save to any extent such loss or damage is caused or contributed by any act neglect or default of the *Contractor* or any of the *Contractor's* Personnel.
- 29.7 The *Contractor* will report any injury, disease or dangerous occurrence at any Government Establishment arising out of the performance of this Contract, which is required to be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 ("RIDDOR") to the Head of Establishment in accordance with Booklet 3 – Requirements Information. This would be in addition to any report, which the *Contractor* may be required to submit under RIDDOR to the relevant enforcing authority (e.g. Health and Safety Executive or Local Authority).
- 29.8 Where the *Contractor* enters a Government Establishment for the purpose of performing work under the Contract:
- 29.8.1 The *Contractor* will notify the Head of Establishment and the *Service manager* of:

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- (i) any health and safety hazards associated with the work to be performed by him or any of his Personnel;
- (ii) any foreseeable risks to the health and safety of all persons associated with such hazards; and
- (iii) any precautions to be taken by him as well as any precautions which, in his opinion, ought to be taken by the *Client*, in order to control such risks.

29.8.2 The *Client* will notify the *Contractor* of:

- (i) Any material health and safety hazards of which it is aware and which may be encountered by the *Contractor* or any of his Personnel on the Government Establishment and which a competent *Contractor* could not be expected to have known about or have foreseen ; and
- (ii) Any precautions (but without being responsible for the same) which, in its opinion, ought to be taken by the *Contractor*, in order to control such risks.

29.8.3 The *Contractor* will notify his Personnel of and, where appropriate, provide adequate instruction in relation to:

- (i) the hazards, risks and precautions notified by him to the *Client* under clause 29.8.1;
- (ii) the hazards, risks and precautions notified by the *Client* to the *Contractor* under clause 29.8.2; and
- (iii) the precautions which, in his opinion, ought to be taken by his Personnel in order to control those risks.

29.8.4 The *Contractor* will provide the Head of Establishment and the *Service manager* with:

- (i) copies of those sections of his own and, where appropriate, his Personnel's safety policies which are relevant to the risks notified under clause 29.8.1;
- (ii) copies of any related risk assessments; and
- (iii) copies of any notifications and instructions issued by him to his Personnel under clause 29.8.3.

29.8.5 The *Client* will provide the *Contractor* with:

- (i) copies of those sections of its own safety policies which are relevant to the risks notified under clause 29.8.2;
- (ii) copies of any related risk assessments; and
- (iii) copies of any notifications and instructions issued by it to its employees similar to those called for from the *Contractor* under clause 29.8.3,

and the *Contractor* will comply with the safety policies and the *Employer* Policies.

## 29A Construction (Design and Management) (CDM) Regulations 2015

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- 29A.1 The *Contractor* shall comply with its obligations in relation to the Construction (Design and Management (CDM) Regulations set out in Booklet 3 (Requirements Information) Module E, and without prejudice to Clauses 20.1.1 and 20.1.3 (*Providing the Services*), to the extent applicable the Host Nation Law.

**29B Access and Facilities provided by the Contractor**

- 29B.1 The *Contractor* shall provide to the *Client*, following reasonable notice, relevant accommodation/facilities, at no direct cost to the *Client*, and all reasonable access to its premises for monitoring the *Contractor's* progress and quality standards in Providing the Service and in connection with any audit in accordance with Clause 19W.6 (*Audit*) and/or Clause X20 (*Performance Management Regime*).
- 29B.2 As far as reasonably practical, the *Contractor* shall ensure that the provisions of Clause 29B.1 are included in all Sub-Contracts at any level of sub-contracting to provide the Contractor Deliverables wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

**29C Import and Export Licences**

- 29C.1 If, in the performance of this Contract, the *Contractor* needs to import into the UK or export out of the UK anything not supplied by or on behalf of the *Client* and for which a UK import or export licence is required, the responsibility for applying for the licence shall rest with the *Contractor*. The *Client* shall provide the *Contractor* with sufficient information, certification, documentation and other reasonable assistance in obtaining any necessary UK import or export licence.

**Obtaining a license or authorization from a foreign government – Contractor obligations**

- 29C.2 When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of this Contract, the *Contractor* shall as soon as reasonably practicable consult with the *Client* on the licence requirements and, where the *Contractor* or any Contractor Related Party is the applicant for the licence or authorisation the *Contractor* shall:
- 29C.2.1 ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable (which for the purposes of this Clause 29C.2.1 (*Import and Export Licences*) shall also include information, technical data and software), unless otherwise agreed with the *Client*, identify in the application:
- (i) the end user as: His Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "**HM Government**"); and
  - (ii) the end use as: For the Purposes of HM Government; and
- 29C.2.2 include in the submission for the licence or authorisation a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".
- 29C.3 If the *Contractor* or any Sub-Contractor in the performance of this Contract needs to export materiel not previously supplied by or on behalf of the *Client* for which an



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export licence or import licence or authorisation from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the *Contractor* or that Sub-Contractor, provided always that for the purposes of this Clause 29C (*Import and Export Licences*) “materiel” shall mean information, technical data and items, including Articles, components of Articles and software.

- 29C.4 Where this Contract performance requires the export of materiel for which a foreign export licence or import licence or authorisation is required, the *Contractor* shall include the dependencies for the export licence or import licence or authorisation application, grant and maintenance in the Risk Register for this Contract and in the risk management plan for this Contract, with appropriate review points. Where there is no requirement under this Contract for a risk management plan the *Contractor* shall submit this information to the *Service Manager*.
- 29C.5 During the Contract Period and for a period of up to two (2) years from the end of the Contract Period, however extended in accordance with the terms of this Contract, the *Client* may make a written request to the *Contractor* to seek a variation to the conditions to a foreign export licence or import licence or authorisation to enable the *Client* to re-export or re-transfer a licensed or authorised item or licensed or authorised information from the UK to a non-licensed or unauthorised Third Party. If the *Client* makes such a request, it will consult with the *Contractor* before making a determination of whether the *Client* or the *Contractor* is best placed in all the circumstances to make the request. Where subsequent to such consultation the *Client* notifies the *Contractor* that the *Contractor* is best placed to make such request:
- 29C.5.1 the *Contractor* shall, or procure that the Sub-Contractors shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export license or import license or authorization in accordance with the procedures of the licensing authority. Where the *Contractor* has an objection, the Parties shall meet within five (5) Working Days to resolve the issue and, should they fail to resolve the issue, the matter shall be escalated to an appropriate level within both Parties’ organizations, to include their respective export licensing, import licensing or authorization (as the case may be) subject matter experts; and
- 29C.5.2 the *Client* shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.
- 29C.6 Where the *Client* determines that it is best placed to make such request, the *Contractor* shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the *Client* to make the application for the requested variation.
- 29C.7 Where the *Client* invokes Clauses 29C (*Obtaining a licence or authorisation from a foreign government – Contractor obligations*), the *Client* will pay the *Contractor* a fair and reasonable charge for such service based on the cost of providing it.
- 29C.8 Where the *Contractor* subcontracts work under this Contract, which is likely to be subject to foreign export control, import control or both, the *Contractor* shall use reasonable endeavours to incorporate in each Sub-Contract equivalent obligations to those set out in this Clause 29C (*Import and Export Licences*). Where it is not possible to include equivalent obligations to those set out in this Clause 29C (*Import*

and Export Licences), the *Contractor* shall report that fact and the circumstances to the *Client*.

**Obtaining a license or authorization from a foreign government – *Client* obligations**

- 29C.9 Without prejudice to HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the *Client* shall provide the *Contractor* with sufficient information, certification, documentation and other reasonable assistance to facilitate the granting of export licences or import licences or authorisations by a foreign Government in respect of the performance of this Contract.
- 29C.10 The *Client* shall provide such assistance as the *Contractor* may reasonably require in obtaining any UK export licences necessary for the performance of this Contract.

***Contractor* Obligation to Provide Information**

- 29C.11 The *Contractor* shall use reasonable endeavours to identify whether any Contractor Deliverable is subject to:
- 29C.11.1 a non-UK export license, authorisation or exemption; or
- 29C.11.2 any other related transfer or export control,
- that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. For the avoidance of doubt, this does not include the Intellectual Property specific restrictions of the type referred to in Clause 29R (*Intellectual Property Rights*).
- 29C.12 If at any time during the Contract Period the *Contractor* becomes aware that all or any part of the Contractor Deliverables are subject to Clause 29C.11 (*Contractor Obligation to Provide Information*), it shall notify the *Client* of this as soon as reasonably practicable by providing details in the DEFFORM 528 or other mutually agreed alternative format. Such notification shall be no later than thirty (30) days of knowledge of any affected Contractor Deliverable and in any event such notification shall be not less than thirty (30) days prior to delivery of the Contractor Deliverables.
- 29C.13 If the information to be provided under Clause 29C.11 (*Contractor Obligation to Provide Information*) has been provided previously to the *Client* by the *Contractor* under this Contract, the *Contractor* may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Clause 29C.11 (*Contractor Obligation to Provide Information*).
- 29C.14 During the Contract Period, the *Contractor* shall notify the *Client* as soon as reasonably practicable of any changes in the information notified previously under Clause 29C.11 (*Contractor Obligation to Provide Information*) of which it becomes or is aware that would affect the *Client's* ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the *Client*.
- 29C.15 For a period of up to two (2) years from the end of the Contract Period however extended in accordance with the terms of this Contract and in response to a specific request by the *Service Manager*, the *Contractor* shall notify the *Client* as soon as reasonably practicable of any changes in the information notified previously under Clause 29C.11 (*Contractor Obligation to Provide Information*) of which it becomes aware that would affect the *Client's* ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the *Client*.

- 29C.16 Where following receipt of materiel from a Sub-Contractor or any of its other suppliers, restrictions are notified to the *Contractor* by that Sub-Contractor, supplier or other Third Party or are identified by the *Contractor*, the *Contractor* shall immediately inform the *Client* by issuing an updated DEFFORM 528. Within two (2) days of such notification, the *Contractor* shall propose to the *Client* actions to mitigate the impact of such restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. The *Client* shall notify the *Contractor* within five (5) days of receipt of a proposal whether it is acceptable and where appropriate this Contract shall be modified in accordance with its terms to implement the proposal.
- 29C.17 If the restrictions prevent the *Contractor* from performing its obligations under this Contract and have not been removed, modified or otherwise satisfactorily managed within a reasonable time, the *Client* may at its absolute discretion elect to amend this Contract in accordance with Clause 19D (*Contract Changes and Additional Services*) and/or Clause 19C (*Amendments to Contract*) or as otherwise may be provided by this Contract or to terminate this Contract. Except as set out in Clause 29C.11 (*Contractor Obligation to Provide Information*), in the event of termination in these circumstances termination shall be on fair and reasonable terms having regard to all the circumstances including payments already made and payments that would otherwise be due under this Contract, costs incurred by the *Contractor* and benefits received by the *Client*. The Parties, acting in good faith, will use all reasonable endeavours to agree such fair and reasonable terms failing which either Party may refer the matter to Dispute Resolution Procedure.
- 29C.18 In the event that the restrictions notified to the *Client* pursuant to Clause 29C.11 (*Contractor Obligation to Provide Information*) were known or ought reasonably have been known by the *Contractor* (but were not disclosed) at the Contract Date or if restrictions notified to the *Client* pursuant to Clause 29C.11 (*Contractor Obligation to Provide Information*) were known or ought reasonably to have been known by the *Contractor* at the date of submission of the most recent DEFFORM 528 submitted to the *Client* in accordance with Clause 29C.11 (*Contractor Obligation to Provide Information*), termination under Clause 29C.11 (*Contractor Obligation to Provide information*) will be in accordance with Clause 91 (*Reasons for Termination*) and the provisions of Clause 29C.22 (*Interim Position*) will not apply.

***Client obligation to provide information***

- 29C.19 The *Client* shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the *Contractor* as GFA. Where the *Client* is to provide materiel necessary to enable the *Contractor* to perform this Contract or in respect of which the Contractor Deliverables are to be provided, and that materiel is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of Clause 29C.11 (*Contractor Obligation to Provide Information*), the *Client* shall provide a completed DEFFORM 528 or will provide a new or updated DEFFORM 528 to the *Contractor* within thirty (30) days of the date of knowledge and in any case not later than thirty (30) days prior to the delivery of such materiel to the *Contractor*.
- 29C.20 In the event that the *Client* becomes aware that the DEFFORM 528 disclosure was incomplete or inaccurate or in the event additional such materiel is identified, then the *Client* shall provide, as soon as reasonably practicable a new or revised DEFFORM 528. In the event that the *Client* becomes aware that a prior disclosure included in DEFFORM 528 submitted to the *Contractor* was incomplete or inaccurate less than

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thirty (30) days prior to the delivery to the *Contractor* of any material to which the updated or new disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure.

### 29C.21 Where:

29C.21.1 restrictions are advised by the *Client* to the *Contractor* in a DEFFORM 528 provided pursuant to Clause 29C.19 or 29C.20 or both (*Client Obligation to Provide Information*); or

29C.21.2 any of the information provided by the *Client* in any DEFFORM 528 proves to be incorrect or inaccurate,

the *Client* and the *Contractor* shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the *Contractor* to perform its obligations under this Contract, the matter shall be handled under the terms of Clause 19D (*Contract Changes and Additional Services*) and/or Clause 9 (*Amendments to Contract*) or as may otherwise be provided by this Contract as appropriate and if no alternative solution satisfies the essential terms of this Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the *Client* may terminate this Contract. Termination under these circumstances will be under the terms of Clause 94 (*Termination for Convenience*).

### Interim position

29C.22 Pending agreement of any amendment of this Contract as set out in Clause 29C.17 (*Contractor Obligation to Provide Information*) or 29C.21 (*Client Obligation to Provide Information*), provided the *Contractor* takes such steps as are reasonable to mitigate the impact, the *Contractor* shall be relieved from its obligations to perform those elements of this Contract directly affected by the restrictions or provision of incorrect or incomplete information.

### Import Export Duties

29C.23 To the extent that any import duty is or becomes payable in respect of any Articles and/or component parts thereof, the *Contractor* agrees:

29C.23.1 to provide to the *Client* such details as the *Client* may reasonably request with respect to the circumstances of payment and the amount of such import duty;

29C.23.2 to ensure that any and all UK, sovereign base area and/or Host Nation documentation required by any Relevant Authority in respect of the importation of any such Articles and/or component parts thereof is completed and submitted in accordance with the requirements of such Relevant Tax Authority;

29C.23.3 to take any and all steps necessary in order to benefit from any available waiver or relief in any or all of the UK, sovereign base area and/or Host Nation in respect of such import duty including without limitation ensuring that invoices from overseas quote the contract number and are endorsed to certify that such Articles and/or component parts thereof are required solely for the purposes of this Contract.

- 29C.24 The *Client* may in its sole discretion, upon the request of the *Contractor*, give to the *Contractor* such assistance as the *Client* shall deem relevant or appropriate in respect of the *Contractor's* obligations in Clause 29C.23.3.
- 29C.25 The Parties agree that the *Contractor* shall pay any and all applicable import duties and dues payable in respect of any Articles and any component parts thereof imported into the UK, sovereign base area and/or Host Nation in connection with this Contract for the *Client* and include the amount of the import duty in the invoice to be issued to the *Client* for payment of such items. Where the *Client* pays the *Contractor* the invoiced amount for such items and it subsequently transpires that the *Contractor* should not have paid any import duty and invoiced the *Client* for such amounts, the *Contractor* shall reimburse to the *Client* an amount equivalent to that import duty together with interest at a rate to be determined in accordance with the UK, sovereign base area or Host Nation's tax repayment charges (as applicable) current at the time of reimbursement.

## **29D SME Spend Data Collection**

- 29D.1 The *Contractor* shall by 30 June (or such alternative date agreed between the Parties (acting reasonably) in writing having regard for the end date of the *Contractor's* financial year)) each year during the Contract Period at no additional cost, charge and expense to the *Client* provide to the *Client* the information identified in DEFFORM 139 (as amended by the *Client* from time to time and with each such amended version taking effect in accordance with Clause 29D.3, including:
- 29D.1.1 the total Revenue on and prior to the Reporting Date in respect of the relevant financial year immediately prior to the Reporting Date;
  - 29D.1.2 the total value of Sub-Contract Revenue paid under the Contract in respect of the relevant financial year immediately prior to the Reporting Date; and
  - 29D.1.3 the total value of Sub-Contract Revenue paid to SMEs and Voluntary Community and Social Enterprise(s) in respect of the relevant financial year immediately prior to the Reporting Date.
- 29D.2 The *Client* may issue from time-to-time guidance to the *Contractor* in relation to the completion of DEFFORM 139 (and the *Contractor* shall not unreasonably refuse to comply with any such guidance so issued when completing such DEFFORM and complying with this Clause 29D (*SME Spend Data Collection*)).
- 29D.3 The *Client* may at any time during the Contract Period change the reporting template in DEFFORM 139, provided that the *Client* shall have given a minimum of thirty (30) days' advance notice in writing of the scope and nature of such change or changes. The changes may include the data required or format of the report or both. The Parties agree that no such change shall constitute a formal amendment of this Contract.
- 29D.4 Where the *Contractor* is reasonably likely to incur additional costs arising from any change to the reporting template in DEFFORM 139 notified by the *Client* to the *Contractor* pursuant to Clause 29D.3, the *Contractor* may notify the *Client* to such effect providing at the same time a Contractor Change proposal including the information identified in Annex B (*Contract Change Management Process*). On and from the date on which the *Client* receives such notification and proposal the Parties shall operate, and comply with their respective obligations under, Annex B (*Contract*

*Change Management Process*) in relation to such Contract Change and for the purposes of this Clause 29D (*SME Spend Data Collection*) all references to "Contractor proposal" shall be construed as references to the "Contractor Change proposal" and "*Client* Change Notice " shall be construed as references to the *Client's* notice issued pursuant to Clause 29D.3.

- 29D.5 Notwithstanding the requirements of Clause 19J (*The Contractor's Records*), the *Contractor* shall retain the information identified in Clause 29D.1 and supporting records for a period of twenty-four (24) months commencing on the date of their provision pursuant to Clause 29D.1.

**29E     Not Used**

**29F     Discrimination**

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

- 29F.2 Without prejudice to the generality of the obligation in Clause 29F.1, the *Contractor* shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or any statutory modification or re-enactment thereof, or any other applicable statutory provision or common law having application in the jurisdiction in which the service is being carried out, relating to discrimination in employment.

- 29F.3 The *Contractor* shall take all reasonable steps to secure the observance of the provisions of Clause 29F.1 (*Discrimination*) by all Contractor Related Parties and any other persons under its control employed in the execution of this Contract.

- 29F.4 The *Contractor* shall take all reasonable steps to reflect this Clause 29F in any Sub-Contract that it enters into to satisfy the requirements of the Contract and to require its Sub-Contractors to reflect this Clause 29F in their sub-contracts they enter into to satisfy the requirements of this Contract

- 29F.5 The *Contractor* shall immediately notify the *Client* of any prosecution or proceedings, brought under the legislation detailed in Clause 29F.2, against the *Contractor*, any Contractor Related Party and all other persons under its control employed in the execution of this Contract.

- 29F.6 Notification by the *Contractor* of such information will not prejudice any rights of the *Client* or the *Contractor* under this Contract.

**29G     Subcontracting and Prompt Payment**

- 29G.1 In this Clause 'Subcontractor' means any subcontractor engaged by the *Contractor* or by any other subcontractor of the *Contractor* at any level of subcontracting to provide Contractor Deliverables wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract and 'Subcontract' shall be interpreted accordingly.

- 29G.2 Subcontracting any part of the Contract shall not relieve the *Contractor* of any of the *Contractor's* obligations, duties or liabilities under the Contract.

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- 29G.3 Where the *Contractor* enters into a Subcontract they shall cause a term to be included in such Subcontract:
- 29G.3.1 providing that where the Subcontractor submits an invoice to the *Contractor*, the *Contractor* will consider and verify that invoice in a timely fashion;
  - 29G.3.2 providing that the *Contractor* shall pay the Subcontractor any sums due under such an invoice no later than a period of 30 days from the date on which the *Contractor* has determined that the invoice is valid and undisputed;
  - 29G.3.3 providing that where the *Contractor* fails to comply with Clause 29G.3.1 above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of Clause 29G.3.2 after a reasonable time has passed; and
  - 29G.3.4 requiring the counterparty to that Subcontract to include in any Subcontract which they award, provisions having the same effect as Clauses 29G.3.1 to 29G.3.4.

### **29H International Collaboration**

- 29H.1 For the purpose of this Clause the expression 'International Collaboration Agreement' shall mean any agreement or arrangement made or proposed to be made between the United Kingdom Government and the government of another country or any government-sponsored international body for collaboration in a joint programme of research, development, production, supply or operations utilising any results produced under the Contract, and for the allocation of responsibility for work under such programme between the parties to such agreement or arrangement.
- 29H.2 Subject to the rights of third parties arising otherwise than from work performed under the Contract and to the provisions of this Clause 29H.2, the *Client* shall have the right under this Clause 29H.2 to copy any copyright work furnished by the *Contractor* under the Contract, the copyright in which belongs to the *Contractor*, and to issue for information only such work or copy for the purpose of promoting the establishment of an International Collaboration Agreement and for the purpose of technical oversight of an International Collaboration Agreement made. Subject as aforesaid, the *Contractor* shall, if requested by the *Client* within the period prescribed in the Contract, provide the *Client* with such assistance and further information as the *Client* may reasonably require for such promotion and technical oversight. A reasonable charge for this service, based on the cost of providing it, will be borne by the *Client*.
- 29H.3 If, under an International Collaboration Agreement made, the *Client* agrees that any results produced under the Contract shall be utilised in work undertaken or shared by or on behalf of another party to such International Collaboration Agreement then, to the extent of their right to do so and on fair and reasonable terms approved by the *Client*, the *Contractor* shall, if requested by the *Client* within the period prescribed in the Contract, make available under licence to that other party or their nominee, for use for the purpose provided in such an International Collaboration Agreement only, any information which the *Client* is entitled to receive under the Contract, together with any technical assistance and background information necessary for the effective application of such information.
- 29H.4

- 29H.4.1 If disclosure by the *Client* under Clause 29H.2 of any copyright work would affect any rights of the *Contractor* or third parties arising otherwise than from work performed for the purposes of the Contract, the *Contractor* shall have the right to place on such copyright work a notice stating that it is supplied under contract to the *Client* and may not be issued outside United Kingdom Government Departments except in accordance with the conditions of the Contract. Before exercising its rights under Clause 29H.2 in respect of any work bearing such notice the *Client* shall give to the *Contractor* prior written notice of fifteen days (or such other period as may be agreed) of its intention to do so and have regard to any representations made by the *Contractor* at any time before issue takes place as to the protection of any separately identifiable trade secrets, know-how, or similar proprietary information arising otherwise than from work performed under the Contract. The *Contractor* shall be free under the terms of this Clause to make any proposals for the protection of the information referred to herein. In particular, the *Client* shall give full consideration to any proposals the *Contractor* may make for the preparation of a special International Collaboration Report, for the release of information in stages, or for restrictions on the circulation of the information to be released. The *Client* shall be entitled to make issue contrary to such representations and proposals fifteen days after notifying the *Contractor* in writing that it considers it in the national interest to do so.
- 29H.4.2 The *Client* shall not have the right and the *Contractor* shall not be obliged under this Clause 29H.4.2 to disclose to a third party directly or indirectly manufacturing or design information with respect to units, sub-units or components not developed or designed under the Contract. Provided that if the *Contractor* has not granted and does not wish to grant a licence to a manufacturer in the country of the other party and if so there is no reasonable substitute article available in the other country the *Contractor* shall in that event be obliged to make the disclosure and grant a licence direct to at least one manufacturer in the country of the other party to be approved by the *Contractor*. The *Contractor* shall on request supply the identification and shape, size and function of such units, sub-units and components.
- 29H.4.3 The *Contractor* shall on request insofar as they may be able to do so supply or procure the supply of such of the units, sub-units and components referred to in sub- clause 29H.4.2 as may be required to such other party within a reasonable timescale and on reasonable commercial, non-discriminatory terms.
- 29H.4.4 If the *Client* makes issue of information contrary to the *Contractor's* representations under sub- clause 29H.4.1 as to the protection of trade secrets, know-how and similar proprietary information, the *Contractor* shall be entitled to such compensation, if any, as is fair and reasonable in the circumstances.
- 29H.5 If the *Contractor* is party to a licence or other agreement relating to the use of inventions, designs or technical information which restricts their freedom to supply or authorise the disclosure or use of information for the purposes of this Clause, the *Contractor* shall, when tendering, quoting a price for the Contract, or offering to perform it (or, if at these times the restriction is not apparent, as soon thereafter as it is), notify the *Client* and at the *Client's* request use all reasonable efforts with the



assistance and at the expense of the *Client* to abate the restrictions to the extent required. Without the prior consent in writing of the *Client*, the *Contractor* shall not wittingly make use in the performance of the Contract of inventions, designs or technical information which are the subject of any agreement made after the date of the Contract or make any grant of rights in the results of work under the Contract which they know would restrict their freedom as aforesaid.

- 29H.6 Unless in respect of any particular subcontract the *Client* agrees otherwise, the *Contractor* shall include the provisions of this Clause mutatis mutandis in any subcontract placed by them for the performance of any work of research, study, or development for the purposes of the Contract.
- 29H.7 The *Client* undertakes that it will consult with the *Contractor* as early, as frequently and as fully as is reasonably practicable in the consideration of any International Collaboration Agreement into which it may wish to enter and will pay due regard to any representations of the *Contractor*.

**29I Transport (If Contractor Is Responsible For Transport)**

- 29I The *Contractor* shall be responsible for transporting the Articles supplied under the Contract from the point of origin to the consignee. The *Contractor* shall also be responsible for all loading and unloading of the Articles upon arrival at the site including, where necessary, the provision of special handling equipment.

**29J Co-Operation on Expiry of Contract**

- 29J.1 Upon the expiry of the Contract the *Contractor* agrees to co- operate with the *Client* to such extent as they may be reasonably required to do so for a period of up to 6 months from the date of expiry, such period to be determined by the *Client*, to ensure an orderly and efficient transition from the management by the *Contractor* to management by the *Client* or some other person.
- 29J.2 The *Client* and the *Contractor* shall agree a fair and reasonable price for satisfying the provisions of this Clause if required.

**29K Progress Meetings and Reports**

**Progress Meetings**

- 29K.1 The *Contractor* shall attend progress meetings at the frequency and times specified in the Booklet 3, Module A. Any additional meetings shall be at no cost to the *Client*.
- 29K.1.1 The *Client's* Project Manager and acquisition team members shall attend each meeting and will advise the *Contractor* in advance of the expertise of its supporting team.
- 29K.1.2 The *Contractor's* Project Manager shall be required to attend each meeting supported by personnel suitably qualified to respond to the areas of expertise notified by the *Client*.
- 29K.2 All meetings will be held at a location to be agreed between the *Contractor* and the Project Manager or Equipment Support Manager.
- 29K.3 Unless stated otherwise the *Contractor* shall be responsible for making a record of the discussions and decisions of the meeting. These will be forwarded within two

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weeks of the meeting, in draft form, to the Commercial Officer at the address given in boxes 1 and 2 of the DEFFORM 111, for agreement prior to the final version being issued.

### **Progress Reports**

- 29K.4 The *Contractor* shall supply the *Client* with reports on the progress of the Contract in accordance with Booklet 3, Module A.
- 29K.5 Reports shall detail as a minimum:
- 29K.5.1 Performance / delivery of the Contractor Deliverables
  - 29K.5.2 Risks and opportunities
  - 29K.5.3 Any other information specified in the Contract
  - 29K 5.4 Any other information reasonably requested by the *Client*.
- 29K.6 Reports shall be provided to the addressees in boxes 1 and 2 of the DEFFORM 111 and in the form and frequency specified in the Contract.
- 29K.7 The provision of these reports by the Contractor and receipt by the Client shall be in accordance with Booklet 3 (Requirements Information). These reports shall not prejudice any rights or obligations of the Client or the Contractor under the Contract.

29L **Not Used**

29M **Not Used**

29N **Not Used**

29O **Not Used**

### **29P Delivery, Acceptance, Rejection, Loss of or Damage to the Articles**

#### **Delivery**

- 29P.1 The Contractor shall deliver the Articles in accordance with the terms of this Contract.
- 29P.2 Unless otherwise agreed, delivery of the Articles shall occur when the Articles have been handed over by the *Contractor* to the *Client* or to the representative of the *Client*.
- 29P.3 Unless otherwise agreed, where:
- 29P.3.1 the *Contractor* is required under this Contract to carry out any *services* in connection with any Issued Property; or
  - 29P.3.2 the results of any of the *services* which the *Contractor* is required to deliver are to be received by the *Client* in the form of a deliverable, such as a report or in the form of computer software,
- delivery of the *services*, or the relevant part of the *services*, shall occur when the Issued Property or the deliverable has been handed over by the *Contractor* to the *Client* or to the representative of the *Client*.

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- 29P.4 Unless otherwise agreed, and subject to the provisions of Clause 79A (Vesting) where applicable, the property in the Articles shall pass from the *Contractor* to the *Client* upon delivery in accordance with Clause 29P.1 to 29P.9 (*Delivery*).
- 29P.5 Until delivery, the risk of loss or damage to the Articles shall be with the *Contractor*.
- 29P.6 Whereby any Contractor Deliverable is to be delivered by the *Contractor* to its own premises, or to those of a Sub-Contractor ("**Self-to-Self Delivery**"), the risk in such a Contractor Deliverable shall remain vested in the *Contractor* until it is handed over to the *Client*.
- 29P.7 The Contractor shall ensure that the Articles are packaged in accordance with the terms of this Contract.
- 29P.8 The Client may occasionally issue instructions that differ from the transport or consignment arrangements in this Contract. These instructions will be the subject of a Contract Change which shall also account for any resulting change in the Price, delivery or both.
- 29P.9 Where, after delivery, an Article is rejected by the *Client* in accordance with Clause 29P.15 to 29P.21 (*Rejection*) that Article shall, for the purposes of this Contract, be considered as not having been delivered under this Contract and the property in that Article shall return to the *Contractor* unless a notice of objection has been issued to the *Client* in accordance with Clause 29P.21 (*Rejection*).

### Acceptance

- 29P.10 Subject to Clause 29P.11, acceptance of an Article occurs at the time and in accordance with the procedure specified in this Contract or, if none is so specified:
- 29P.11 where this Contract specifies a time limit within which to reject, that time has elapsed;
- 29P.12 where this Contract specifies no time limit within which to reject, a reasonable time has elapsed since delivery has occurred in accordance with Clause 29P.1 to 29P.9 (*Delivery*); or
- 29P.13 when it has been delivered and the *Client* does any act in relation to it which is inconsistent with the *Contractor's* ownership.
- 29P.11 The *Client* shall not have accepted an Article:
- 29P.11.1 merely because the *Client* asks for, or agrees to, its repair by or under an arrangement with the *Contractor*; or
- 29P.11.2 unless otherwise specified in this Contract, merely because the Article has been delivered to a Third Party.
- 29P.12 Unless otherwise specified in this Contract, the *Client* shall not be deemed to have accepted an Article unless it has had a reasonable opportunity to examine it after delivery for the purpose:
- 29P.12.1 of ascertaining whether it is in conformity with this Contract; or
- 29P.12.2 in the case of a contract for sale by sample, of comparing the bulk with the sample.
- 29P.13 Acceptance shall be governed by Clause 29P.10 to 29P.14 (*Acceptance*) to the exclusion of any common law or statutory provision relating to acceptance of goods.

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29P.14 Where software is to be supplied as a requirement of this Contract it will be subject to the provisions of this Clause 29P.10 to 29P.14 (*Acceptance*) as if it were an Article.

### **Rejection**

29P.15 Prior to acceptance by the *Client* in accordance with Clause 29P.10 to 29P.14 (*Acceptance*), the *Client* may reject any Article (whether or not after inspection) which does not conform with the requirements of this Contract.

29P.16 The *Client* may (whether or not after inspection) reject the whole of any consignment of the Articles if:

29P.16.1 such proportion or percentage of the Articles in that consignment as this Contract may specify as being appropriate for the purposes of Clause 29P.15 to 29P.21 (*Rejection*), do not conform with the requirements of this Contract; or

29P.16.2 samples, whether of Articles or of the material in the Articles, taken randomly from that consignment do not conform with the requirements of this Contract.

29P.17 For the purposes of Clause 29P.15 to 29P.21 (*Rejection*), an item of Issued Property in connection with which the *Contractor* is required under this Contract to carry out services, shall, following completion of the services, be subject to rejection under Clauses 29P.15 and 29P.16 as if it was an Article, but without prejudice to the *Client's* proprietary and other rights in that item of Issued Property. The provisions of Clauses 29P.18, 29P.19, 29P.20 and 29P.21 shall similarly apply to such items.

29P.18 Subject to Clause 79B (*Counterfeit Materiel*) and Clause 29P.21, the *Contractor* shall at his own expense and within fourteen (14) days of being notified of the rejection, or within any other period specified in this Contract, remove any Article or consignment which the *Client* has rejected.

29P.19 If the *Contractor* fails to remove the rejected Article or consignment in accordance with Clause 29P.18, the *Client* may return it to the *Contractor* at the *Contractor's* risk and expense.

29P.20 The *Contractor* shall at his own expense and within the contractual period for delivery, or within such further reasonable period as the *Client* may allow, supply Articles that conform with the requirements of this Contract.

29P.21 The *Contractor* may object in writing to a notification of rejection by the *Client* within the period specified at Clause 29P.18. If the objection is not resolved within a reasonable time, it shall be treated as a dispute within the meaning of Clause 96 (*Dispute Resolution Procedure*), as applicable. Unless otherwise agreed the *Contractor* shall not remove the Articles which are the subject of the rejection notice unless and until the objection or dispute has been resolved in favour of the *Client*.

### **Loss of or Damage to the Articles**

29P.22 Until delivery, the risk of loss of or damage to the Articles remains with the *Contractor*. Without prejudice to any other rights or remedies of the *Client*, the *Contractor* shall make good any such loss or damage however caused or occasioned which occurs before delivery.

29P.23 Clause 29P.22 shall apply notwithstanding:

29P.23.1. that the Articles may have been inspected by the *Client*; or

29P.23.2 that the property therein may have passed earlier than upon delivery.

- 29P.24 Unless otherwise agreed and save for the provisions of Clause 29P.25, the *Contractor* shall not after delivery be at risk in respect of the Articles, except where the *Client* rejects any Article under Clause 29P.15 to 29P.21 (*Rejection*), in which case the risk in the rejected Article shall revert to the *Contractor* on the earlier of:
- 29P.24.1 the removal of the Article by the *Contractor* in accordance with Clause 29P.18 (*Rejection*); or
  - 29P.24.2 the close of business on the last day of the period in which the *Contractor* is required to remove the rejected Article in accordance with Clause 29P.18 (*Rejection*); or
  - 29P.24.3 the return of the Article by the *Client* in accordance with Clause 29P.19 (*Rejection*).
- 29P.25 Notwithstanding the provisions of Clause 29P.24, if the *Contractor* has given notice of objection under Clause 29P.21 (*Rejection*) it shall not be at risk in respect of the rejected Article where a dispute between the parties relating to the rejection remains unresolved and the Article remains in the possession of the *Client*.
- 29P.26 Clauses 29P.22 to 29P.26 (*Loss of or Damage to the Articles*) shall not apply to any Articles issued to the *Contractor* by or on behalf of the *Client* in connection with which the *Contractor* is required to carry out any of the *services*. Such Articles shall be subject to Clauses 71 (*Issued Property*) and 72 (*Accounting for the Property of the Client*).

## **29Q Timber and Wood-Derived Products**

### **Requirements for Timber**

- 29Q.1 All Timber and Wood-Derived Products supplied by the *Contractor* under this Contract (including all Timber and Wood-Derived Products supplied by Sub-Contractors):
- 29Q.1.1 shall comply with the Specification; and
  - 29Q.1.2 must originate either:
    - (i) from a Legal and Sustainable source; or
    - (i) from a FLEGT-licensed or equivalent source.
- 29Q.2 In addition to the requirements of Clause 29Q.1 (*Requirements for Timber*), all Timber and Wood-Derived Products supplied by the *Contractor* under this Contract (including all Timber and Wood-Derived Products supplied by Sub-Contractors) shall originate from a forest source where management of the forest has full regard for:
- 29Q.2.1 identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
  - 29Q.2.2 mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
  - 29Q.2.3 safeguarding the basic labour rights and health and safety of forest workers.

### **Requirements for Proof of Timber Origin**

- 29Q.3 If requested by the *Client*, the *Contractor* shall provide to the *Client* evidence that the Timber and Wood-Derived Products supplied to the *Client* under this Contract complies with the requirements of Clause 29Q.1 (*Requirements for Timber*) or Clause 29Q.2 (*Requirements for Timber*) or both.
- 29Q.4 The *Client* reserves the right at any time during the execution of this Contract and for a period of five (5) years from the expiry or termination of this Contract to require the *Contractor* to produce the evidence required for the *Client's* inspection within fourteen (14) days of the *Client's* request.
- 29Q.5 If the *Contractor* has already provided the *Client* with the evidence required under Clause 29Q.3 (*Requirements for Proof of Timber Origin*), the *Contractor* may satisfy these requirements by giving details of the previous notification and confirming the evidence remains valid and satisfies the provisions of Clauses 29Q.1 and 29Q.2 (*Requirements for Timber*).
- 29Q.6 The *Contractor* shall maintain records of all Timber and Wood-Derived Products, delivered to and accepted by the *Client*, in accordance with Clause 19J (*The Contractor's Records*).

**Recycled Timber**

- 29Q.7 Notwithstanding Clause 29Q.3 (*Requirements for Proof of Timber Origin*), if exceptional circumstances render it strictly impractical for the *Contractor* to record evidence of proof of timber origin for previously used Recycled Timber, the *Contractor* shall support the use of this Recycled Timber with:
- 29Q.7.1 a record tracing the Recycled Timber to its previous end use as a standalone object or as part of a structure; and
- 29Q.7.2 an explanation of the circumstances that rendered it impractical to record evidence of proof of timber origin.

**Independent Verification**

- 29Q.8 The *Client* reserves the right to decide, except where in the *Client's* opinion the timber supplied is incidental to the requirement and from a low-risk source, whether the evidence submitted to it demonstrates compliance with Clause 29Q.1 (*Requirements for Timber*) and Clause 29Q.2 (*Requirements for Timber*). In the event that the *Client* is not satisfied, the *Contractor* shall commission and meet the costs of an "**Independent Verification**" and resulting report that will:
- 29Q.8.1 verify the forest source of the timber or wood; and
- 29Q.8.2 assess whether the source meets the relevant criteria of Clause 29Q.2 (*Requirements for Timber*).

**Statistical Reporting**

- 29Q.9 The statistical reporting requirement at Clause 29Q.10 (*Statistical Reporting*) applies to all Timber and Wood-Derived Products delivered under this Contract. The *Client* reserves the right to amend the requirement for statistical reporting, in the event that the UK Government changes the requirement for reporting compliance with the Government Timber Procurement Policy. Amendments to the statistical reporting requirement will be made in accordance with Clause 19D (*Contract Changes and Additional Services*).
- 29Q.10 The *Contractor* shall provide to the *Client*, using DEFFORM 691A (the form of which at the Contract Date is set out in Annex O (*Timber and Wood-Derived Products*)) the

data or information the *Client* requires in respect of Timber and Wood-Derived Products delivered to the *Client* under this Contract, or at such other frequency as stated in this Contract. The *Contractor* shall send all completed DEFFORMs 691A, including Nil Returns where appropriate, to the *Service Manager*.

29Q.11 DEFFORM 691A may be amended by the *Client* from time to time, in accordance with Clause 19D (*Contract Changes and Additional Services*).

## **29R Intellectual Property Rights**

- 29R.1 Subject to the retention by the *Contractor*, or the Third-Party owner (as the case may be) of the Contractor's Background IPR, and where appropriate a licence back to the *Contractor* to use the IP Materials for all purposes connected with this Contract, the *Contractor* hereby assigns (or shall ensure that the Third-Party owner assigns) to the *Client*, with full title guarantee, all IPR which may subsist in the IP Materials specific to this Contract. These assignments take effect on the Contract Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the IPR produced by the *Contractor* or the Third Party owner (as the case may be). The *Contractor* shall execute (or ensure that the Third Party owner executes) all documentation necessary to execute these assignments.
- 29R.2 The *Contractor* shall not, and shall procure that the Contractor Related Parties do not, (except when necessary for the performance of this Contract) without prior written consent of the *Client*, use or disclose any such IPR in the Foreground IPR.
- 29R.3 All Foreground IPR whether created by the *Contractor* or any Contractor Related Party or a Third Party belongs to the *Client* and all Background IPR furnished or made available to the *Contractor* by or on behalf of the *Client* remains the property of the *Client*.
- 29R.4 The Contractor hereby waives or shall procure a waiver of any moral rights subsisting in copyright produced for this Contract.
- 29R.5 Subject to Clauses 29R.13 and 29R.14 (*Intellectual Property Rights*), the *Contractor* shall ensure that the Third Party owner of any Background IPR in IP Materials that are delivered by or on behalf of the *Contractor* in relation to the performance by the *Contractor* of its obligations under this Contract grants to the *Client* a non-exclusive licence or, if itself a licensee of those rights, grants to the *Client* an authorised sub-licence, to use, reproduce, modify, develop and maintain the IPR in the same. Such licence or sub-licence is non-exclusive, perpetual, royalty free and irrevocable and includes the right for the *Client* to sub-license, transfer, novate or assign to other Government Departments, any Follow-On Contractor or to any other Third Party.
- 29R.6 The *Contractor* shall not infringe any IPR of any Third Party in Providing the Services and the *Contractor*, from the Contract Date, shall indemnify and keep indemnified and hold the *Client* harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the *Client* may suffer or incur as a result of or in connection with any breach of this Clause 29R (*Intellectual Property Rights*), except where such claim arises from the use of data supplied by the *Client* which is not required to be verified by the *Contractor* under any provision of this Contract.
- 29R.7 The *Client* shall notify the *Contractor* in writing of any claim or demand brought against the *Client* for infringement or alleged infringement of any IPR in materials supplied or licensed by the *Contractor*.

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- 29R.8 The *Contractor* shall, at its own expense, conduct all negotiations and any litigation arising in connection with any claim for breach of IPR in materials supplied or licensed by the *Contractor*, provided always that the *Contractor* shall:
- 29R.8.1 consult the *Client* on all substantive issues which arise during the conduct of such litigation and negotiations;
  - 29R.8.2 take due and proper account of the interests of the *Client*; and
  - 29R.8.3 not settle or compromise any claim without the *Client*'s prior written consent (not to be unreasonably withheld or delayed).
- 29R.9 The *Client* shall at the *Contractor*'s request afford to the *Contractor* all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the *Client* or the *Contractor* by a Third Party for infringement or alleged infringement of any Third Party IPR in connection with the performance of the *Contractor*'s obligations under this Contract and the *Contractor* shall indemnify the *Client* for all reasonable costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so.
- 29R.10 The *Client* shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any IPR by the *Client* or the *Contractor* in connection with the performance of its obligations under this Contract.
- 29R.11 If a claim, demand or action for infringement or alleged infringement of any IPR by the *Contractor* is made in connection with this Contract or in the reasonable opinion of the *Contractor* is likely to be made, the *Contractor* shall notify the *Client* as soon as reasonably practicable and, at its own expense and subject to the consent of the *Client* (not to be unreasonably withheld or delayed) shall use its best endeavours to:
- 29R.11.1 modify any service without reducing the performance or functionality of the same, or substitute alternative works of equivalent performance and functionality, in order to avoid the infringement or the alleged infringement, provided that the provisions herein apply mutatis mutandis to such modified service or to the substitute works; or
  - 29R.11.2 procure a licence to use and provide any part of the *services* which is the subject of the alleged infringement, on terms which are acceptable to the *Client*,
- and in the event that the *Contractor* is unable to comply with these requirements within twenty-eight (28) days of receipt of the *Contractor*'s notification the *Client* may terminate the *Contractor*'s employment under this Contract in accordance with Clause 90 (*Termination*).
- 29R.12 The *Contractor* hereby grants to the *Client* a royalty-free, irrevocable and non-exclusive license (with a right to sub-license) (and where appropriate worldwide) in perpetuity to use any Background IPR that the *Contractor* owns and which the *Client* reasonably requires in order to exercise its rights and take the benefit of this Contract.
- 29R.13 Where the *Contractor* secures a license from a Third Party in any software for the provision of part of the *services* it shall do so in the name of the *Client* in perpetuity with the right to sub-license for the purposes of performing any part of the *services* which is provided at any time pursuant to this Contract.
- 29R.14 Where the *Contractor* after using reasonable endeavours is unable to secure a software license on the terms set out in Clause 29R (*Intellectual Property Rights*) they



shall secure the best commercially available terms for the same and shall seek the concurrence of the *Client* prior to their acceptance.

- 29R.15 Where the *Contractor* uses any of its own software to Provide the Service it shall grant a free irrevocable licence to the *Client* in perpetuity with the right to sub-license to any Third Party nominated by the *Client* to use the software for the purposes of continuing to operate any part of the *services* provided at any time under this Contract.

**Authorisation by the Crown for use of Third Party Intellectual Property Rights**

- 29R.16 Notwithstanding any other provisions of this Contract and for the avoidance of doubt, award of this Contract by the *Client* and/or placement of any Task Order under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The *Contractor* acknowledges that any such authorisation by the *Client* under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific Intellectual Property Rights involved.

**29S Measures in a Crisis (MIAC)**

- 29S.1 If, at any time, the *Client* believes, in its sole opinion, that there exist any of the circumstances identified in Clause 29S.2, the *Client* or the *Service Manager* may issue a written notice to the *Contractor* of such belief.

- 29S.2 The circumstances referred to in Clause 29S.1 are where, in view of:

29S.2.1 the national interest and/or the interests of the United Kingdom and/or the Host Nation, the requirements of national security and/or the security of the United Kingdom and/or the Host Nation, or the occurrence of a state of transition to war, war or other emergency (whether or not involving hostilities); and/or

29S.2.2 a request to the Client by the Host Nation government, a local authority, public body, or statutory corporation for assistance in relation to the occurrence or possible occurrence of a major accident, crisis or natural disaster; and/or

29S.2.3 a request by NATO, the United Nations, the European Union or any other supra-national organisation and/or country for support and assistance in relation to international obligations,

it is necessary, appropriate, or desirable for the *Client* to take all or any of the measures described in Clause 29S.4 (*Effect of Implementation of Measures in a Crisis*) and/or 29S.5 (*Client's Overriding Rights*).

- 29S.3 Measures in a Crisis shall cease to apply when the *Client* or the *Service Manager* issues a written notice to that effect to the *Contractor* and thereafter the *Contractor* shall continue to be bound by the provisions of this Contract.

**Effect of Implementation of Measures in a Crisis**

- 29S.4. If the Client or the *Service Manager* has issued the notice contemplated in Clause 29S.1 (*Measures in a Crisis*):

29S.4.1 the *Client* may require the *Contractor*, within such period as the *Client* in its sole discretion specifies (but provided that such period is reasonable taking into account all relevant circumstances), to provide such information

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in the possession, knowledge or control of the *Contractor* as the *Client* may, in its sole discretion, require including information relating to all or any of the following matters:

- (i) provision of the *services* currently being carried out by the *Contractor* or any Contractor Related Party; and/or
- (ii) provision of the *services* to be carried out by the *Contractor* or any Contractor Related Party (and due to commence within a period specified by the *Client*); and/or
- (iii) the current deployment of the Personnel whether inside or outside the Establishment; and/or
- (iv) all supporting equipment and documentation currently held by the Contractor or any Contractor Related Party and the location of such equipment and documentation,

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

29S.4.2 Upon providing the *Client* with the information requested pursuant to Clause 29S.4.1 (*Effect of Implementation of Measures in a Crisis*), or upon expiry of the period specified by the *Client* for the supply of such information, the *Contractor* shall, upon being so requested by the *Client*, discuss in good faith with the *Client* any matters which the *Client*, in its sole opinion, may consider relevant or appropriate to any proposals the *Client* may have for the reallocation of priorities for, or for the reorganisation of, the provision of the *services* being carried out, or to be carried out, by the *Contractor*. These shall be in order to deal with the circumstances which gave rise to the issuing of a notice pursuant to Clause 29S.1, including the following matters:

- (i) the revision (including the early completion, suspension or cancellation) of the provision of the *services* for the *Client*; and/or
- (ii) the immediate implementation of new *services*,

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

### ***Client's Overriding Rights***

29S.5 Notwithstanding any provision to the contrary in this Contract, and notwithstanding that any of the measures described in Clause 29S.4 (*Effect of Implementation of Measures in a Crisis*) may not have been taken, required to be taken, or have been completed, the *Client* may, at any time and in its sole discretion step-in to this Contract pursuant to Clause 29T (*Client Step-In*), and/or the *Client* may instruct the *Contractor*.

29S.5.1 to accelerate to early completion, to suspend, or to cease permanently, any part of the *services* carried out by the *Contractor* for Third Parties, to remove (permanently or temporarily) the property of Third Parties from the Establishment and to procure that any such action is carried out on terms with such Parties which result in the least possible loss to the *Contractor*; and

29S.5.2 to accelerate to early completion or to suspend the provision of the *services* or any part of the *services*; and

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29S.5.3 to carry out any changes whatsoever to this Contract required by the *Client* without reference to the Contract Change Management Process; and

29S.5.4 to deploy its Personnel and any Equipment or rights used in connection with them or to use, or make available for use by the *Client* or as directed by the *Client*, all such Equipment or rights in accordance with the *Client's* directions,

and the *Contractor* shall promptly and diligently comply with any instruction issued by the *Client* referred to in this Clause 29S.5.

### ***Client's Indemnity on Measures in a Crisis***

29S.6 If the *Client* has stepped-in to this Contract and/or the *Client* has instructed the *Contractor* in accordance with Clause 29S.5 (*Client's Overriding Rights*), the provisions of Clause 29T.5 (*Effect of Step-In without Contractor Breach*) shall apply and then:

29S.6.1 for so long as and to the extent that the provisions of Clause 29S.4 (*Effect of Implementation of Measures in a Crisis*) or any instruction issued by the *Client* pursuant to Clause 29S.5 (*Client's Overriding Rights*) ("**MIAC Required Action**") prevents the *Contractor* from providing all or any part of the *services*, the *Contractor* shall be relieved from its obligations to provide such part of the *services*; and

29S.6.2 in respect of the period in which the *Client* is taking the MIAC Required Action and provided that the *Contractor* complies with its obligations under Clause 29S.4 (*Effect of Implementation of Measures in a Crisis*) or Clause 29S.5 (*Client's Overriding Rights*), then:

(i) provided that the *Contractor* provides the *Client* with reasonable assistance (such assistance to be at the expense of the *Client* to the extent incremental costs are incurred), the Service Payment due from the *Client* to the *Contractor* shall equal the amount the *Contractor* would receive if it were satisfying all its obligations and Providing the *Services* or part of the *services* affected by the MIAC Required Action in full over that period; and

(ii) the *Client* shall indemnify the *Contractor* against:

29S.6.3 any direct losses from any claim or action for damages by a third party against the *Contractor* arising out of the MIAC Required Action; and/or

29S.6.4 any reasonable indirect losses which it proves it has suffered in relation to contracts with Third Parties by reason of the MIAC Required Action or the provision of *services* to the *Client* by reason of the MIAC Required Action,

and the provisions of this Clause 29S.6 shall be the *Contractor's* sole remedy as a result of the *Client* having stepped-in to this Contract pursuant to Clause 29T (*Client Step-In*) and/or the *Client* having instructed the *Contractor* in accordance with Clause 29S.5 (*Client's Overriding Rights*). For the avoidance of doubt, no Compensation Event shall arise as a result of such step-in or instruction.

**29T Client Step-In**

**Interpretation**

- 29T.1 In Clause 29S (*Measures in a Crisis*) and this Clause 29T (*Client Step-In*) references to the *Client* taking action shall be deemed to include references to the *Client* procuring the taking of action by others on behalf of the *Client*.
- 29T.2 If the *Client* reasonably believes that it needs to take action in connection with the *services*:
- 29T.2.1 because a serious risk exists to the health or safety of persons or property or to the environment;
- 29T.2.2 to discharge a statutory duty; and/or
- 29T.2.3 because the *Client* invokes Measures in a Crisis,
- then the *Client* shall be entitled to take action in accordance with this Clause 29T (*Client Step-In*).

**Procedure for Client Step-In**

- 29T.3 If Clause 29T (*Client Step-In*) applies and the *Client* wishes to take action, the *Client* shall notify the *Contractor* of the following:
- 29T.3.1 the action it wishes to take; and
- 29T.3.2 the reason for such action; and
- 29T.3.3 the date it wishes to commence such action; and
- 29T.3.4 the time period which it believes shall be necessary for such action; and
- 29T.3.5 to the extent practicable, the effect on the *Contractor* and its obligation to Provide the Service or any part of the *services* during the period such action is being taken.
- 29T.4 Following service of such notice, the *Client* shall take such action as notified under Clause 29T.3 (*Procedure for Client Step-In*) and any consequential additional action as it reasonably believes is necessary (together, the "**Required Action**") and the *Contractor* shall give all reasonable assistance to the *Client* while it is taking the Required Action.

**Effect of Step-In without Contractor Breach**

- 29T.5 If the *Contractor* is not in breach of its obligations under this Contract and the *Client* exercises its right to take action in connection with the *services* pursuant to Clause 29T (*Client Step-In*):
- 29T.5.1 then for so long as and to the extent that the Required Action is taken, and this prevents the *Contractor* from providing all or any part of the *services*, the *Contractor* shall be relieved from its obligations to provide such part of the *services*; and
- 29T.5.2 in respect of the period in which the *Client* is taking the Required Action and provided that the *Contractor* provides the *Client* with reasonable assistance (such assistance to be at the expense of the *Client* to the extent incremental costs are incurred), the Service Payment due from the *Client* to the *Contractor* shall equal the amount the *Contractor* would receive if it

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were satisfying all its obligations and providing the part of the *services* affected by the Required Action in full over that period; and

- 29T.5.3 if the *Client* has issued the notice contemplated in Clause 29S (*Measures in a Crisis*), the *Client's* indemnity as set out in Clause 29S.6 (*Client's Indemnity on Measures in a Crisis*) shall continue to apply.

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

- 29T.6 If the *Contractor* is in breach of its obligations under this Contract and in consequence the *Client* exercises its right to take action in connection with the *services* pursuant to this Clause 29T (*Client Step-In*):

29T.6.1 then for so long as and to the extent that the Required Action is taken, and this prevents the *Contractor* from Providing the *Services* or any part of the *services*, the *Contractor* shall be relieved from its obligations to provide such part of the *services*; and

29T.6.2 in respect of the period in which the *Client* is taking Required Action, the Service Payment due from the *Client* to the *Contractor* shall equal the amount the *Contractor* would receive if it were satisfying all its obligations and providing the relevant part of the *services* affected by the Required Action in full over that period, less an amount equal to all the *Client's* expenditure in taking the Required Action.

### **Client Step-Out**

- 29T.7 The *Client* may at any time during the period of the Required Action notify the *Contractor* that the *Client* wishes to cease the Required Action and the date on which it intends to cease the Required Action.

- 29T.8 The Required Action shall cease with effect from the date notified under Clause 29T.7 and with effect on that date:

29T.8.1 the *Client* will be released from all of its obligations and liabilities in relation to the Required Action arising prior to the cessation of the Required Action; and

29T.8.2 the *Contractor* shall resume all or any part of the *services* which was the subject of the Required Action.

## **29U Business Continuity Management**

- 29U.1 The *Contractor* shall be responsible for Business Continuity Management and the production of Business Continuity Plan in accordance with the requirements of Booklet 3 (Requirements Information) Module C, Module E and Module G.

## **29V Service Improvement**

- 29V.1 The *Contractor* shall have an ongoing obligation throughout the Service Period to identify new or potential improvements to the *services* in accordance with this Clause 29V.1 (*Service Improvement*). As part of this obligation, the *Contractor* shall identify and report to the *Client* at each Performance Review Meeting on:

29V.1.1 the emergence of new and evolving relevant technologies which could improve the *services* and those technological advances potentially

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available to the *Contractor* and the *Client* which the Parties may wish to adopt;

- 29V.1.2 new or potential improvements to the *services* including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the *services*;
  - 29V.1.3 new or potential improvements to the interfaces or integration of the *services* with other services provided by Third Parties or the *Client* which might result in efficiency or productivity gains or in reduction of operational risk;
  - 29V.1.4 new or potential improvements to the Facilities Management Service where these changes could impact on the *services*;
  - 29V.1.5 changes in business processes and ways of working that would enable the *service* to be delivered at lower costs and/or greater benefits to the *Client*; and/or
  - 29V.1.6 changes to the IT environment, business processes and ways of working that would enable reductions in the total energy consumed annually in *Providing the Service*.
- 29V.2 The *Contractor* shall ensure that the information that it provides to the *Client* shall be sufficient for the *Client* to decide whether any improvement should be implemented. The *Contractor* shall provide any further information that the *Client* requests.
- 29V.3 If the *Client* wishes to incorporate any improvement identified by the *Contractor*, the *Client* shall do so in accordance with the Contract Change Management Process.

### **29W Parent Company Guarantee**

- 29W.1 On or before the Contract Date the *Contractor* shall procure that the Parent Company executes as a deed and delivers to the *Client* a Parent Company Guarantee.
- 29W.2 Notwithstanding any other provisions of this Contract, no payments will become due to the *Contractor* under this Contract while the *Contractor* remains in default of this Clause 29W (*Parent Company Guarantee*).

**3. TIME**

**30 Contract Period, Mobilisation, the Service Period and Options**

**Contract Period**

30.1 Subject to Clauses 30.5 to 30.14 (inclusive), this Contract and the rights and obligations of the Parties shall take effect on the Contract Date and, except as set out in Clause 97 (*Continuing Obligations*), shall terminate on the earlier of the:

30.1.1 Expiry Date, as the same may be extended following the exercise by the Client of any of the Options; and

30.1.2 Termination Date.

**Mobilisation**

30.2 The Parties shall comply with their respective obligations in relation to Mobilisation set out in the Booklet 3, Module D.

**Starting the Service Period**

30.3 The *Contractor* shall not begin Providing the Services until the In Service Date and shall Provide the Services throughout the Service Period.

30.4 The *Contractor* shall Provide the Services in accordance with the timescales specified in the Service Information, using at all times all reasonable endeavours to avoid and mitigate any delay howsoever caused.

**Options**

30.5 In consideration of the *Client* agreeing to enter into this Contract, the *Contractor* hereby grants to the *Client* the right to exercise the Options to:

35.5.1 extend the Service Period (as such Service Period is defined at the Contract Date) up to a maximum of two (2) (1+1) years in the aggregate.

30.6 If the *Client* elects to exercise one or more of the Options, the following provisions of this Clause 30 shall apply.

30.7 The *Service Manager* shall issue a notice to the *Contractor* (such notice confirming that the Service Manager is considering exercising the relevant identified Option, subject to the *Service Manager* and the *Contractor* confirming the Option Fixed Price and other matters relating to such Option) (an "**Option Notice**") and, subject to the proviso below, such Option Notice may be issued by the *Service Manager*:

30.7.1 in the case of the Option numbered 1 (First 1 Year Contract Extension for the period 01/08/2029 to 31/07/2030) not less than three (3) months prior to the Original Expiry Date;

30.7.2 in the case of the Option numbered 2 (Second 1 Year Contract Extension for the period 01/08/2030 to 31/07/2031) not less than three (3) months prior to the expiry date of Option numbered 1;

provided always that the date on which the Service Manager issues the relevant Option Notice in respect of Option numbered 2 occurs only in the period during which Option numbered 1 previously exercised by the *Client* in accordance with this Clause 30 is subsisting.

- 30.8 The proposed Option Firm Price in respect of each Option referred to in Clause 30.7 is set out in Booklet 5 (*Pricing Information*) and the Parties agree that such Option Price can only be increased or decreased in accordance with the provisions of Booklet 5 (*Pricing Information*) and/or in the event that:
- 30.8.1 prior to exercise of the relevant Option, there is a material change to the scope of the Articles and/or services and, in the case of an increase to the proposed Option Firm Price, where the *Contractor* can demonstrate a causal increase in the proposed Option Firm Price arising as a result of such material change and where a Contract Change is subsequently agreed in accordance with the procedures in Clauses 30.9 to 30.14 (*inclusive*) and as set out in Annex B (*Change Management Process*), to vary the proposed Option Firm Price before it then forms part of the Option Price;
  - 30.8.2 where a Task Order Proposal in relation to an Exercised Option is agreed and an Active Task Order commences which adjusts the relevant scope of the Articles and/or services and the proposed Option Firm Price, in accordance with the procedures in Clause 19 and Annex B (*Change Management Process*); or
  - 30.8.3 in relation to an Exercised Option, where a Contract Change is agreed in accordance with the Annex B (*Change Management Process*) which changes the amount of the proposed Option Fixed Price which relates to such Exercised Option.
- 30.9 Within ten (10) Working Days (or such other period as the Parties may agree) from the date of receipt of the Option Notice from the *Client* in accordance with Clause 30.7, the *Contractor* shall notify the *Service Manager* (together with all supporting detail as is deemed necessary by the *Client*):
- 30.9.1 that the proposed Option Firm Price relevant to the applicable Option is confirmed (there being no material changes to the scope of the Articles and/or services relating to the applicable Option); or
  - 30.9.2 of any proposed adjustment to the proposed Option Firm Price as a result of identified changes to the scope of the Articles and/or services resulting in a proposed Option Firm Price (which is different to the original proposed Option Fixed Price) for the applicable Option;
  - 30.9.3 of any other proposed changes that the *Contractor* considers are necessary to enable the applicable Option to form part of this Contract which arise as a direct result of any change to the scope of the Articles and/or services for the applicable Option; and
  - 30.9.4 of any other information which the *Contractor* considers is relevant relating to the relevant Option.
- 30.10 In calculating the confirmed Option Adjusted Firm Price in accordance with Clause 30.9, the *Contractor* shall:
- 30.10.1 apply the same logic and approach as used to calculate the Option Firm Price, such logic and approach being adjusted only to the extent necessary to take account of any material changes to the scope of the Option as agreed by the Parties;



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- 30.10.2 work with the *Service Manager* to seek to agree the proposed Option Adjusted Fixed Price (and any consequential adjustment to this Contract respectively); and
- 30.10.3 act reasonably and in good faith to ensure that such proposed Option Adjusted Firm Price is fair and reasonable.
- 30.11 If the *Service Manager* does not accept the proposed Option Adjusted Fixed Price and/or other changes to this Contract, the *Service Manager* shall give details of the reasons as to why it does not accept such proposed Option Adjusted Fixed Price and/or proposed changes and the *Service Manager* may request that the *Contractor*:
- 30.11.1 provides such further information as the *Service Manager* may require to verify such proposed Option Adjusted Fixed Price and/or proposed changes; and/or
- 30.11.2 carries out a further calculation of such proposed Option Adjusted Fixed Price and/or revises such proposed changes and provides details of such calculation and/or revisions to the *Service Manager*,
- in each case in writing and to be provided within a reasonable time period, such time period as specified by the *Service Manager* (by notice in writing) to the *Contractor*.
- 30.12 In the event of any Dispute in relation to any Option which is the subject of an Option Notice, either Party shall be entitled to refer the matter for resolution in accordance with Clause 96 (*Dispute Resolution Procedure*).
- 30.13 Following the agreement (including agreement to the terms of any Option at the Contract Date, without amendment) or determination of the Option Adjusted Fixed Price and/or other proposed changes, then:
- 30.13.1 the Parties shall proceed as if the agreed (or determined) terms of the relevant Option were an Estimate confirmed by the *Client* in accordance with Annex B (*Change Management Process*) and the Parties shall enter into any documents required to give effect to the relevant Option and commence the implementation of the relevant Option as set out in Annex B (*Change Management Process*);
- 30.13.2 the rights and obligations of the Parties in respect of the relevant Option shall take effect from the date specified in the documents referred to in Clause 30.13.1 (when such documents have been duly executed by the Parties and consequently the Option then becomes an Exercised Option) and shall form rights and obligations under this Contract; and
- 30.13.3 the Option Firm Price shall be deemed to be the Annual Core Services Payment for the relevant Option Period.
- 30.14 Following the exercise of any of the Options pursuant to this Clause 30 (*Contract Period, Mobilisation, the Service Period and Options*), any rights and obligations of the Parties existing under this Contract prior to the exercise of such Option shall continue to apply.

## **31 The Contractor's Plan**

- 31.1 The *Contractor* shall submit the *Contractor's Plan* at Booklet 6 of this Document to form a binding part of the Contract Documentation.

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- 31.2 The *Contractor* shall show on each plan which it submits for acceptance:
- 31.2.1 the complete scope of *services* and Works as defined in Booklet 3 (Requirements Information) and all other documents under this Contract;
  - 31.2.2 the starting date and the end of the Service Period;
  - 31.2.3 the order and timing of the work of the *Client* and Others as last agreed with them by the *Contractor* or, if not so agreed, as stated in Booklet 3 (Requirements Information);
  - 31.2.4 provisions for:
    - (i) time risk allowances;
    - (ii) health and safety requirements; and
    - (iii) the procedures set out in this Contract;
  - 31.2.5 the dates when, in order to Provide the Service in accordance with its plan, the *Contractor* will need:
    - (i) access to the Affected Property as stated in Booklet 3 (Requirements Information);
    - (ii) acceptances;
    - (iii) Government Furnished Equipment, Issued Property and other things to be provided by the *Client* and information from Others;
  - 31.2.6 for each operation, a statement of how the *Contractor* plans to do the work identifying the principal Equipment and other resources which the *Contractor* plans to use;
  - 31.2.7 all information required by Booklet 3 (Requirements Information) and/or Booklet 4 (Client Supplied Data); and
  - 31.2.8 the other information which the Service Information requires the *Contractor* to show on a plan submitted for acceptance.
- 31.3 Within four (4) weeks of the *Contractor* submitting a plan to the *Service Manager* for acceptance, the *Service Manager* shall either accept the plan or notify the *Contractor* of its reason for not accepting it. A reason for not accepting a plan is that:
- 31.3.1 the *Contractor's* plans which it shows are not practicable;
  - 31.3.2 it does not show the information which this Contract requires
  - 31.3.3 it does not represent the *Contractor's* plans realistically,
  - 31.3.4 it does not comply with Service information, or
  - 31.3.5 any other reason provided by the *Service Manager* (acting reasonably).

## 32 **Revising the Contractor's Plan**

- 32.1 The *Contractor* shall submit a revised plan to the *Service Manager* for acceptance showing the effects of an implemented Compensation Event and other changes. Such revised plan shall be submitted:
- 32.1.1 when requested by the *Service Manager* and within the *period for reply* after the *Service Manager* has instructed the *Contractor* to submit a reply;

- 32.1.2 when requested by the *Service Manager* for an individual Task Order issued in accordance with Clause 19 (*Task Order Management Process*) and Annex B (*Change Management Process*);
- 32.1.3 each time a Contract Change is instructed in accordance with Annex B (*Change Management Process*); and
- 32.1.4 when the *Contractor* chooses to.

### 33. **Task Order Programme**

The *Contractor* submits a Task Order programme to the *Service manager* for acceptance within the period stated in the Contract Data.

33.2 The *Contractor* shows on each Task Order programme submitted for acceptance

- the Task starting date and the Task Completion Date,
  - planned Task Completion,
  - the order and timing of the operations which the *Contractor* plans to do in order to complete the Task,
- provisions for
- float,
  - time risk allowances,
  - health and safety requirements and
  - the procedures set out in the contract,
  - the dates when, in order to Provide the Service in accordance with the Task Order programme, the *Contractor* will need
    - access to the Affected Property,
    - acceptances,
    - Plant and Materials, equipment and other things to be provided by the *Client* and
    - information from Others,
  - for each operation, a statement of how the *Contractor* plans to do the work identifying the principal Equipment and other resources which will be used and
  - other information which the Scope requires the *Contractor* to show on a Task Order programme submitted for acceptance.

A Task Order programme issued for acceptance is in the form stated in Scope.

33.3 Within one week of the *Contractor* submitting a Task Order programme for acceptance, the *Service manager* notifies the *Contractor* of the acceptance of the Task Order programme or the reasons for not accepting it. A reason for not accepting the Task Order programme is that

- the *Contractor's* plans which it shows are not practicable,
- it does not show the information which the contract requires,
- it does not represent the *Contractor's* plans realistically or
- it does not comply with the Scope.

If the *Service manager* does not notify acceptance or non-acceptance within the time allowed, the *Contractor* may notify the *Service manager* of that failure. If the failure continues for a further one week after the *Contractor's* notification, it is treated as acceptance by the *Service manager* of the Task Order programme.

**34. Revising the Task Order programme**

- 34.1 The *Contractor* shows on each revised Task Order programme
- the actual progress achieved on each operation and its effect upon the timing of the remaining work,
  - how the *Contractor* plans to deal with any delays and to correct notified Defects and
  - any other changes which the *Contractor* proposes to make to the Task Order programme.
- 34.2 The *Contractor* submits a revised Task Order programme to the *Service manager* for acceptance
- within the period for reply after the *Service manager* has instructed the *Contractor* to
- and
- when the *Contractor* chooses to.

The latest Task Order programme accepted by the *Service manager* supersedes a previously accepted Task Order programme.

**35. Access**

- 35.1 The *Client* provides the right of access for the *Contractor* to the Affected Property as shown on the Accepted Plan or the date for access shown on the latest accepted Task Order programme.

**36 Instructions to Stop or Not to Start Works and/or Services**

- 36.1 The *Service Manager* may instruct the *Contractor* to stop or not to start any Works and/or services carried out under this Contract and may at any time within the next six (6) months instruct the *Contractor* to re-start or start such Works and/or services. During any period in which any Works and/or services are so stopped or not started, the *Contractor* shall keep secure and protect all Equipment and *Client* Assets against any deterioration, loss, damage or theft.
- 36.2 If within six (6) months from the date of postponement the *Client* instructs the *Contractor* to resume the relevant Works and/or services, then any payments made in respect of such Works and/or services shall be considered as payments on account towards the total of the Prices.
- 36.3 If the *Client* has not instructed the *Contractor* to resume the relevant Works and/or services which has been postponed at a date six (6) months from the date of postponement, the *Service Manager* will be deemed to have given an instruction to remove the postponed Works and/or services from the services and the Contract Change Management Process shall apply.

**37**     **Timescales**

- 37.1     Where this Contract does not provide for a specific timescale and no timescale is stated by the *Service Manager* or the *Client*, the *Contractor* shall act or respond (as appropriate) within the *period for reply*.

#### **4. QUALITY MANAGEMENT**

##### **40 Quality Management and Assurance**

- 40.1 Without prejudice to the provisions of Booklet 3 (Requirements Information) Module A section A6 (*Quality Management*), the *Contractor* shall submit the Quality Plan as defined in AQAP 2105 to the *Client* in accordance with this Contract.
- 40.2 When agreed by the *Client*, the Quality Plan shall be incorporated into this Contract. Notwithstanding that the Quality Plan will have been seen and agreed by the *Client*, the *Contractor* shall be solely responsible for the accuracy, suitability and applicability of the Quality Plan.
- 40.3 The *Contractor* shall comply with Booklet 3 (Requirements Information) Module A section A6 (*Quality Management*).

##### **41 Service Failure in the Delivery of the Services**

- 41.1 The *Contractor* will notify the *Service Manager* when delivery of any part of the *services* is not performed in accordance with this Contract and shall comply with Clause 15 (*Early Warnings*). In the event that any *services* are not performed in accordance with this Contract, the *Service Manager* will determine if the *Contractor* has already received payment for that part of the *services*. The *Service Manager* will instruct the *Contractor* to calculate the value of the *services* that are not performed in accordance with this Contract using the price information in the Booklet 5 (*Pricing Information*) and/or any applicable Task Order MOD Form 1097/1 and the next payment application will be reduced or abated by the corresponding amount or (if the *Service Manager* does not agree with the *Contractor's* calculation) such other amount as the *Service Manager* shall certify together with (save where such failure perform the relevant part of the *services* is attributable to the failure or default of the *Client*) any additional amounts incurred by the *Client* by reason of the relevant part of the *services* being delivered by another contractor in accordance with Clause 50 (*Assessing the Amount Due*) and Booklet 5 (*Pricing Information*). Unless any part of the *services* that are not performed by the *Contractor* in accordance with this Contract are delivered by another contractor, if and when the *Contractor* delivers the outstanding *services*, it will be entitled to recover the sum abated or reduced in the next interim payment.
- 41.2 In the event that the *Contractor* has failed to deliver any part of the *services* in accordance with this Contract, the *Service Manager* may determine that part of the *services* should not be delivered or may be delivered by another contractor. The *Service Manager* will instruct the *Contractor* to calculate the value of the undelivered part of the *services* using the price information in Booklet 5 (*Pricing*) and/or any applicable Task Order and the next payment application will be reduced by a corresponding amount or (if the *Service Manager* does not agree with the *Contractor's* calculation) such other amount as the *Service Manager* shall certify together with (save where such non-delivery is attributable to the failure or default of the *Client*) any additional amounts incurred by the *Client* by reason of the undelivered part of the *services* being delivered by another contractor.

##### **42. Testing & Inspection before delivery**

- 42.1 The *Contractor* does not deliver those Plant and Materials which the Scope states are to be tested or inspected before delivery until the *Service manager* has notified

the *Contractor* that they have passed the test or inspection.

#### **43 Notifying and Correcting Service Failures**

- 43.1 Until the end of the Service Period, the *Service Manager* shall notify the *Contractor* of each Service Failure as soon as the *Service Manager* finds it and the *Contractor* shall notify the *Service Manager* of each Service Failure as soon as the *Contractor* finds it. The *Contractor* shall correct a Service Failure whether or not the *Service Manager* has notified the *Contractor* of it.
- 43.2 The *Contractor* shall correct Service Failures within a time which minimises the adverse effect on the *Client* or Others and in any event within the period required by the *Service Manager* (acting reasonably in the circumstances).
- 43.3 The *Service Manager* shall arrange for the *Client* to allow the *Contractor* access to the relevant Affected Property if it is needed for correcting a Service Failure.

#### **44 Accepting Service Failures**

- 44.1 The *Contractor* and the *Service Manager* may each propose to the other (via the Contract Change Management Process) that the Service Information should be changed so that a Service Failure does not have to be corrected. The *Client* has complete discretion as to whether or not to agree to any Contract Change. If the *Client* agrees the Contract Change and accepts the *Contractor's* quotation, the *Service Manager* shall issue a Contract Change request to change the Service Information and the Prices accordingly. For the avoidance of doubt any such agreement to a Contract Change shall not constitute a Compensation Event.

#### **45 Defects Liability**

- 45.1 Any Works Service Failures which appear within the relevant Defects Liability Period shall be specified by the *Service Manager* in a schedule of Works Service Failures which shall be delivered to the *Contractor* not later than ten (10) Working Days after the expiration of the relevant Defects Liability Period. Such schedule of Works Service Failures shall be an instruction of the *Client* to make good the Works Service Failure listed, and within ten (10) Working Days, or such longer period as the *Client* may agree acting reasonably, after the receipt of such schedule, the Works Service Failure specified shall be made good by the *Contractor* at no cost to the *Client*.
- 45.2 Notwithstanding Clause 45.1, the *Service Manager* may at any time within the relevant Defects Liability Period issue instructions on behalf of the *Client* requiring any Works Service Failure which appear to be made good, provided that no such instructions shall be issued more than ten (10) Working Days after the expiry of the relevant Defects Liability Period. Within ten (10) Working Days, or such longer period as the *Client* may agree acting reasonably, after the receipt of such instruction, the Works Service Failure specified shall be made good by the *Contractor* at no cost to the *Client*.
- 45.3 If the *Contractor* fails to comply with an instruction issued pursuant to Clause 45.1 or 45.2 within ten (10) Working Days, or such longer period as the *Client* may agree acting reasonably, of the relevant instruction, the *Client* may, without prejudice to Clause 29T (*Client Step-In*), itself carry out or employ and pay others to carry out the necessary making good of any Works Service Failure, recovering from the *Contractor*

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the costs and losses incurred as a result of such Works Service Failure and making good the same as a debt.

- 45.4 When all of the Works Service Failures which the *Contractor* is obliged to make good under Clause 45.1 have been made good and the condition precedents at Clause 45.5 have been met, the *Service Manager* shall issue a certificate to that effect, which certificate shall not be unreasonably delayed or withheld, and completion of making good any Works Service Failure shall be deemed for all the purposes of this Contract to have taken place on the day stated in such notice (the "**Certificate of Completion of Making Good Works Service Failures**") provided that the *Service Manager* shall not be required to issue any Certificate of Completion of Making Good Works Service Failures any earlier than ten (10) Working Days after the expiry of the Defects Liability Period. For the avoidance of doubt, the issue of any Certificate of Completion of Making Good Works Service Failures shall not affect the continuing liability of the *Contractor* in respect of any Works Service Failures.
- 45.5 It shall be a condition precedent to the issue of the final Certificate of Completion of Making Good Works Service Failures that the *Contractor* has submitted to the *Client* all reports, documents and other information dealing with the matters set out in the Service Information.
- 45.6 The *Client's* rights in respect of a Works Service Failure which the *Service Manager* has not found or notified are not affected by the issue of the Certificate of Completion of Making Good Works Service Failures. The *Client's* rights in respect of a Works Service Failure which the *Service Manager* has not found or notified are not affected by the issue of the Certificate of Completion of Making Good Works Service Failures. For the avoidance of doubt this includes the *Client's* rights with regards to any latent or inherent defects in any works, Articles and or plant and materials supplied to the *Client* under this Contract. Where such latent or inherent defects are discovered, the *Contractor* will bear all costs of making good such defects.



## 5. **PAYMENT**

### 50 **Assessing the Amount Due**

- 50.1 The *Service Manager* shall assess the amount due at each assessment date. Assessment dates for the Milestone Payment will be the relevant date of certification under Clause 57 (*Milestone Payments during Mobilisation*) of completion of the Milestone to which the Milestone Payment relates. The first assessment date for payment for the *services* is the first day of the Contract Month next following the Contract Month in which the In Service Date occurs. For the avoidance of doubt as an example if the ISD was 15th November 2021 the first assessment date would be the 1st of December 2021 and the period assessed for payment would be from the 15th of November to 30th November. Later assessment dates are the first day of every subsequent Contract Month thereafter until the end of the Service Period or termination of the *Contractor's* employment under this Contract (whichever is the earlier).
- 50.2 The amount due is the Service Payment for the *services* provided in the relevant assessment period. The *Service Manager* shall assess the amount due in accordance with Booklet 5 (*Pricing Information*).
- 50.3 In assessing the amount due, the *Service Manager* shall consider any application for payment the *Contractor* has submitted on or before the assessment date. The *Contractor's* application for payment is the notice of payment to the *Client* specifying the amount due at the payment date and stating the basis on which the amount was calculated. When submitting such application, the *Contractor* shall also give the *Client* the supporting documents and information that the *Client* reasonably requires to enable it to evaluate the notified sum. If no application for payment is received by the *Service Manager* in accordance with this Clause 50.3, the sum to be certified in accordance with Clause 50.6 in respect of that assessment period shall be nil, provided that where the *Contractor* subsequently issues an application for payment in respect of such assessment period, such application shall be assessed by the *Service Manager* at the next following assessment date (which, for the avoidance of doubt, shall be the date used to calculate the Relevant Day for the purposes of Clause 50.5) in accordance with Clause 50.2 and any sum which the *Service Manager* assesses as being due to the *Contractor* shall be included in the next Payment Certificate and paid to the *Contractor* in accordance with Clause 54 (*Payment under CP&F*).
- 50.4 The *Service Manager* shall correct any wrongly assessed amount due in a later payment certificate.
- 50.5 The date on which payment becomes due is thirty (30) days after the assessment date (the "**Relevant Day**").
- 50.6 Where the *Contractor's* application is submitted in accordance with Clause 50.3, the *Service Manager* shall certify payment no later than fifteen (15) days after the relevant assessment date. The *Service Manager's* certificate ("**Payment Certificate**") is the notice of payment to the *Contractor* specifying the amount due on the Relevant Day.
- 50.7 In respect of each payment instalment, the *Client* shall pay to the *Contractor* by the Relevant Day (subject to any pay less notice issued in accordance with Clause 50.8 and subject to Clause 50.11) the amount certified by the *Service Manager* under Clause 50.6 or where an amount has not been so certified by the *Service Manager* the sum stated in the *Contractor's* application for payment under Clause 50.3.

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- 50.8 If either Party intends to pay less than the notified sum, it shall notify the other Party not later than five (5) days before the Relevant Day by stating the amount considered to be due and the basis on which that sum is calculated. Subject to Clause 50.11, a Party shall not withhold payment of an amount due under this Contract unless it has notified its intention to pay less than the notified sum as required by this Contract.
- 50.9 In relation to giving notices under this Clause 50 (*Assessing the Amount Due*), it is immaterial that the amount then considered to be due may be zero or a negative amount.
- 50.10 A pay less notice given by the *Client* under this Clause 50 (*Assessing the Amount Due*) may be given on its behalf by the *Service Manager* or any other person who the *Client* notifies the *Contractor* as being authorised to do so.
- 50.11 If an Insolvency Event (Company) or Insolvency Event (Individual or Firm) occurs in respect of the *Contractor* before the Relevant Day, the *Client* need not pay the *Contractor* the notified sum or any sum.
- 50.12 Neither, the issuing of a Payment Certificate nor payment by the *Client* shall be construed as acceptance by the *Client* of the performance of the *Contractor's* obligations nor as a waiver of its rights and remedies under this Contract.
- 50.13 All payments for services provided to REDACTED are to be presented on a separate invoice for payment.

## 51 Interest

- 51.1 Where and to the extent that any sum due under this Contract would otherwise be a 'qualifying debt' under the Late Payment of Commercial Debts (Interest) Act 1998 (or to the extent applicable, Host Nation Law) (for the purposes of this Clause 51 (*Interest*), the "**Act**"):
- 51.1.1 the interest provided for by this Clause 51 (*Interest*) is a contractual remedy and is not a statutory interest. Therefore, to the extent permissible by Law, the provisions of the Act relating to statutory interest will not apply to this Contract;
  - 51.1.2 from the day after the Relevant Day and thereafter until payment is made, simple interest at a rate calculated in accordance with Clause 51.1.3 (*Interest*), may be claimed by the *Contractor* on the value of all claims for payment (or unpaid parts thereof) made in accordance with this Contract;
  - 51.1.3 without prejudice to 51.1.1 (*Interest*), the rate of interest referred to in Clause 51.1.2 (*Interest*) will be the prevailing interest rate of the Bank of England on the Relevant Day;
  - 51.1.4 no interest will be payable for any period of delay attributable to the conduct of the *Contractor*;
  - 51.1.5 all claims for interest made pursuant to this Clause 51.1 (*Interest*) shall be notified in writing to the *Service Manager*; and
- any interest pursuant to this Clause 51.1 (*Interest*) will not form a part of the Prices and, as a remedy for late payment, will not be subject to VAT.
- 51.2 If an amount due is corrected in a later Payment Certificate either:
- 51.2.1 by the *Service Manager* pursuant to Clause 50.4 (*Assessing the Amount*

*Due*); or

- 51.2.2 following the determination of a Disputed Amount pursuant to Clause 58 (*Disputed Amounts*),

interest on the correcting amount shall be paid. Interest shall be assessed from the date when the incorrect amount was certified under Clause 50.6 (*Assessing the Amount Due*) until the date when the correcting amount is assessed and certified in a Payment Certificate.

## **52. Defined Cost**

- 52.1 All the *Contractor's* costs which are not included in the Defined Cost are treated as included in the Fee. Defined Cost includes only amounts calculated using rates and percentages stated in the Contract Data and other amounts at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.

## **53. Final assessment**

- 53.1 The *Service manager* makes an assessment of the final amount due and certifies a final payment, if any is due, no later than

- thirteen weeks after the end of the Service Period or, if a different period is stated in the Contract Data, within the period stated, or
- thirteen weeks after the *Service manager* issues a termination certificate.

The *Service manager* gives the *Contractor* details of how the amount due has been assessed.

The Party to which payment is due submits an invoice to the other Party for the amount to be paid within one week of the *Service manager's* certificate. The final payment is made by the later of

- one week after the paying Party receives an invoice from the other Party and
- three weeks after the assessment date, or, if a different period is stated in the Contract Data, within the period stated.

- 53.2 If the *Service manager* does not make this assessment within the time allowed, the *Contractor* may issue to the *Client* an assessment of the final amount due, giving details of how the final amount due has been assessed. If the *Client* agrees with this assessment, the Party to which payment is due submits an invoice for the amount agreed for payment within one week of the date of the assessment. The final payment is made by the later of

- one week after the paying Party receives an invoice from the other Party and
- three weeks after the assessment date, or, if a different period is stated in the Contract Data, within the period stated.

- 53.3 An assessment of the final amount due issued within the time stated in the contract is conclusive evidence of the final amount due under or in connection with the contract unless a Party takes the following actions.

If the contract includes Option W1, a Party

- refers a dispute about the assessment of the final amount due to the *Senior Representatives* within four weeks of the assessment being issued,

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- refers any issues not agreed by the *Service manager* to the *Adjudicator* within three weeks of the list of the issues not agreed being produced or when it should have been produced and
- refers to the tribunal its dissatisfaction with a decision of the *Adjudicator* as to the final assessment of the amount due within four weeks of the decision being made.

If the contract includes Option W2, a Party

- refers a dispute about the assessment of the final amount due to the *Senior Representatives* or to the *Adjudicator* within four weeks of the assessment being issued,
- refers any issues referred to but not agreed by the *Service manager* to the *Adjudicator* within three weeks of the list of issues not agreed being produced or when it should have been produced and
- refers to the tribunal its dissatisfaction with a decision of the *Adjudicator* as to the final assessment of the amount due within four weeks of the decision being made.

53.4 The assessment of the final amount due is changed to include

- any agreement the Parties reach and
- a decision of the *Adjudicator* which has not been referred to the tribunal within four weeks of that decision.

A changed assessment becomes conclusive evidence of the final amount due under or in connection with the contract.

### **54      Payment under CP&F**

54.1 Payment under this Contract shall be made via the Contracting, Purchasing and Finance (“**CP&F**”) electronic procurement tool via the current supported CP&F gateway.

54.2 The *Client* shall, subject to Clause 58 (*Disputed Amounts*), pay all valid and undisputed claims for payment submitted and determined in accordance with Clause 50 (*Assessing the Amount Due*) on or before the Relevant Day.

54.3 The *Client* shall make payment to the *Contractor* by means of the Bankers Automated Clearing Service (“**BACS**”) directly into the *Contractor's* nominated bank account. To facilitate payment by means of the BACS system, the *Contractor* shall provide the *Client* in advance of the submission of its application for payment, if it has not already done so, details of the name and address of its bank, the sort code and account number.

### **55      Not Used**

### **56      Not Used**

**57 Milestone Payments during Mobilisation**

- 57.1 Provided that all preceding Milestones on the Milestone Payment Schedule have been completed, when the *Contractor* considers that a Milestone has been completed it shall apply to the *Service Manager* for a certificate of completion in respect of that Milestone.
- 57.2 Within seven (7) Working Days of receipt of the *Contractor's* application the *Service Manager* shall either:
- 57.2.1 issue to the *Contractor* a certificate of completion in respect of the Milestone applied for; or
- 57.2.2 notify the *Contractor* that the Milestone has not been completed in accordance with this Contract, giving the reasons for its decision.
- 57.3 The issue of a certificate of completion of a Milestone in accordance with Clause 57.2 shall not relieve the *Contractor* of its obligations or liabilities to the *Client* arising out of, or in any way connected with, the performance of this Contract.

**58 Disputed Amounts**

- 58.1 Without prejudice to Clause 54 (*Payment under CP&F*), where the amount specified in the Payment Certificate is lower than that stated in the *Contractor's* payment application in respect of the same assessment period (the difference between the two amounts being the “**Disputed Amount**”), the *Contractor* may notify the *Client* that it wishes to refer the matter for determination under Clause 96 (*Dispute Resolution Procedure*).
- 58.2 Where a Disputed Amount has been determined under the Dispute Resolution Procedure pursuant to a referral made in accordance with Clause 58.1 (*Disputed Amounts*) and it is determined that the *Client* has withheld any amount which the *Contractor* was entitled to be paid, the *Client* shall pay such amount to the *Contractor* together with interest calculated in accordance with Clause 51.2 (*Interest*).
- 58.3 Any amount due to the *Contractor* pursuant to Clause 58.2 (*Disputed Amounts*) shall be accounted for in the *Service Manager's* next assessment carried out in accordance with Clause 50 (*Assessing the Amount Due*) and the associated Payment Certificate.

**59 Value Added Tax and Other Taxes**

- 59.1 The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supply of Contractor Deliverables by the Contractor to the Client.
- 59.2 If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of their business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HM Revenue and Customs (HMRC), the Client shall pay to the Contractor in addition to the Contract Price (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supply of Contractor Deliverables, and all other payments under the Contract according to the law at the relevant tax point.

- 59.3 The Contractor is responsible for the determination of VAT liability. The Contractor shall consult their Customer Compliance Manager or the HMRC Enquiries Desk (and not the Commercial Officer) in cases of doubt. The Contractor shall notify the Client's Commercial Officer of the Client's VAT liability under the Contract, and any changes to it, within twenty working days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Client may require the Contractor to obtain, and pass to the Client, a formal opinion from HMRC. The Contractor shall comply promptly with any such requirement. Where the Contractor obtains an opinion from HMRC, they shall supply a copy to the Client within three working days of receiving that opinion unless they propose to challenge the opinion. Where the Contractor challenges the opinion they shall supply to the Client a copy of any final opinions issued by HMRC on completion of the challenge within three working days of receiving the opinion.
- 59.4 Where supply of Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Client shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables. The Contractor shall be responsible for ensuring they take into account any changes in VAT law regarding registration.
- 59.5 Where Contractor Deliverables are deemed to be supplied to the Client outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non- EU) turnover or similar tax. In that event, the Client shall pay to the Contractor in addition to the Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables within thirty calendar days of a written request for payment of any such sum by the Contractor.
- 59.6 In relation to the Contractor Deliverables supplied under the Contract the Client shall not be required to pay any sum in respect of the Contractor's input VAT (or similar EU or non-EU or both input taxes). However, these input taxes will be allowed where it is established that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement the matter shall be resolved under DEFCON 530 or some other form of dispute resolution as agreed between the Parties.
- 59.7 Should HMRC assess that the Contractor has incorrectly determined the VAT liability, in accordance with this DEFCON, the Client will pay the VAT assessed by HMRC or the Contractor shall credit any VAT paid by the Client over and above the HMRC assessment (as applicable). In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the Client under this Contract or any other contract. The Contractor shall supply the Client with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three working days of a written request from the Client for such correspondence.
- 59.8 Where the Contractor is a qualifying company or qualifying partnership for the purposes of any UK tax legislation the Contractor shall notify the Client's Commercial Officer, in writing, where it has notified HMRC that a return it has delivered to HMRC includes an uncertain amount that relates to a contract it has entered into with the Client. The Contractor shall notify the Client within 20 working days of the notification

it has provided to HMRC and provide the Client with a copy of the notification. The Contractor shall continue to keep the Client informed of any correspondence and/or discussions with HMRC in relation to the uncertain tax treatment within a reasonable time frame or upon request by the Client.

- 59.9 In the event that HMRC notifies the Contractor of any change to the tax treatment of a previously notified uncertain amount, the Contractor shall notify the Client's and provide a copy of HMRC's notification and assessment within 20 working days of receiving such notification and assessment.
- 59.10 The Client shall not be liable for any interest and/or penalty that the Contractor is required to pay to HMRC for a failure to notify HMRC of an uncertain amount.

## **59A Tax Compliance**

### **Warranty**

- 59A.1 The *Contractor* represents and warrants that at the date this Contract came into effect, it has notified the *Client* in writing of any Occasion of Tax Non-Compliance (OOTNC) or any litigation that it is involved in that is in connection with any OOTNC.

### **Duty of the Contractor to notify OOTNC**

- 59A.2 If, at any point during the performance of this Contract, an OOTNC occurs, the *Contractor* shall:

59A.2.1 notify the *Client* in writing of such fact within twenty (20) Working Days of its occurrence; and

59A.2.2 promptly provide to the *Client*:

- (i) details of the steps which the *Contractor* is taking to address the OOTNC and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- (ii) such other information in relation to the OOTNC as the *Client* may reasonably require.

- 59A.3 For the avoidance of doubt, the obligation at Clause 60.2 also applies to OOTNC in non-UK jurisdictions. If the OOTNC occurred in non-UK jurisdictions, the notification must be accompanied by a full explanation of the OOTNC and any relevant tax laws and administrative provisions so the *Client* can understand the nature and seriousness of the OOTNC.

- 59A.4 Promptly upon a request by the *Client*, the *Contractor* shall supply to the *Client* a certificate signed by two (2) of its directors or senior officers on its behalf certifying that no OOTNC is continuing, or if an OOTNC is continuing, specifying the OOTNC and the steps, if applicable, being taken to remedy it. This should include any mitigating factors that the *Contractor* considers relevant.

- 59A.5 The duty to notify does not substitute the *Contractor's* obligations under Clause 19J (*The Contractor's Records*).

### **Default**

- 59A.6 The *Client* shall be entitled to terminate this Contract in the event that:

59A.6.1 the warranty given by the *Contractor* pursuant to Clause 59.1 is materially untrue; or

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- 59A.6.2 the *Contractor* commits a material breach of its obligation to notify the *Client* of any OOTNC as required by Clause 59.2; or
- 59A.6.3 the *Contractor* fails to provide details of proposed mitigating factors which in the reasonable opinion of the *Client*, are acceptable.
- 59A.7 In the event that the *Client* is entitled to terminate this Contract under Clause 59.6, the *Client* shall be entitled to recover from the *Contractor*:
- 59A.7.1 the amount of any loss resulting from any such termination; and/or
- 59A.7.2 any other loss sustained in consequence of any breach of this Clause 59, including where this Contract has not been terminated.

### **Duties of the *Client***

- 59A.8 In exercising its rights or remedies under this Clause 59A (*Tax Compliance*), the *Client* shall:
- 59A.8.1 act in a reasonable and proportionate manner taking into account, among other things:
- (i) the gravity and duration of the OOTNC and any sanctions imposed by a court or tribunal; and
  - (ii) any remedial action taken by the *Contractor* to prevent reoccurrence of the OOTNC; and
- 59A.8.2 without prejudice to Clause 59A.6 (*Default*), seriously consider, where appropriate, action other than termination of this Contract to deal with the failure by the *Contractor* to comply with this Clause 59A (*Tax Compliance*).

### **59B Recovery of Sums Due**

- 59B.1 Whenever under this Contract any sum of money will be recoverable from or payable by the *Contractor*, the same may be deducted from any sum then due or which at any time thereafter may become due to the *Contractor* under this Contract, or under any other contract with the *Client* or with any Government department and/or such sum may be recoverable by the *Client* from the *Contractor* as a debt.

### **59C Expenses**

- 59C.1 Except as expressly set out in this Contract, the *Client* shall not be required to pay any incidental expenses that the *Contractor* incurs in Providing the Service including travel, subsistence and lodging, document or report production, shipping, desktop or office equipment costs required by the Personnel, network or data interchange costs or other telecommunication charges.

### **59D Exchange Rate Variation**

- 59D.1 The Price is calculated by reference to the London market rate of exchange of United States Dollars to the pound sterling (the Base Exchange Rate).
- 59D.2 If the London market rate of Exchange, on the date on which the Price becomes due for payment in accordance with the Terms and Conditions of the Contract, is greater or less than the Base Exchange Rate by at least Two (2) per cent, the Price shall be varied in direct proportion to the increase or decrease and be payable accordingly.



**6. COMPENSATION EVENTS**

**60 Compensation Events**

60.1 Subject to Clause 60.4, and save to the extent that any of the events referred to in this Clause 60.1 are a direct result of a Force Majeure Event, the following constitute Compensation Events:

- 60.1.1 the *Service Manager* gives an instruction to stop or not start any Works and/or services in accordance with Clause 36 (*Instructions to Stop or Not to Start Works and/or Services*) where that instruction is not due to the default, act or omission of the *Contractor* or any of its Personnel;
- 60.1.2 the *Service Manager* does not reply to a communication from the *Contractor* within the period required by this Contract provided that the *Contractor* has complied with all of its obligations required by this Contract as regards notifications to the *Client* or to the *Service Manager*;
- 60.1.3 the *Service Manager* changes a decision which it has previously communicated to the *Contractor* save where such change is due to any act, neglect or default of the *Contractor* or any Contractor Related Party (including the provision by the *Contractor* of inaccurate or misleading information);
- 60.1.4 the *Service Manager* unreasonably withholds an acceptance other than:
  - (i) where the *Service Manager* is entitled to withhold such acceptance; or
  - (ii) acceptance of a quotation for not correcting a Service Failure, in accordance with the terms of this Contract;
- 60.1.5 a test or inspection done by the *Service Manager* causes unnecessary and avoidable delay save where such test or inspection is reasonable having regard to previous instances of non-compliant work;
- 60.1.6 a breach of this Contract by the *Client* which after all reasonable mitigation by the *Contractor* causes a material increase in the cost to the *Contractor* of Providing the Service and which is not a Client Dependency Failure or one of the other Compensation Events;
- 60.1.7 the *Client* wilfully damages any Equipment;
- 60.1.8 the exclusion of civilian staff to the Host Nation airfield, naval base, ammunition depot, or air fuel depot or operational reasons;
- 60.1.9 an incident on a runway in the Host Nation that affects access to the Affected Property
- 60.1.10 a maritime or alongside incident in the Host Nation and affects access to the Affected Property
- 60.1.11 a rockfall which blocks access to the Affected Property or makes the Affected Property unsafe; and/or
- 60.1.12 refugee migration or civil crisis in the Host Nation,

(“**Compensation Event**”)

save where the *Client* has issued a written notice in accordance with Clause 29S.1 (*Measures in a Crisis*) in relation to such event, in which case the provisions of Clause

29S (*Measures in a Crisis*) shall apply and the event shall not be a Compensation Event, or where such event is due to any act, omission, breach or default of the *Contractor* or any Contractor Related Party (including the provision by the *Contractor* or any Contractor Related Party of inaccurate or misleading information).

- 60.2 In relation to the Compensation Events listed at Clauses 60.1.8 and 60.1.9, the *Contractor* and *Client* recognise the urgency of these events and shall work together to ensure that such matters move through the Early Warning procedure as set out at Clause 15 (*Early Warnings*) quickly to ensure that such matters are mitigated and resolved as soon as possible.
- 60.3 The Parties agree that where an event or circumstance relates to one or more Compensation Events as set out in Clauses 60.1.1 to 60.1.9 (inclusive):
  - 60.3.1 the *Contractor* shall only be entitled to issue a single Compensation Event Notice; and
  - 60.3.2 there shall be no double counting in assessing the effects of such Compensation Event or Compensation Events.
- 60.4 Notwithstanding anything to the contrary in this Contract:
  - 60.4.1 a Contract Change (including the implementation of such Contract Change) shall not give rise to and/or constitute a Compensation Event, save to the extent that this is expressly agreed or determined as part of the Contract Change in question in accordance with Annex B;
  - 60.4.2 a Client Dependency Failure shall not give rise to and/or constitute a Compensation Event; and
  - 60.4.3 the *Client* may elect that a Compensation Event is dealt with in accordance with the Change Management Process. If the *Client* so elects:
    - (i) the *Client* shall issue a Contract Change Notice; and
    - (ii) (save where the Client Change Notice is withdrawn or deemed to have been withdrawn pursuant to the Change Management Process) the relevant event shall no longer be a Compensation Event and the *Contractor* shall be entitled to no compensation, save to the extent that this is expressly agreed or determined as part of the Change Management Process in accordance with Annex B.

## **61 Notifying Compensation Events**

### **61.1 Process**

- 61.1.1 The *Contractor* shall make provision for the *Service Manager* to manage and administer Compensation Events.
- 61.1.2 The *Service Manager* will resolve all Compensation Event issues at meetings convened specifically for that purpose. This will not preclude the resolution of urgent matters relating to Compensation Events outside this forum, but the outcomes shall be recorded by the *Contractor* on the IS/IMS.

### **61.2 Notification of Compensation**

- 61.2.1 If the *Contractor* becomes aware of a possible Compensation Event, it shall in every case follow the Early Warning procedure described in Clause 15 (*Early Warnings*) to mitigate costs.

- 61.2.2 The *Service Manager*, in giving an instruction or changing an earlier decision, may not always indicate that this action will lead to a Compensation Event. It is the *Contractor's* responsibility to review such changes in information and notify the *Service Manager* of possible Compensation Events resulting from such changes.

### 61.3 Compensation Event Review Meetings

- 61.3.1 Compensation Events will be dealt with at the monthly Compensation Event Review Meetings (CERM) held by the *Service Manager*.
- 61.3.2 All unresolved Compensation Event notifications recorded on the IS/IMS shall be discussed at the appropriate CERM. The method of dealing with Compensation Events shall in every instance be formalised at the CERM. This will not preclude the *Service Manager* or the Contractor's Representative from holding informal discussions before the CERM to speed up the formal agreement of the method of dealing with the Compensation Event at the CERM.
- 61.3.3 If the *Contractor* or the *Service Manager* considers that the discussion about a particular Compensation Event cannot wait until the next monthly CERM, the *Service Manager* or the *Contractor* shall request an interim CERM to discuss that specific event. Provided that the *Contractor* and the *Service Manager* agree on the need for such an interim CERM, both Parties are required to be available for a meeting within three (3) days of the request for the meeting being received.
- 61.3.4 If the agreed way of dealing with a Compensation Event requires a quotation from the *Contractor*, the provisions of Clause 62 (*Quotations for Compensation Events*) shall be followed.

### 61.4 Administrative Procedures

- 61.4.1 All records relating to Compensation Events including all Compensation Events arising before ISD shall be held on the IS/IMS. If information such as drawings cannot be recorded in the IS for practical reasons, a reference to them in the IS/IMS is sufficient to meet this requirement. Any information not held or referenced on the IS/IMS may not be accepted as valid unless the *Service Manager* agrees to accept it as being valid. All records of meetings and discussions relating to Compensation Events shall be held on the IS/IMS. The structure and content of such records shall be agreed with the *Service Manager*. The records shall be held in a format that lends itself to interrogation and data mining to allow production of reports from these records for the *Client*.
- 61.4.2 The records maintained on the IS/IMS shall include full details of each Compensation Event and shall, as a minimum, contain:
- (i) unique Compensation Event reference number;
  - (ii) name and position of originator including date on which the Compensation Event was issued;
  - (iii) details of the Compensation Event, such as relevant dates, Establishment, location and Affected Property details;
  - (iv) details of the agreed way of dealing with the Compensation Event including mitigation or other action taken;

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- (v) the name of the person currently holding the action relating to the Compensation Event;
  - (vi) details of all quotations and supporting data;
  - (vii) the most likely quotation for dealing with the Compensation Event;
  - (viii) a log of all events relating to the Compensation Event including outcomes and decisions taken; and
  - (ix) any other information deemed necessary by the *Service Manager* for effective management of the Compensation Event.
- 61.4.3 The *Contractor* shall submit a monthly report to the *Service Manager* setting out details of all Compensation Events that have not been fully resolved and this includes the acceptance of quotations, if applicable. The IS/IMS shall also have the capability to produce a variety of other Compensation Event related reports to be specified by the *Service Manager*.
- 61.4.4 Records including the agreement reached at the CERM shall be maintained by the *Contractor* on behalf of the *Service Manager*. At each monthly CERM, all records from previous CERM that still remain unapproved by the *Service Manager* shall be discussed, amended and approved or commented on at the meeting by the *Service Manager*. Once approved by the *Service Manager* these records become the official record of resolutions agreed for Compensation Events and the *Contractor shall update IS/IMS updated accordingly*.
- 61.4.5 None of the provisions set out in this Clause 61 preclude the *Contractor* or *Service Manager* from requesting additional meetings to resolve issues.
- 61.5 Where the Compensation Event is of a type falling under Clause 61.1.3 (*Compensation Events*), the *Contractor* shall notify the *Service Manager* of the Compensation Event at the time of receiving the changing of the earlier decision. On receipt of notification by the *Contractor* that it considers that the changing of a decision by the *Service Manager* is a Compensation Event the *Service Manager* may:
- 61.5.1 instruct the *Contractor* to submit a quotation in accordance with Clause 62 (*Quotations for Compensation Events*) unless a quotation has already been submitted pursuant to Clause 61.6 (*Notifying Compensation Events*); or
  - 61.5.2 direct the *Contractor* to put the changed decision into immediate effect whilst submitting such a quotation,
- provided always that this Clause 61.5 is without prejudice to the rights of the *Service Manager* to decide that the changed decision is actually an event which falls within one or more of Clauses 61.7.3 to 61.7.8 (inclusive) and so that the Prices and/or dates are not to be changed.
- 61.6 The *Service Manager* may instruct the *Contractor* to submit quotations for a proposed changed decision. The *Contractor* shall not put a proposed changed decision into effect, and such changed decision will not be deemed to be a Compensation Event, unless and until the *Service Manager* notifies the *Contractor* that it wishes to proceed with the proposed changed decision.
- 61.7 The *Contractor* shall notify the *Service Manager* of an event which has happened or which it expects to happen if:

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- 61.7.1 the *Contractor* believes that the event is a Compensation Event; and
- 61.7.2 subject to Clause 61.2.2, the *Service Manager* has not notified the event to the *Contractor*,

provided that if the *Contractor* does not notify a Compensation Event within three (3) weeks of becoming aware of the Compensation Event, it is not entitled to a change in the Prices and/or the dates for carrying out and completing the relevant part of the *services*.

If the *Service Manager* decides that an event notified by the *Contractor*:

- 61.7.3 arises by reason of any act, omission, breach or default by the *Contractor* or any Contractor Related Party;
- 61.7.4 has not happened and is not expected to happen;
- 61.7.5 does not result in an increase in the cost to the *Contractor* of carrying out the *services*;
- 61.7.6 is not a Compensation Event;
- 61.7.7 has not been duly mitigated by the *Contractor*; or
- 61.7.8 has occurred due to the realisation of a risk assumed by the *Contractor* pursuant to Clause 80 (*The Contractor's Risks*),

it shall notify the *Contractor* of its decision that the Prices and/or dates for carrying out and completing the relevant part of the *services* are not to be changed.

- 61.8 If the *Service Manager* decides that the reasons set out in Clauses 61.7.3 to 61.7.8 (*Notifying Compensation Events*) (inclusive) do not apply, it shall notify the *Contractor* accordingly and instruct it to submit quotations in accordance with Clause 62 (*Quotations for Compensation Events*).

- 61.9 If the *Service Manager* does not notify its decision to the *Contractor* within either:

- 61.9.1 two (2) weeks of the *Contractor's* notification; or
- 61.9.2 a longer period to which the *Contractor* has agreed; or
- 61.9.3 a longer period specified by the *Service Manager* (being not more than four (4) weeks); or
- 61.9.4 at the next Performance Review Meeting,

the *Contractor* may notify the *Service Manager* to this effect. If the *Service Manager* fails to reply within two (2) weeks of this notification the *Contractor* will be entitled to issue a further notification to the *Service Manager* with a copy to the Commercial Officer. If neither the *Service Manager* nor the *Client* reply within two (2) weeks of the issue of such further notification it will be treated as acceptance by the *Service Manager* that the event is a Compensation Event and an instruction to submit quotations in accordance with Clause 62 (*Quotations for Compensation Events*).

- 61.10 If the *Service Manager* decides that the *Contractor* did not give an Early Warning of the event which an experienced *Contractor* could have given, it shall notify this decision to the *Contractor* when it instructs it to submit quotations and Clause 63.6 (*Assessing Compensation Events*) shall apply.

- 61.11 If the *Service Manager* decides that the effects of a Compensation Event are too uncertain to be forecast reasonably, it shall state assumptions about the Compensation Event in its instruction to submit quotations. Assessment of the

Compensation Event shall be based on these assumptions. If any of them is later found to have been wrong, the *Service Manager* shall notify a correction.

- 61.12 A Compensation Event shall not be notified after the end of the Service Period.

**62 Quotations for Compensation Events**

- 62.1 After discussing with the *Contractor* different ways of dealing with the Compensation Event which are practicable, the *Service Manager* may instruct the *Contractor* to submit alternative quotations. The *Contractor* shall submit any such required quotations to the *Service Manager* and may submit quotations for other methods of dealing with the Compensation Event which it considers practicable.
- 62.2 Quotations for Compensation Events shall comprise proposed changes to the Prices and/or extensions to the dates for carrying out and completing the Works and/or services or any part of the Works and/or services assessed by the *Contractor* in accordance with Clause 63 (*Assessing Compensation Events*). The *Contractor* shall submit details of its assessment with each quotation. If the plan for the remaining Works and/or services is altered by the Compensation Event, the *Contractor* shall include the alterations to the Accepted Plan (and any applicable Task Orders) in its quotation.
- 62.3 The *Contractor* shall submit quotations as soon as possible, but in any event within three (3) weeks of being instructed to do so by the *Service Manager*. The *Service Manager* shall reply within four (4) weeks of the submission. Its reply shall be:
- 62.3.1 an instruction to submit a revised quotation;
  - 62.3.2 an acceptance of a quotation;
  - 62.3.3 a notification that a proposed changed decision will not be made; or
  - 62.3.4 a notification that it will be making its own assessment in accordance with Clause 64 (*The Service Manager's Assessments*).
- 62.4 The *Service Manager* shall instruct the *Contractor* to submit a revised quotation pursuant to Clause 62.3.1 (*Quotations for Compensation Events*) only after explaining its reasons for doing so to the *Contractor*. The *Contractor* shall submit the revised quotation as soon as possible, but in any event, within three (3) weeks of being instructed to do so.
- 62.5 The *Service Manager* may extend the time allowed for:
- 62.5.1 the *Contractor* to submit quotations for a Compensation Event; and/or
  - 62.5.2 the *Service Manager* to reply to a quotation,
- if the *Service Manager* and the *Contractor* agree to the extension before the submission or reply is due. The *Service Manager* shall notify the *Contractor* of any extension that has been agreed.
- 62.6 If the *Service Manager* does not reply to a quotation within the time allowed, the *Contractor* may notify the *Service Manager* to this effect. If the *Contractor* submitted more than one quotation for the Compensation Event, it shall state in its notification which quotation it proposes is to be accepted. If the *Service Manager* fails to reply within two (2) weeks of this notification the *Contractor* will be entitled to issue a further notification to the *Service Manager* with a copy to the Commercial Officer. A failure

by the *Service Manager* or the *Client* to reply within two (2) weeks of this further notification shall be treated as acceptance of the quotation by the *Service Manager*.

### **63 Assessing Compensation Events**

- 63.1 Subject to Clause 63.1, for a Compensation Event which only affects the quantities of Works and/or *services* shown in the Booklet 5 (Pricing Information) and/or any applicable Task Order (MOD 1097/1), the change to the Prices shall be assessed by multiplying the changed quantities of Works and/or *services* by the appropriate rates in the Booklet 5 (Pricing Information) and/or any applicable Task Order.
- 63.2 For other Compensation Events, subject to Clause 63.6, the change to the Prices shall be assessed as the effect of the Compensation Event upon the costs reasonably incurred (or to be reasonably incurred) by the *Contractor* in carrying out the Works and/or *services* using the rates and prices contained in the Booklet 5 (Pricing Information) and/or any applicable Task Order MOD1097/1.
- 63.3 A delay to the date for carrying out and completing the Works and/or *services* or any part of the Works and/or *services* is assessed, subject to Clause 63.6, as the length of time that, to the extent properly due to the Compensation Event, the planned date for carrying out and completing the Works and/or *services* or relevant part of the Works and/or *services* is later than:
- 63.3.1 the planned date as shown in the PPM programme or a Task Order (as appropriate);
  - 63.3.2 in the case of Reactive Maintenance such length of time beyond the time period specified in the relevant Response Category set out in Module F (*Maintenance Services*) of Booklet 3 (Requirements Information); or
  - 63.3.3 where neither Clause 63.3.1 nor Clause 63.3.2 applies, the date required by the Service Information,
- as is appropriate and commensurate with the extent to which the delay is properly due only to the Compensation Event, and provided that any delay caused by a Compensation Event which is concurrent with another delay for which the *Contractor* is responsible shall not be taken into account.
- 63.4 The effect of a Compensation Event may be assessed as a reduction, as well as an increase, in the Prices.
- 63.5 Subject to Clause 63.8, the rights of the *Client* and the *Contractor* to change the Prices and/or to extend the dates for carrying out and completing the Works and/or *services* or any part of the Works and/or *services* are their only rights in respect of a Compensation Event, provided that a Compensation Event of the sort referred to Clause 63.1.4 shall not entitle the *Contractor* to any rights remedies or other forms of relief otherwise than as set out in Clause 62.3 (*Quotations for Compensation Events*) of this Contract and so that in the case of such Compensation Events the provisions of Clauses 62 (*Quotations for Compensation Events*) and Clause 63 (*Assessing Compensation Events*) that provide for any increase to the Prices shall not apply.
- 63.6 If the *Service Manager* has notified the *Contractor* pursuant to Clause 61.10 (*Notifying Compensation Events*) that the *Contractor* did not give an Early Warning, the Compensation Event is assessed as if the *Contractor* had given Early Warning and had taken such actions as the *Service Manager* (acting reasonably) decides should have been taken to mitigate, avoid or reduce any increase to the total of the

Prices, or any delay, or any impairment of the performance of the Works and/or services.

- 63.7 Where the Booklet 5 (Pricing Information) and/or any applicable Task Order MOD0197/1 has been changed consequent upon a Compensation Event then the changed Booklet 5 (Pricing Information) and/or any applicable Task Order shall (if deemed appropriate by the *Service Manager*, acting reasonably, taking into account the nature of the Compensation Event in question) be used for subsequent assessments of the Booklet 5 (Pricing Information) and/or any applicable Task Order MOD 1097/1.
- 63.8 The *Client* shall not be entitled to:
- 63.8.1 bring a claim for a breach of obligations under this Contract by the *Contractor*; or
- 63.8.2 make any deductions pursuant to the Performance Management Regime, to the extent that a Compensation Event occurs and the *Service Manager* decides that the reasons set out in Clauses 61.7.3 to 61.7.8 (*Notifying Compensation Events*) (inclusive) do not apply, and the *Contractor* is prevented from carrying out its obligations under this Contract by that Compensation Event. The *Client* shall not be entitled to terminate this Contract for reasons R5, R8 or R16 (as set out in Clause 91 (*Reasons for Termination*)) to the extent that such reason arises as a result of a Compensation Event and the *Service Manager* decides that the reasons set out in Clauses 61.7.3 to 61.7.8 (*Notifying Compensation Events*) (inclusive) do not apply.
- 63.9 Assessments of the effect of a Compensation Event includes risk allowances for cost for matters which have a significant chance of occurring and are at the *Contractor's* risk under this Contract.
- 63.10 Assessments are based upon assumptions that the *Contractor* reacts competently and promptly to the Compensation Event, that any costs due to the Compensation Event are reasonably incurred and that the Accepted Plan (and any applicable PPM Programme) can be changed.

#### **64 The Service Manager's Assessments**

- 64.1 The *Service Manager* shall assess a Compensation Event:
- 64.1.1 if the *Contractor* has not submitted a quotation and details of its assessment within the time allowed;
- 64.1.2 if the *Service Manager* decides that the *Contractor* has not assessed the Compensation Event in accordance with this Contract in a quotation and it does not instruct the *Contractor* to submit a revised quotation;
- 64.1.3 if, when the *Contractor* submits quotations for a Compensation Event, it has not submitted a plan (or revised PPM Programme) or alterations to a plan (or PPM Programme) which this Contract requires it to submit; or
- 64.1.4 if, when the *Contractor* submits quotations for a Compensation Event, the *Service Manager* has not accepted the *Contractor's* latest plan for one of the reasons stated in this Contract.
- 64.2 The *Service Manager* shall notify the *Contractor* of its assessment of a Compensation Event and shall give the *Contractor* details of it within the period allowed for the



*Contractor's* submission of its quotation for the same event. This period shall start when the need for the *Service Manager* assessment becomes apparent.

- 64.3 If the *Service Manager* does not assess a Compensation Event within the time allowed, the *Contractor* may notify the *Service Manager* to this effect (and shall issue a copy of such notification to the Commercial Office). If the *Contractor* submitted more than one quotation for the Compensation Event, it shall state in its notification which quotation it proposes is to be accepted. If the *Service Manager* (or the Commercial Officer (as the case may be)) fails to reply within two (2) weeks of this notification, the notification shall be treated as acceptance of the *Contractor's* quotation by the *Service Manager*.

## **65. Proposed instructions**

- 65.1 The *Service manager* may instruct the *Contractor* to submit a quotation for a proposed instruction. The *Service manager* states in the instruction the date by which the proposed instruction may be given. The *Contractor* does not put a proposed instruction into effect.
- 65.2 The *Contractor* submits quotations for a proposed instruction within three weeks of being instructed to do so by the *Service manager*. The quotation is assessed as a compensation event. The *Service manager* replies to the *Contractor's* quotation by the date when the proposed instruction may be given. The reply is
- an instruction to submit a revised quotation including the reasons for doing so,
  - the issue of the instruction together with a notification of the instruction as a compensation event and acceptance of the quotation or
  - a notification that the quotation is not accepted.

If the *Service manager* does not reply to the quotation within the time allowed, the quotation is not accepted.

- 65.3 If the quotation is not accepted, the *Service manager* may issue the instruction, notify the instruction as a compensation event and instruct the *Contractor* to submit a quotation.

## **66 Implementing Compensation Events**

- 66.1 A Compensation Event shall be implemented when:
- 66.1.1 the *Service Manager* notifies its acceptance of the *Contractor's* Task Order (MOD Form 1097/1);
  - 66.1.2 the *Service Manager* notifies the *Contractor* of its own assessment via a Task Order (MOD Form 1097/1);
  - 66.1.3 a *Contractor's* quotation is treated as having been accepted by the *Service Manager* in accordance with Clause 64.3 (*The Service Manager's Assessments*); or
  - 66.1.4 it is expressly agreed or determined that a Compensation Event is to form part of the Contract Change in question in accordance with Annex B (*Contract Change Management Process*).

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66.2 Except in the circumstances set out in Clause 61.8 (*Notifying Compensation Events*), the assessment of a Compensation Event will not be revised if a forecast upon which it is based is shown by later recorded information to have been wrong.

66.3 Where a Compensation Event is implemented, the changes to the Booklet 5 (Pricing Information) and/or any applicable Task Order (if any) shall be those set out in the Task Order (or the *Contractor's* Task Order which the *Service Manager* has accepted) in accordance with Clause 63.7 (*Assessing Compensation Events*).

**7. USE OF EQUIPMENT, PLANT AND MATERIALS**

**70 Client's Title to Plant and Materials**

- 70.1 Whatever title the *Contractor* has to Plant and Materials which is outside the Affected Property shall pass to the *Client* if the *Service Manager* has marked it as for this *Contract* and/or the *Client* has paid for it.
- 70.2 Whatever title the *Contractor* has to Plant and Materials shall pass to the *Client* if it has been brought within the Affected Property, or the *Client* has paid for it. Unless title has passed pursuant to this Clause 70.2 as a result of the *Client* paying for it, title to the relevant Plant and Materials shall pass back to the *Contractor* if it is removed from the Affected Property with the *Service Manager's* permission.
- 70.3 The *Contractor* shall provide proof of its title to Plant and Materials prior to inclusion in the assessment of the amount due in payment of the relevant Plant and Materials.
- 70.4 If title of Plant and Materials has passed to the *Client* pursuant to this Clause 70, the *Contractor* shall provide the *Service Manager* with a Vesting Certificate within ten (10) Working Days of the date that such title passes to the *Client* stating that such title has passed to the *Client*.

**71 Issued Property**

**General**

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

**Receipt**

- 71.3 Subject to Clauses 71.4 and 71.7, within fourteen (14) days of receipt of Issued Property, or such other longer period as may be specified in this *Contract*, the *Contractor* shall:
- 71.3.1 check the Issued Property to verify that it corresponds with the Issued Property specified in Booklet 4 (*Client Supplied data*) and/or the relevant Task Order;
  - 71.3.2 conduct a reasonable visual inspection;
  - 71.3.3 conduct any additional inspection and testing as may be necessary and practicable to check that the Issued Property is not defective or deficient for the purpose for which it has been provided; and
  - 71.3.4 notify the *Client* of any defects, deficiencies or discrepancies discovered.
- 71.4 Where Issued Property is packaged it shall not be unpacked earlier than is necessary. The period identified at Clause 71.3 shall count from the date on which packages are opened.

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- 71.5 The *Client* shall within a reasonable time after receipt of any notice under Clause 71.3 replace, re-issue or authorise repair of Issued Property agreed to be defective or deficient and, if appropriate, the *Client* shall revise the Prices, delivery schedule or both. If appropriate, it shall also issue written instructions for the return or disposal of the defective or deficient Issued Property.
- 71.6 In the event that the *Client* fails to provide, replace, or authorise repair of defective or deficient Issued Property within a reasonable time of receipt of a notice in accordance with Clause 71.3, fair and reasonable revisions of the Prices, delivery schedule or both shall be made as may be appropriate provided that the *Contractor* has taken all reasonable measures to mitigate the consequences of any such delay.
- 71.7 Clauses 71.3 to 71.6 do not apply in the following circumstances:
- 71.7.1 where Issued Property is issued for the purpose of repair, overhaul, conversion or other Works and/or services to be performed on the Issued Property, inspection of such property shall be as specified in this Contract;
  - 71.7.2 where the *Contractor* can show that the Issued Property cannot be fully tested until it has been integrated with other items, inspection of such property shall be as specified in this Contract; or
  - 71.7.3 where Special Jigs and Tools etc. become Issued Property under Clause 29N (*Special Jigs, Tooling and Test Equipment*).

### **Custody**

- 71.8 Subject to Clause 71.11 and any limitation or exclusion of liability as may be specified in this Contract, the *Contractor* shall be responsible for the safe custody and due return of Issued Property, whether or not incorporated into the Articles, and shall be responsible for all loss or damage thereto, until re-delivered in accordance with the *Client* instructions or until the expiry of the period specified in Clause 71.14
- 71.9 The *Contractor* shall be responsible for such calibration and maintenance of the Issued Property as is specified in Booklet 3, Module K, Leaflet KL-05 (*Government Furnished Equipment*) and Booklet 4 (*Client Supplied data*).
- 71.10 If requested, the *Client*, within a reasonable time, and where practicable before delivery of the Issued Property, shall notify the *Contractor* of the value of the Issued Property.
- 71.11 The *Contractor* shall not be liable in respect of:
- 71.11.1 defects or deficiencies notified to the *Client* in accordance with Clause 71.3 or latent defects which the *Contractor* can show could not reasonably have been discovered by means of the activities described at Clause 71.3;
  - 71.11.2 fair wear and tear in Issued Property resulting from its normal and proper use in the execution of this Contract (except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance by the *Contractor*);
  - 71.11.3 Issued Property rendered unserviceable as a direct result of ordinary performance of this Contract;
  - 71.11.4 any loss or damage to Issued Property arising from:
    - (i) aircraft or other aerial devices or objects dropped from them, including pressure waves caused by aircraft or such devices whether travelling at sonic or supersonic speeds;

- (ii) ionising radiation or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel;
- (iii) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof;
- (iv) riot, civil commotion, civil war, rebellion, revolution, insurrection, military or usurped power or acts of the King's enemies.

**Accounting and Return of Issued Property**

71.12 The *Contractor* shall:

71.12.1. open and maintain a Public Store Account ("**PSA**") as defined in DEFSTAN 05-099, which shall include a complete list of all property of the *Client* as defined in Clause 72.2 (*Accounting for the Property of the Client*) and record for that property all transactions or other accounting information specified in Annex M (*Accounting for the Property of the Client*);

71.12.2 ensure that all property of the *Client* recorded in the PSA, including but not limited to Issued Property, is available for inspection by the *Client* at any reasonable time;

71.12.3 on being given two (2) months' notice or such other period as has been stated in this Contract permit, and co-operate with, the *Client* to conduct audits of the property of the *Client* recorded in the PSA in a manner to be determined by the *Client*, where the *Client* has reasonable grounds to believe that the property of the *Client* has not been used in accordance with the terms of issue then these audits may be conducted without notice.

71.13 Once title in Special Jigs, Tools etc has passed to the *Client* in accordance with Clause 29N.6 (*Special Jigs, Tooling and Test Equipment*) the *Contractor* shall record that equipment in the PSA in accordance with DEFSTAN 05-099.

71.14 At the end of the Contract Period, the *Contractor* shall forward a list of Issued Property still held to the *Service Manager*. Return or disposal of such Issued Property will be as specified in this Contract, or as instructed by the *Client* at the end of the Contract Period. If no return or disposal instructions are specified in this Contract, the *Client* shall provide such instructions within two (2) months of the *Contractor's* written request to do so.

71.15 The *Contractor* shall:

71.15.1. not, without the prior written consent of the *Client*, carry out any Commercial Work during the Contract Period;

71.15.2 operate, manage and maintain the Issued Property in accordance with Good Industry Practice or otherwise as specified in the Service Information and any Accepted Plan;

71.15.3 not move any Issued Property from any location without the *Client's* prior written consent (not to be unreasonably withheld or delayed);

71.15.4 ensure that any instructions or manuals supplied by the manufacturer of any Issued Property for their use and which are made available to the *Contractor* shall be followed by the Personnel;

71.15.5 take such steps as may be properly recommended by the manufacturer of any Issued Property (to the extent that such steps have been notified to it);

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- 71.15.6 not knowingly use or permit any of the Issued Property to be used in contravention of any Law or, where applicable, any Host Nation Law;
- 71.15.7 not permit or assert any lien over, sell, offer for sale, assign, mortgage, encumbrance, pledge, sub-let or lend out any of the Issued Property and ensure that no lien claims are made in respect thereof;
- 71.1.5.8 where any Issued Property is leased to the *Client*, ensure that such Issued Property is used only in accordance with the terms of any relevant leasing contract (to the extent that such terms have been notified to it);
- 71.15.9 keep a record of all improvements, alterations and upgrades made by or on behalf of the *Contractor* in and to any Issued Property; and
- 71.1.5.10 deliver the Issued Property back to the *Client* in accordance with the Exit Strategy.

## **72 Accounting for the Property of the Client**

### **72.1 The Contractor shall:**

- 72.1.1 supply to the *Client* quarterly reports on the current PSA holdings. At least one (1) report in any twelve (12) month accounting period or part thereof shall be a reconciled report. This shall be submitted with the Annual Certificate Form AAC 32 as required in DEFSTAN 05-099. The other three (3) reports submitted in the period may be un-reconciled advisory reports. The submission by the *Contractor* and receipt by the *Client* of these reports shall not prejudice any rights or obligations of the *Client* or the *Contractor* under this Contract;
- 72.1.2 ensure that the PSA is available for inspection by the *Client* at any reasonable time;
- 72.1.3 without prejudice to Clause 19W.6 and/or 19X.4 (*Audit*), on being given two (2) months' notice or any other period as has been stated in this Contract permit, and co-operate with, the *Client* to conduct audits of the PSA in a manner to be determined by the *Client*; where the *Client* has reasonable grounds to doubt the integrity of the PSA to the extent that the *Client* is not satisfied of the proper use of property of the *Client*, an audit may be conducted without notice;
- 72.1.4 retain the PSA for a period of three (3) years after disposal of the last item of the property of the *Client*, or for any other period as may be specified in this Contract;
- 72.1.5 if the *Client* agrees that a Sub-Contractor at whatever level of sub-contracting shall have responsibility in the Sub-Contractor's PSA for property of the *Client* issued in aid of this Contract, the *Contractor* shall include in any Sub-Contract with those Sub-Contractors only the provisions corresponding to those set out in this Clause 72 (*Accounting for the Property of the Client*) that apply to property of the *Client* issued in aid of the Sub-Contract, in particular Clauses 72.1, 72.2, 72.4 and 72.7; and
- 72.1.6 manage the Government Furnished Assets (GFA) component of the PSA in accordance with the provisions of DEFSTAN 05-099; and implement any new edition of or amendment to DEFSTAN 05-099 subject to Clause 19.6C to 19C.14 (inclusive) (*Specification changes*) within three (3) months of the

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publication date of the new edition. These amendments shall not have retrospective effect.

- 72.2 For the purposes of this Clause 72 (*Accounting for the Property of the Client*), 'property of the *Client*' means GFA and Fixed Assets, including property issued under Clause 71 (*Issued Property*) and property of the *Client* issued to the *Contractor* under any other authorising document except for property vested in the *Client* under Clause 79A (*Vesting*).
- 72.3 For the avoidance of doubt, it is a condition of this Contract that this Clause 72 (*Accounting for the Property of the Client*) shall apply to all property issued to the *Contractor* from the Contract Date, whether in aid of this Contract, any other contract or other agreement with the *Client*. Property of the *Client* issued prior to the Contract Date may be subject to separate contractual arrangements.
- 72.4 The obligations of the *Contractor* arising under this Clause 72 (*Accounting for the Property of the Client*) in respect of property of the *Client* issued in aid of the Contract shall survive the expiry or earlier termination of this Contract and shall not be completed until all such obligations are fulfilled including the provisions of Clause 72.1.4.
- 72.5 The obligations of the *Contractor* arising under this Clause 72 (*Accounting for the Property of the Client*) in respect of property of the *Client* unconnected with this Contract shall survive the expiry or earlier termination of this Contract and shall not be completed until all those obligations are fulfilled (including the provisions of Clause 72.1.4) unless and until a subsequent contract containing DEFCON 694 (or equivalent provisions) is placed with the *Contractor*, at which time obligations, in respect of any remaining property of the *Client*, unconnected with this Contract, shall be subsumed in the subsequent contract.
- 72.6 If, after the expiry or earlier termination of this Contract, no subsequent contract is placed containing DEFCON 694 (or equivalent provisions) within the period detailed at Clause 72.1.4, then the obligations of the *Contractor* arising under this Clause 72 (*Accounting for the Property of the Client*) in respect of property of the *Client* unconnected with this Contract shall cease on expiry of the period detailed at Clause 72.1.4.
- 72.7 The *Client* reserves the right to amend Annex M (*Accounting for the Property of the Client*) without further consultation where the amendments arise from the *Client's* proper and reasonable accounting requirements. For the purposes of this Clause 72 (*Accounting for the Property of the Client*), Annex M (*Accounting for the Property of the Client*) shall be regarded as a Specification and subject to the terms of Clauses 19C.6 to 19C.14 (*Specification Changes*) (inclusive). If the *Client* exercises this right:
- 72.7.1 the *Contractor* shall implement the amendment to Annex M (*Accounting for the Property of the Client*) at the commencement of the *Client's* next accounting year provided that a notice of six (6) months or such other period as may expressly be agreed between the *Client* and *Contractor* is given to the *Contractor*. These amendments shall not have retrospective effect; and
- 72.7.2 the *Contractor* shall inform the *Client* as soon as practicable, but in any event within three (3) months' notice having been given, if the *Contractor* cannot comply with the amendment to Annex M (*Accounting for the Property of the Client*).

**73 Client Dependencies and Interdependent Contracts**

73.1 The *Client* shall perform (or procure the performance of) the *Client* Dependencies from the In Service Date.

**Interdependent Contracts**

73.2 If, as a result of any default, negligence and/or breach by the *Contractor* of any of its obligations under or pursuant to any contracts with the *Client*, the *Client* is unable to comply with any or all of its obligations under this Contract then, notwithstanding any other provision of this Contract:

73.2.1 such failure by the *Client* to comply with these obligations shall not be treated as a Compensation Event or a Client Dependency Failure for the purposes of this Contract provided that the *Client* has used its reasonable endeavours to mitigate such failure; and

73.2.2 the *Contractor* shall not be entitled to any relief and/or compensation of whatever nature (including any adjustment to the Prices) and howsoever arising in respect of such failure by the *Client* to comply.

**Client Dependency Failure**

73.3 If and to the extent that a Client Dependency Failure is the direct cause of the *Contractor's* inability to provide all or any part of the *services* or perform any of its other obligations under this Contract or of the degradation of the *Contractor's* performance against the Performance Management Regime then subject to Clause 73.7 (*Client Dependency Failure*), the *Contractor* is entitled, save where the Client Dependency Failure has been caused by any act or omission of the *Contractor* or any Contractor Related Party under this Contract and/or any default, negligence and/or breach as described in Clause 73.2 (*Interdependent Contracts*), to apply for relief from those of its obligations that it is unable to perform as a direct result of such Client Dependency Failure. If such act or omission of the *Contractor* or any Contractor Related Party and/or any default, negligence and/or breach as described in Clause 73.2 (*Interdependent Contracts*) has contributed to the Client Dependency Failure, the *Contractor's* entitlement to relief shall be reduced by an amount proportional to such contribution to the Client Dependency Failure.

73.4 To obtain relief pursuant to Clause 73.3 (*Client Dependency Failure*) the *Contractor* shall:

73.4.1 as soon as practicable, and in any event within ten (10) Working Days after it became aware that the Client Dependency Failure has adversely affected or is likely to adversely affect the ability of the *Contractor* to Provide the *Services* or to perform its obligations, give to the *Service Manager* a notice which shall contain:

- (i) full details of the nature of the Client Dependency Failure;
- (ii) the date of occurrence of the Client Dependency Failure;
- (iii) the likely duration of the Client Dependency Failure;
- (iv) identification of the cause or likely cause of the Client Dependency Failure;



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- (v) full details of its claim for relief from the Performance Management Regime and for relief from its other obligations under this Contract; and
  - (vi) its proposals either for remedying or mitigating the effects of the Client Dependency Failure which shall include:
    - (A) a full description of any additional works or services;
    - (B) a timetable for such works and services;
    - (C) information on who will carry out such works and services; and
    - (D) full details of the cost of such works or services;
- 73.4.2 demonstrate to the reasonable satisfaction of the *Service Manager* that:
- (i) the *Contractor* and its Sub-Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;
  - (ii) the Client Dependency Failure was the direct cause of the *Contractor's* inability to Provide the Services or perform any of its other obligations under this Contract or of the degradation of the *Contractor's* performance against the Performance Management Regime;
  - (iii) the relief claimed could not reasonably be expected to be mitigated or recovered by the *Contractor* and/or its Sub-Contractors acting in accordance with Good Industry Practice, without incurring material expenditure; and
  - (iv) the *Contractor* and its Sub-Contractors are using reasonable endeavours to perform the *Contractor's* obligations under this Contract;
- 73.4.3 continue to perform its obligations under this Contract subject to the constraints of the Client Dependency Failure; and
- 73.4.4 notify the *Service Manager* if at any time the *Contractor* receives or becomes aware of any further information relating to the Client Dependency Failure, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.
- 73.5 The *Service Manager* shall confirm whether or not it agrees the information received from the *Contractor* in accordance with Clause 73.4 (*Client Dependency Failure*) and the relief claimed. If the *Service Manager* and the *Contractor* cannot agree such information and the relief claimed, the Parties shall resolve the matter in accordance with Clause 96 (*Dispute Resolution Procedure*).
- 73.6 If information referred to in this Clause 73 (*Client Dependencies and Interdependent Contracts*) is provided by the *Contractor* after the dates referred to in this Clause 73 (*Client Dependencies Interdependent Contracts*) then the *Contractor* shall not be entitled to any relief in respect of the period for which the information is delayed.
- 73.7 The *Contractor* shall be entitled to relief from its obligations under this Contract under this Clause 73 (*Client Dependencies and Interdependent Contracts*) in respect of the

Client Dependency Failure concerned only in respect of performance of the *Contractor's* obligations under this Contract arising after the date on which the Client Dependency Failure occurred.

- 73.8 Where the *Client* reasonably believes that the mechanisms contained in Clause 73.4 (*Client Dependency Failure*) are not appropriate in the circumstances it may, following receipt of a notice under Clause 73.4 (*Client Dependency Failure*), elect to use the Contract Change Management Process to agree with the *Contractor* how the consequences of the Client Dependency Failure should be dealt with.
- 73.9 The *Contractor* acknowledges and agrees that any relief agreed by the Parties in accordance with this Clause 73 (*Client Dependencies and Interdependent Contracts*) shall be in full and final settlement of any claim it has in respect of the Client Dependency Failure. The occurrence of a Client Dependency Failure shall not give rise to or constitute a Compensation Event nor entitle the *Contractor* to any compensation.
- 73.10 The *Contractor* shall not be entitled to any common law or equitable rights including rights to damages or to any other rights under contract, tort or otherwise in relation to any Client Dependency Failure other than as set out in this Clause 73 (*Client Dependencies and Interdependent Contracts*).
- 73.11 Where the *Client*, in its absolute discretion, notifies the *Contractor* that the *Client* wishes the *Contractor* to implement some or all of the proposals identified in the notice as set out in Clause 73.4.1(vi) (*Client Dependency Failure*), the *Contractor* shall implement them to the extent required by the *Service Manager*. The Prices shall be adjusted in accordance with the details provided in Clause 73.4.1(vi) (*Client Dependency Failure*).

#### **74 Equipment**

- 74.1 The *Contractor* grants, and in respect of Equipment owned by a Third Party shall procure the grant, to the *Client* of a licence to use the Equipment to the extent necessary to receive the full benefit of the *services*.
- 74.2 The *Client* shall not have title to and/or risk in Equipment unless and until any such Equipment is transferred to the *Client* in accordance with Clause 92 (*Procedures on Termination*).
- 74.3 The *Contractor* shall not in any way charge, mortgage, pledge, create a lien over or otherwise encumber any Equipment without the prior written consent of the *Client*.
- 74.4 Subject to Clause 60.1.7 (*Compensation Events*), the *Contractor* shall be responsible for all Equipment, wherever it may be located, and shall promptly repair or replace at its own cost any lost, stolen, damaged or defective Equipment.
- 74.5 Until the time of any transfer referred to in Clause 92 (*Procedures on Termination*), the *Contractor* shall hold any Equipment which is used exclusively in the provision of the *services* (the “**Exclusive Equipment**”) on trust for the *Client* for the purposes of Providing the Service. The *Contractor* agrees to comply with all reasonable directions of the *Client* relating to the Exclusive Equipment.
- 74.6 Nothing in this Clause 74 (*Equipment*) shall affect the ability of the *Client* to use any of the Equipment prior to its transfer to the *Client* in accordance with Clause 92 (*Procedures on Termination*).

- 74.7 Unless the *Client* has given its prior written consent, Exclusive Equipment shall be used by the *Contractor* solely for the purposes of Providing the Services in accordance with this Contract and shall not be used for the *Contractor's* own purposes or in providing any services to Third Parties or Sub-Contractors of the *Contractor*.
- 74.8 The *Client* shall not be responsible for the delivery of Equipment to or from the Establishment, nor any costs of delivery, off-loading of Equipment, packaging and removal of packaging or the costs of disposing any Equipment during the Contract Period or upon the expiry or termination of this Contract (including where such costs are connected with the transfer of such Equipment to the *Client* or any incoming contractor).
- 74.9 The loss or destruction for any reason of the Equipment held at the Establishment shall not relieve the *Contractor* of its obligation to Provide the Service and to meet the performance levels set out in Annex D (*Performance Management Regime*).

**75 Outgoing Contractor's Stock, Assets and Equipment**

- 75.1 The *Contractor* may, after the Contract Date, negotiate with any outgo who has provided to the *Client* services similar to the *services* if it wishes to purchase from them any stock, assets and/or equipment owned by them and used in connection with the provision of such *services* to the *Client*, provided that any purchase agreed pursuant to this Clause 75 (*Outgoing Contractor's Stock, Assets and Equipment*) is completed prior to the In Service Date.
- 75.2 Nothing in this Clause 75 (*Outgoing Contractor's Stock, Assets and Equipment*), including the amount paid by the *Contractor* for any stock, assets and/or equipment purchased pursuant to Clause 75.1 (*Outgoing Contractor's Stock, Assets and Equipment*), shall:
- 75.2.1 operate to relieve the *Contractor* from its obligation to Provide the Service or any other obligation under this Contract; or
- 75.2.3 have any impact on the Prices.

**76 Not Used**

**77 Not Used**

**78 Removing Equipment**

- 78.1 The *Contractor* shall remove Equipment from the Affected Property when it is no longer needed unless the *Service Manager* allows it to be left in the Affected Property.

**79 Redundant Materiel**

- 79.1 All Redundant Materiel resulting from work carried out under, or procured for the purposes of this Contract, the costs of which have been paid by the *Client* under this Contract, or which is otherwise owned by the *Client*, shall be disposed of as follows:
- 79.1.1 on expiry or termination of this Contract, or earlier if appropriate, the *Contractor* shall prepare;

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- (i) a list of those items of Materiel which are considered to be serviceable or repairable. The list shall record the condition of each item, its actual cost or estimated value and, in the case of repairable items, the estimated price of repair; and
  - (ii) a list of those items of Materiel which are considered to be unserviceable and which cannot be economically repaired or are otherwise considered to be scrap.
- 79.1.2 The *Contractor* shall send the lists referred to in Clause 79.1.1 to the *Service Manager*.
- 79.1.3 Within three (3) months of the date of receipt of the lists, the *Service Manager* shall issue disposal instructions to the *Contractor*. Such disposal instructions shall require that the items of Materiel are either:
  - (i) transferred to other subsisting contracts;
  - (ii) subject to contract, retained by the *Contractor* for use in the performance of future contracts placed with the *Contractor*;
  - (iii) subject to contract, repaired by the *Contractor*, or
  - (iv) at the discretion of the *Client*, sold by the *Contractor*, acting on behalf of the *Client*, for the best price reasonably obtainable.
- 79.1.4 Material included in the list referred to in Clause 79.1.1(ii) (*Redundant Materiel*) shall be dismantled and disposed of in such a manner as to preclude the possibility of resale in its existing form.
- 79.2. The proceeds of the sale of items of Material sold pursuant to Clause 79.1.3(iv) shall be credited to the *Client* in accordance with arrangements made between the *Contractor* and the *Client*.
- 79.3 A list of the items sold by the *Contractor* shall be sent to the *Service Manager* specified in the Contract together with a statement of the proceeds of sale.

### **79A**    **Vesting**

- 79A.1 Subject to the following provisions of this Clause 79A (*Vesting*):
  - 79A.1.1 each Article as it is constructed together with its component parts and equipment so far as incorporated in the Articles; and
  - 79A.1.2. all Materiel which the *Contractor* acquires or allocates for incorporation in any of the Articles,shall vest in and become the absolute property of the *Client*, as from the time the construction of the Article begins or the Materiel is acquired specifically for or is allocated for incorporation in any of the Articles and shall from that time be in the possession of the *Contractor* for the sole purpose of completing the Articles and delivering them when completed to the *Client*, and shall not be within the control or disposition of the *Contractor* other than for that purpose.
- 79A.2 Neither the *Contractor*, nor a Sub-Contractor, nor any other person shall have a lien on any Article or Materiel which have vested in the *Client* under Clause 79A.1 (*Vesting*) for any sum due to the *Contractor*, Sub-Contractor or other person. The *Contractor* shall take all reasonable steps necessary to ensure that the provisions of

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this Clause 79A (*Vesting*) are brought to the notice of all Sub-Contractors and other persons dealing with any such Articles or Materiel.

- 79A.3 Without prejudice to Clause 79A.1 (*Vesting*), the *Contractor* shall ensure that from the time when the construction of any Article begins, or as soon as practicable thereafter, or when any Materiel is acquired specifically for or is allocated for incorporation in any of the Articles, they are marked or recorded so that they are readily identifiable as the property of the *Client*. The *Contractor* shall comply with any direction given by the *Client* in this respect.
- 79A.4 Any Article or Materiel which is rejected by the *Client* shall immediately re-vest in the *Contractor*.
- 79A.5 If the *Client* terminates this Contract otherwise than under Clause 94 (*Termination for Convenience*), any Article which has not been accepted in accordance with Clause 29P.10 to 29P.14 (inclusive) (*Acceptance*) and any Materiel which has not been incorporated in any Article which has been accepted in accordance with Clauses 29P.10 to 29P.14 (inclusive) (*Acceptance*) shall re-vest in the *Contractor*. Such re-vesting shall occur on the expiry of thirty (30) days from the date on which that termination shall take effect, unless the *Client* has given the *Contractor* notice, prior to that expiry, that the *Client* elects to retain the property in the Article and/or Materiel.
- 79A.6 Any payment made by the *Client* in respect of any Article or Materiel which re-vest in the *Contractor* under Clauses 79A.4 or 79A.5 shall be recoverable from the *Contractor*.
- 79A.7 The *Contractor* shall hand over to the *Client* any Article or Materiel in which the *Client* has elected to retain the property under Clause 79A.5. If the *Contractor* fails to do so, the *Client* shall have the right to enter the *Contractor's* premises and remove the Article or Materiel and recover the cost of doing so from the *Contractor*.
- 79A.8 The *Client* shall pay a fair and reasonable price for any Article or Materiel in which it has elected to retain the property under Clause 79A.5 and which are handed over to it by the *Contractor* or otherwise come into his possession.
- 79A.9 Where any Article or Materiel in the *Client's* possession or control has re-vested in the *Contractor* in accordance with Clauses 79A.4 or 79A.5, the *Contractor* shall bear the cost of resuming possession and control of them from the place of delivery in the relevant Host Nation as specified in this Contract. If the Article or Materiel is on the premises of the *Client* or the premises of any Government Department (including any agencies thereof), the *Contractor* shall remove them within fourteen (14) days of their re-vesting.

### 79B **Counterfeit Materiel**

- 79B.1 For the purposes of this Clause 79B (*Counterfeit Materiel*), “**Counterfeit Materiel**” shall mean any Article or any part thereof whose origin, age, composition, configuration, certification status or other characteristic (including whether or not such Article or part has been used previously) has been falsely represented by:
- 79B.1.1 misleading marking of any Materiel (or any part of it), labelling or packaging;
- 79B.1.2 misleading documentation; or
- 79B.1.3 any other means, including failing to disclose information,

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

79B.2 Where the *Client* suspects that any Article or consignment of Articles contains Counterfeit Materiel, it shall:

79B.2.1 notify the *Contractor* of its suspicion and reasons therefor;

79B.2.2 where reasonably possible, and if requested by the *Contractor* within ten (10) Working Days of such notification (at the *Contractor's* own risk and expense and subject to any reasonable controls specified by *Client*) afford the *Contractor* the facility to:

(i) inspect the Article or consignment; and/or

(ii) obtain a sample thereof for validation or testing purposes;

79B.2.3 give the *Contractor* a further twenty (20) Working Days or such other reasonable period agreed by the *Client*, from the date of the inspection at Clause 79B.2.2(i) or the provision of a sample at Clause 79B.2.2(ii), to comment on whether the Article or consignment meets the definition of Counterfeit Materiel; and

79B.2.4 determine, on the balance of probabilities and strictly on the evidence available to it at the time, whether the Article or consignment meets the definition of Counterfeit Materiel.

Where the *Client* has determined that the Article, part or consignment of Articles contain Counterfeit Materiel then it may reject the Article, part or consignment under Clause 29P.15 to 29P.21 (*Rejection*).

79B.3 In addition to its rights under Clause 29P.15 TO 29P.21 (*Rejection*), where the *Client* reasonably believes that any Article or consignment of Articles contains Counterfeit Materiel, it shall be entitled to:

79B.3.1 retain any Counterfeit Materiel; and/or

79B.3.2 retain the whole or any part of such Article or consignment where it is not possible to separate the Counterfeit Materiel from the rest of the Article, or consignment,

and such retention shall not constitute acceptance under Clause 29P.10 to 29P.14 (*Acceptance*).

79B.4 Where the *Client* intends to exercise its rights under Clause 79B.3 it shall where reasonable permit the *Contractor*, within a period specified by the *Client*, to arrange at its own risk and expense and subject to any reasonable controls specified by *Client*, for:

79B.4.1 the separation of Counterfeit Materiel from any Article or part of an Article; and/or

79B.4.2 the removal of any Article or part of an Article that the *Client* is satisfied does not contain Counterfeit Materiel.

79B.5 In respect of any Article, consignment or part thereof that is retained in accordance with Clause 79B.3, including where the *Client* permits the *Contractor* to remove non-Counterfeit Materiel under Clause 79B.4 but the *Contractor* fails to do so within the

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period specified by the *Client* and subject to Clause 79B.9, the *Client* shall be entitled to exercise any, all, or any combination of, the following rights:

- 79B.5.1 to dispose of it responsibly, and in a manner that does not permit its reintroduction into the supply chain or market;
- 79B.5.2 to pass it to a relevant investigatory or regulatory authority;
- 79B.5.3 to retain conduct or have conducted further testing including destructive testing, for further investigatory, regulatory or risk management purposes. Results from any such tests shall be shared with the *Contractor*, and/or
- 79B.5.4 to recover the reasonable costs of testing, storage, access, and/or disposal of it from the *Contractor*.

Exercise of the rights granted at Clauses 79B.5.1, 79B.5.2 and 79B.5.3 shall not constitute acceptance under Clause 29P.10 to 29P.14 (*Acceptance*).

- 79B.6 Any scrap or other disposal payment received by the *Client* shall be off set against any amount due to the *Client* under Clause 79B.5.4. If the value of the scrap or other disposal payment exceeds the amount due to the *Client* under Clause 79B.5.4 then the balance shall accrue to the *Contractor*.
- 79B.7 The *Client* shall not use a retained Article or consignment other than as permitted in this Clause 79B (*Counterfeit Materiel*).
- 79B.8 The *Client* may without restriction report a discovery of Counterfeit Materiel and disclose information necessary for the identification of similar articles and its possible sources.
- 79B.9 Where the *Contractor* has objected in writing to the notification of the rejection by the *Client* in accordance with Clause 29P.21 (*Rejection*), the *Client* shall not exercise its rights at Clause 79B.5 unless and until the objection or dispute has been resolved in favour of the *Client*. If no such written objection is received, then the *Contractor* shall be deemed to have waived any rights to object to the *Client* exercising the rights granted at Clause 79B.5.
- 79B.10 The *Contractor* shall not be entitled to any payment or compensation from the *Client* as a result of the *Client* exercising the rights set out in this Clause 79B (*Counterfeit Materiel*) except where it has been determined by the Dispute Resolution Procedure that the *Client* has made an incorrect determination under Clause 79B.2.4. In such circumstances the *Client* shall reimburse the *Contractor's* reasonable costs of complying with Clause 79b.2.

## **8. LIABILITIES AND INSURANCE**

### **80 The Contractor's Risks**

- 80.1 Subject to Clauses 80.2 and 80.3 (*The Contractor's Risks*), from the Contract Date until the end of the Service Period, the *Contractor* is responsible for any risks which are not Force Majeure Events, Compensation Events or *Client* Dependencies.
- 80.2 If a Change in Law occurs or will occur during the Contract Period, the *Contractor* shall notify the *Client* of any Contract Changes which are required in order to comply with the Change in Law. Such Contract Changes shall be implemented in accordance with the Contract Change Management Process provided that the *Contractor* shall not be relieved of its obligation to Provide the Service in accordance with the terms of this Contract as a result of a Change in Law.
- 80.3 A specific change in Law of a Country is considered a Contract Change only where the change was not in the public domain at time of pricing submission and could not have been reasonably forecast by a qualified and competent contractor, experienced in the provision of services of a similar nature, complexity and value to the services delivered under this Contract.
- 80.3.1 If the effect of a change in law is to reduce the total of the value of the contract then prices are to be reduced in line with that change.
- 80.4 The effects of Clauses 80.2 and 80.3 are not considered to apply in the first year of contract or for the first six months following full service commencement, whichever is sooner.

### **81 Indemnities and Liability**

#### **Unlimited liabilities**

- 81.1 Neither Party limits its liability for:
- 81.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
  - 81.1.2 fraud or fraudulent misrepresentation by it or its employees;
  - 81.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - 81.1.4 any liability to the extent it cannot be limited or excluded by Law.
- 81.2 The financial caps on liability set out in Clauses 81.3 and 81.4 below shall not apply to the following:
- 81.2.1 for any indemnity given by the *Contractor* to the *Client* under this Contract, including but not limited to:
    - (i) Clause 19A.8 (*Contractor's Conduct on the Affected Property*), Clause 20 (*Providing the Services*), Clause 29 (*Health & Safety and the Environment*) and the *Contractor's* indemnity in Clauses 29R (*Intellectual Property Rights*);
    - (ii) the *Contractor's* indemnity obligations under Annex G (*Transfer Regulations*); and



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- 81.2.2 for any indemnity given by the *Client* to the *Contractor* under this Contract, including but not limited to:
- (i) Clause 87.1 (*War Risk Indemnity*), Clause 94.4 (*Termination for Convenience*), Clause 29S.6.2(ii) (*Client's Indemnity on Measures in a Crisis*) and Clause 29T.5.3 (*Client Step-In*); and
  - (ii) the indemnity given by the *Client* under Annex G (Transfer Regulations);
- 81.2.3 breach by the *Contractor* of Data Protection Legislation;
- 81.2.4 to the extent it arises as a result of a Default by either Party, any fine or penalty incurred by the other Party pursuant to Legislation and any costs incurred by such other Party in defending any proceedings which result in such fine or penalty.

### Financial limits

- 81.3 Subject to Clauses 81.1 and 81.2 and to the maximum extent permitted by Law:
- 81.3.1 subject to Clause 81.3.3, throughout the Contract Period the *Contractor's* total liability in respect of losses that are caused by Defaults of the *Contractor* shall in no event exceed:
- (i) in respect of liability under Clause 19A (*Contractor Presence on the Affected Property*) (other than in respect of liability for Issued Property, in respect of which the provisions of Clause 81.3.1(ii) apply), 10 Million Dollars (\$10,000,000) in aggregate;
  - (ii) in respect of liability under Clause 71 (*Issued Property*), Five Hundred Thousand dollars (\$500,000) in aggregate;
  - (iii) in respect of liability arising as a result of the occurrence of the circumstances referred to in Clause 91 (*Reasons for Termination*), Five Million dollars (\$5,000,000) in aggregate; and
  - (iv) in respect of liability under Clauses 29P.22 to 29P.26 (*Loss of or Damage to the Articles*), Five Million dollars (\$5,000,000) in aggregate;
- 81.3.2 without limiting Clause 81.3.1 and subject always to Clauses 81.1, 81.2 and 81.3.3, the *Contractor's* total liability throughout the Contract Period in respect of all other liabilities (but excluding any Withheld Sums applied in accordance with Annex D (*Performance Management Regime*)), whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be (\$7,500,000) in aggregate; and
- 81.3.3 on the exercise of any and, where more than one (1), each Option Period or agreed extension to the Contract Period, the limitation of the *Contractor's* total liability (in aggregate) set out in Clauses 81.3.1 and 81.3.2 above shall be fully replenished such that on and from each such exercise or extension of the Contract Period, the *Client* shall be able to claim up to the full value of the limitation set out in Clauses 81.3.1 and 81.3.2,
- provided always that nothing in this Clause 81.3 shall be construed as to limit or exclude the *Contractor's* liability for any amount:

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- (i) to the extent it is recoverable by the *Contractor* under any of the Required Insurances including amounts that would have been recovered under the insurance but for the *Contractor's* failure to take out and maintain (or procure the taking out and maintenance of) the relevant insurances) and/or any failure to make a claim under the relevant insurances; and
- (ii) of any insurance excess or deductible applicable to the relevant insurances.

81.4 Subject to Clauses 81.1, 81.2 and 81.5, and to the maximum extent permitted by Law the *Client's* total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Prices paid by the *Client* in the relevant Contract Year in respect of any and all claims in that Contract Year.

81.5 Clause 81.4 shall not exclude or limit the *Contractor's* right under this Contract to claim for the Prices.

### **Consequential loss**

81.6 Subject to Clauses 81.1, 81.2 and 81.7, neither Party shall be liable to the other Party or to any Third Party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:

- 81.6.1 indirect loss or damage;
- 81.6.2 special loss or damage;
- 81.6.3 consequential loss or damage;
- 81.6.4 loss of profits (whether direct or indirect);
- 81.6.5 loss of turnover (whether direct or indirect);
- 81.6.6 loss of business opportunities (whether direct or indirect); or
- 81.6.7 damage to goodwill (whether direct or indirect),

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

81.7 The provisions of Clause 81.6 shall not restrict the *Client's* ability to recover any of the following losses incurred by the *Client* to the extent that they arise as a result of a Default by the *Contractor*:

- 81.7.1 any additional operational and administrative costs and expenses arising from the *Contractor's* Default, including any costs paid or payable by the *Client*:
  - (i) to any Third Party;
  - (ii) for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and
  - (iii) relating to time spent by or on behalf of the *Client* in dealing with the consequences of the Default;
- 81.7.2 any or all wasted expenditure and losses incurred by the *Client* arising from the *Contractor's* Default, including wasted management time;

- 81.7.3 the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Contract Period and any Option Period or agreed extension to the Contract Period (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Prices that would have been payable for the relevant Contractor Deliverables);
- 81.7.4 any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of *Client* data, or other data or software, including, to the extent the *Client* data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such *Client* data, data or software;
- 81.7.5 damage to the *Client's* physical property and tangible assets, including but not limited to damage under Clause 19A (*Contractor Presence on the Affected Property*), Clause 19A.8 (*Contractor's Conduct on the Affected Property*) and Clause 71 (*Issued Property*);
- 81.7.6 costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any Intellectual Property Rights of Third Parties or breach of any obligations of confidence;
- 81.7.7 any additional costs incurred by the *Client* in relation to the *Client's* contracts with a Third Party (including any compensation or interest paid to a Third Party by the *Client*) as a result of the Default (including the extension or replacement of such contracts);
- 81.7.8 any fine or penalty incurred by the *Client* pursuant to Law and any costs incurred by the *Client* in defending any proceedings which result in such fine or penalty; or
- 81.7.9 any savings, discounts or price reductions during the Contract Period and any Option Period or agreed extension to the Contract Period committed to by the *Contractor* pursuant to this Contract.

#### **Invalidity**

- 81.8 Without prejudice to the generality of Clause 19T (*Severability*), if any limitation or provision contained or expressly referred to in this Clause 81.1 is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Clause 81.1.

#### **Third Party claims or losses**

- 81.9 Without prejudice to any other rights or remedies the *Client* may have under this Contract (including but not limited to any indemnity claim under Clauses 29R (*Intellectual Property Rights*) or at Law), the *Client* shall be entitled to make a claim under this Contract against the *Contractor* in respect of any losses incurred by the *Client* which arise out of a claim made against the *Client* by a Third Party under any contract with that Third Party provided that such Third Party claim:
  - 81.9.1 arises naturally and ordinarily as a result of the *Contractor's* failure to provide the Contractor Deliverables or failure to perform any of its obligations under this Contract; and

81.8.2 is a type of claim or loss that would have been recoverable under this Contract if the Third Party were a party to this Contract (whether as the *Client* or the *Contractor*), such claim to be construed as direct losses for the purpose of this Contract.

**No double recovery**

81.10 Neither Party shall be entitled to employ such rights and remedies available to it so as to seek to recover more than once in respect of the same loss, but the *Client* shall be entitled to use (singly or together) such rights and remedies available to the *Client* so as to recover the full extent of any recoverable losses suffered or incurred, including any remedies the *Client* may have pursuant to any Parent Company Guarantee.

**82. Recovery of costs**

82.1 Any cost which the *Client* has paid or will pay as a result of an event for which the *Contractor* is liable is paid by the *Contractor*.

82.2 Any cost which the *Contractor* has paid or will pay to Others as a result of an event for which the *Client* is liable is paid by the *Client*.

82.3 The right of a Party to recover these costs is reduced if an event for which it was liable contributed to the costs. The reduction is in proportion to the extent that the event for which that Party is liable contributed, taking into account each Party's responsibilities under the contract.

**83 Insurance Cover**

83.1 Without prejudice to its obligation to indemnify the *Client* under this Contract, the *Contractor* will, from the date of this Contract take out and maintain or procure the taking out and maintenance in full force and effect insurance in accordance with the requirements specified in the Insurance Table and any other insurances as may be required by law (together the "Required Insurances"). The *Contractor* will ensure that the Required Insurances are effective in each case not later than the date on which the relevant risk commences.

83.2 The Required Insurances referred to in clause 83.1 will be taken out and maintained with insurers who are of good financial standing, sound security and of good repute in the International insurance market.

83.3 The *Contractor* will not (and the *Contractor* will procure that none of its Sub-contractors of any tier will) take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.

83.4 The *Contractor* shall ensure that where specified in the Insurance Table procure that the Required Insurances will contain an indemnity to principals clause or additional insureds equivalent under which the *Client* will be indemnified in respect of claims made against the *Client* arising from the acts or omissions of, or performance of the *Contractor* under this Contract.

83.5 The *Client* may elect (but shall not be obliged) where notice has been provided to the *Contractor* to purchase any insurance which the *Contractor* is required to maintain

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pursuant to this Contract but has failed to maintain in full force and effect, and the *Client* shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the *Contractor*.

### Requirements of the *Contractor*

- 83.6 The *Contractor* shall from the date of this Contract and within fifteen (15) working days after the renewal of each of the Required Insurances provide to the Client:
- Evidence of the Required Insurances, in a form satisfactory to the Client; and
  - 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 *Contractor* in respect thereof.
  - Neither inspection, nor receipt of such evidence, will constitute acceptance by the Employer of the terms thereof, nor be a waiver of the *Contractor's* liability under this Contract.
- 83.7 The *Contractor* shall notify the Client at least ten (10) days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances. This Clause 83.7 shall not apply where the termination of any Required Insurances occurs purely as a result of a change of insurer in respect of any of the Required Insurances required to be taken out and maintained in accordance with this Clause 83.
- 83.8 (1) The *Contractor* will promptly notify to insurers any matter arising from or in relation to this Contract from which it may be entitled to claim under any of the Required Insurances.
- (2) Except where the Client is the claimant party and without limiting the other provisions of this Contract condition, the *Contractor* will notify the Client immediately, (such notification to be accompanied by reasonable particulars of the incident or circumstances giving rise to such claim):
- I. 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 this Contract under any of the Required Insurances.
- 83.9 Where any insurance policy requires the payment of a premium, the *Contractor* will be liable for such premium.
- 83.10 (1) Where any insurance is subject to an excess or deductible below which the indemnity from the insurers is excluded, the *Contractor* will be liable for such excess or deductible.
- (2) The *Contractor* will not be entitled to recover from the Client any sum paid by way of excess or deductible under the insurances whether under the terms of this Contract or otherwise.
- 83.11 All insurance proceeds received under the *Contractors* "All Risks" Insurance referred to in the Insurances Table, will be applied to repair, reinstate and replace each part or parts of the insured property in respect of which the proceeds were received unless otherwise agreed by the Client.
- 83.12 Where the minimum limit of indemnity required in relation to any of the Required Insurances is "in the aggregate", the *Contractor* is to ensure that the insurance cover

is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Contract.

**Failure to insure**

- 83.13 If the *Contractor* is in breach of clause 83.1 the Client may pay (at its option) any premiums, taxes 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 *Contractor* on written demand, together with all reasonable expenses incurred in procuring such insurance.

**84 Required Insurances**

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

**84.1 Contractors “All Risks” Insurance**

(1) Insureds;

Contractor

(2) Insured Property

The permanent and temporary works, materials, goods, plant and equipment for incorporation in the works (plus constructional plant, tools, accommodation and equipment belonging to or the responsibility of the Contractor or its Sub-contractors) and all other property used for use in connection with works associated with the Contract.

(3) Coverage

“All Risks” of physical loss, damage or destruction to the Insured Property unless otherwise excluded.

(4) Sum Insured

At all times an amount not less than the full reinstatement or replacement value of the Insured Property, plus provision to include cover features and extensions as appropriate.

(5) Maximum Deductible

Not to exceed each \$[to be proposed by Tenderers] and every claim

(6) Period of Insurance

From the commencement of any works and until the completion of the works and thereafter in respect of defects liability until expiry of any defects liability period.

(7) Cover Features and Extensions

Additional costs of completion clause

Professional fees clause

Debris removal clause

Seventy two (72) hour clause

Ten percent (10%) escalation clause

Automatic reinstatement of sum insured clause

Loss minimisation

Plans and specification clause

Guarantee maintenance or extended maintenance to the extent available

(8) Principal Exclusions

War and related perils

Nuclear/radioactive risks

Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds

Wear, tear and gradual deterioration

Consequential financial losses

Inventory losses, fraud and employee dishonesty

84.2 Third Party Public and Products Liability Insurance

(1) Insureds;

Contractor

(2) Interest

To indemnify the Insured in respect of all sums that they may become legally liable to pay (including claimant's costs and expenses) as damages in respect of accidental:

death or bodily injury, illness or disease contracted by any person;

loss or damage to property;

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

(3) Limit of Indemnity

Not less than one million US Dollars (\$1,000,000) in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of products or pollution liability.

(4) Maximum Deductible

Not to exceed \$[to be proposed by Tenderers] each and every occurrence of third party property damage.

(5) Period of Insurance

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

(6) Cover Features and Extensions

Cross liability clause

Contingent motor vehicle liability

Legal defence costs

Indemnities to principals clause

Airside third party liability (where the relevant risk commences)

Airside third party motor liability (where the relevant risk commence)

(7) Principal Exclusions:

War and related perils

Nuclear/radioactive risks

Liability for death, illness, disease or bodily injury sustained by employees of the Insured.

Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

Liability arising from the ownership, possession or use of any aircraft or marine vessels.

Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

Losses indemnified under the Construction "All Risks" Insurance policy.

84.3 Professional Indemnity Insurance

(1) Insureds;

Contractor

(2) Interest

To indemnify the Insured for all sums which the Insured will become legally liable to pay (including claimants cost and expenses) as a result of any claim or claims first made against the Insured during the Period of Insurance by reason of any act, error and/or omission arising from or in connection with the Contract.

(3) Limit of Indemnity

Not less than one million US Dollars (\$1,000,000) in respect of any one claim, and in the annual aggregate during the period of insurance.

(4) Maximum Deductible

Not to exceed each \$[to be proposed by Tenderers] and every claim

(5) Period of Insurance



From the date of the Contract for the duration of the Contract renewable on an annual basis unless agreed otherwise by the Parties and a period of three (3) years following the expiry or termination of the Contract whichever occurs earlier.

(6) Cover Features and Extensions

Loss of documents and computer records extension.

Retroactive cover from the date of the Contract or retroactive date no later than the date of the Contract.

(7) Principal Exclusions

War and related perils

Nuclear/radioactive risks

Insolvency of the Insured

Bodily injury, sickness, disease or death sustained by any employee

85 NOT USED

86 NOT USED

87 **War Risk Indemnity – NOT APPLICABLE but may be reviewed if Security situation changes**

87.1 Refer to Annexes Q (DEFCON 661) and R (DEFCON 661A). For the avoidance of doubt, references to “the Authority”, across both applicable Annexes, shall mean “*the Client*” as defined in Annex A (*Identified and Defined Terms*).

## 9. **TERMINATION**

### 90 **Termination**

- 90.1 If either Party wishes to terminate the *Contractor's* employment under this Contract in whole or, in relation to termination by the *Client*, in part, that Party shall notify the *Service Manager* and the other Party giving details of its reason for terminating and, where relevant, giving details of the part of this Contract that the *Client* is terminating. The *Service Manager* shall issue a termination certificate to both Parties promptly if the reason complies with this Contract.
- 90.2 The *Contractor* may terminate only for a reason identified in the table set out in this Clause 90.2 (*Termination*) (the “**Termination Table**”). The *Client* may terminate for any reason. The procedures followed and the amounts due on termination (the “**Termination Sum**”) shall be in accordance with the Termination Table.

**Termination Table**

<b>Terminating Party</b>	<b>Reason</b>	<b>Procedure</b>	<b>Amount due</b>
The <i>Client</i>	A reason other than R1–R17, including the circumstances referred to at Clause 94 ( <i>Termination for Convenience</i> ).	The provisions set out at Clause 94 ( <i>Termination for Convenience</i> ) shall apply.	The provisions set out at Clause 94 ( <i>Termination for Convenience</i> ) shall apply.
	R1–R10 or R14–R16	P1–P6	A1–A2 and A6–A8
	R12 or R13	P1 and P4–P6	A1–A2 and A7–A8
	R17	P7 – P10	A4–A5 and A9–A10
The <i>Contractor</i>	R11	P1–P2 and P4–P6	A1–A3 and A7–A8

- 90.3 The procedures for termination shall be implemented immediately after the *Service Manager* has issued a termination certificate.
- 90.4 Within thirteen (13) weeks of termination, the *Service Manager* shall certify a final payment to or from the *Contractor* which shall be the *Service Manager's* assessment of the amount due on termination less the total of previous payments. Payment shall be made within three (3) weeks of the *Service Manager's* certificate.
- 90.5 After a termination certificate has been issued, the *Contractor* shall do no further work necessary to Provide the Service or, where terminating in part pursuant to Clause 91 (*Reasons for Termination*), the Terminated Service.

#### **Persistent Breach Notices**

- 90.6 If any breach of this Contract by the *Contractor*, other than any breach for which any withholding or abatement of Profit could have been made pursuant to the Performance Management Regime or any breach which constitutes a reason for termination under any of reasons R1 to R10, R12 to R14 has continued for more than thirty (30) days or occurred more than three (3) times in any three (3) month period then the *Service Manager* may serve a notice (a “**Warning Notice**”) on the *Contractor*.
- 90.6.1 specifying that it is a formal warning notice;

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- 90.6.2 giving reasonable details of the breach; and
- 90.6.3 stating that such breach is a breach which, if it recurs frequently or continues, may result in a termination of this Contract.

Without prejudice to the foregoing provisions of this Clause, for the purposes of this Clause 90.6, any failure by the *Contractor* to report on performance against the KPIs in two (2) consecutive reporting periods (as referred to in Booklet 3 (Requirements Information), Module A, Leaflet AL-05A (*Performance Management Regime*) as required pursuant to Booklet 3, Module A, Leaflet AL-10, Appendix 2 (*Records, Meetings and Reports*) shall entitle the *Service Manager* to issue a Warning Notice.

- 90.7 If, following service of a Warning Notice, the breach specified has continued beyond a further thirty (30) days or recurred in two (2) or more months within the six (6) month period after the date of service of the Warning Notice, then the *Service Manager* may serve another notice (a **"Final Warning Notice"**) on the *Contractor*:
  - 90.7.1 specifying that it is a final warning notice;
  - 90.7.2 stating that the breach specified has been the subject of a Warning Notice served within the nine (9) month period prior to the date of service of the Final Warning Notice; and
  - 90.7.3 stating that if such breach continues for more than a further thirty (30) days or recurs in one (1) or more months within the six (6) month period after the date of service of the Final Warning Notice, this Contract may be terminated.
- 90.8 A Warning Notice may not be served in respect of any breach which has previously been counted in the making of a separate Warning Notice.

## 91 **Reasons for Termination**

- 91.1 The *Client* may terminate at any time after any of the following events:
  - 91.1.1 where the *Contractor* is an individual or a firm, any Insolvency Event (Individual or Firm) (**R1**);
  - 91.1.2 where the *Contractor* is a company registered in England, any Insolvency Event (Company) (**R2**);
  - 91.1.3 where the *Contractor* is a company registered other than in England, events occur or are carried out which, within the jurisdiction to which it is subject, are similar in nature or effect to any Insolvency Event (Company) (**R3**);
  - 91.1.4 where any Insolvency Event (Individual or Firm) or Insolvency Event (Company) occurs within the jurisdiction to which it is subject, in respect of any entity, which from time to time has guaranteed the obligations of the *Contractor* in connection with this Contract and which are similar in nature or effect to any Insolvency Event (Company) (**R4**).
- 91.2 The *Client* may terminate if the *Service Manager* has notified that the *Contractor* has defaulted in one of the following ways and not put the default right within four (4) weeks of such notification:
  - 91.2.1 materially failed to Provide the Service or any material portion thereof (which shall include a failure having a material impact on one or more Establishment or Host Nation) within the time or times specified and to the standards agreed in this Contract (**R5**);

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- 91.2.2 not provided a guarantee which this Contract requires, including without limitation when the Parent Company Guarantee ceases to be valid or enforceable for any reason (without the Parent Company Guarantee being replaced with a comparable guarantee to the satisfaction of the *Client* or with another guarantor which is acceptable to the *Client*) **(R6)**;
- 91.2.3 appointed a Sub-Contractor for substantial work before the *Service Manager* has accepted the Sub-Contractor **(R7)**.
- 91.3 The *Client* may terminate if the *Contractor* fails to meet the Acceptable Level of Performance in more than one (1) consecutive quarter or fails to meet the Acceptable Level of Performance in any three (3) quarters in a rolling twelve (12) month period. **(R8)**
- 91.4 The *Client* may terminate if the *Service Manager* has notified that the *Contractor* has defaulted in one of the following ways and not stopped defaulting within four (4) weeks of such notification:
- 91.4.1 substantially hindered the *Client* or Others **(R9)**; or
- 91.4.2 substantially broken the Law or any health or safety regulation **(R10)**.
- 91.5 The *Contractor* may terminate if the *Client* has not paid an amount due under this Contract within twelve (12) weeks which has been certified by the *Service Manager* as properly due and payable provided that the *Contractor* has notified the *Client* and the Commercial Officer at least ten (10) weeks before terminating that the *Client* has not paid such amount and that the *Contractor* may exercise its right under this Clause 91 (*Reasons for Termination*) **(R11)**.
- 91.6 The *Client* may terminate if either Party has been released under the Law from further performance of the whole of this Contract **(R12)**.
- 91.7 The *Client* may terminate if a Force Majeure Event has substantially affected the *Contractor's* work for a continuous period of more than 13 (thirteen) weeks **(R13)**.
- 91.8 The *Client* may terminate in accordance with Clause 22.9 (*Modern Slavery, Child Labour & Inhumane Treatment*), Clause 29C (*Import and Export Licences*), Clause 59.A (*Tax Compliance*), Clause 19CC (*Conflicts of Interest*), 18 (*Fraud and Prevention of Corruption*), Clause 18.8 (*Corrupt Gifts and Payments of Commission*), Clause 19Y.8 (*Security Measures*), Clause 19Z (*Personnel*), Clause 29R (*Intellectual Property Rights*), Clause 19R.1 (*Change of Control*) or Clause 19R (*Change of Control*) or the *Contractor* breaches Clause 26 (*Assignment*) or Clause 24.2 (*Sub-Contracting*) **(R14)**.
- 91.9 The *Client* may terminate if:
- 91.9.1 a Persistent Breach occurs **(R15)**; or
- 91.9.2 the *Contractor* breaches the provisions of Clause 19BB (*Staff Transfer Arrangements on Entry and Exit, Pensions and Employment and Intermediaries*), provided that where the breach is remediable the right to terminate shall only arise where the *Contractor* fails to remedy the breach within twenty-eight (28) days of service of a notice from the *Client* setting out the breach and requiring the *Contractor* to remedy it **(R16)**.
- 91.10 Where the *Client* is entitled to terminate this Contract under Clauses 91.2, 91.3, 91.4 or 91.9, it may, prior to or instead of terminating the whole of this Contract, terminate the *Contractor's* employment to provide any part of the *services* (which may include to Provide the Services in any Host Nation) (the "**Terminated Service**") under this Contract which is materially affected by the relevant circumstance **(R17)**.

## 92 Procedures on Termination

### Full Termination

92.1 On termination, the *Client* may complete the *services* (and employ other contractors for that purpose) and may use any Equipment provided by the *Contractor* (P1).

92.2 The procedure on termination will also include one or more of the following as set out in the Termination Table:

**P2** Upon expiry or termination of the *Contractor's* employment under this Contract the *Client* may instruct the *Contractor* to remove any Equipment and assign the benefit of any Sub-Contract or other contract related to performance of this Contract to the *Client*.

The *Client* may, at its discretion take over from the *Contractor* at a fair and reasonable price, if payment has not already been made, all used and undamaged Materials, bought-out parts and components, and Works in course of design or construction, in the possession of the *Contractor* and properly provided by or supplied to the *Contractor* for the performance of this Contract.

The *Contractor* shall prepare and deliver to the *Client* within an agreed period, or in default of agreement within such period as the *Client* may specify, a list of all such unused and undamaged Materials, in addition to Materials vested in the *Client*, bought-out parts and components and Works in the course of design or construction liable to be taken over by or previously belonging to the *Client* and will deliver these in accordance with the directions of the *Client*.

**P3** The *Client* may use any Equipment to which the *Contractor* has title to complete the *services*. The *Contractor* shall promptly remove the Equipment when the *Service Manager* notifies it that the *Client* no longer requires it to complete the *services*.

**P4** The *Contractor* shall provide to the *Client* information and other things which the Service Information states the *Contractor* is to provide at the end of the Service Period.

**P5** Upon expiry or termination of the *Contractor's* employment under this Contract, the *Contractor* shall provide all reasonable co-operation, assistance and information to the *Client* (and to any Follow-On Contractor appointed by the *Client*) for a period of up to six (6) months from the date of expiry or termination if requested, to the extent necessary to effect an orderly assumption of the *services* by the *Client* or the Follow-On Contractor and shall comply with Booklet 3, Module A, Leaflet AL-20 (*Exit Strategy*).

**P6** On the termination of the *Contractor's* employment under this Contract for any reason, the *Contractor* shall:

9.2.1 immediately return to the *Client* all Confidential Information, Personal Data and IP Materials relating to this Contract in its possession or in the possession or under the control of any Contractor Related Party which was obtained or produced in the course of Providing the Services;

9.2.2 immediately deliver to the *Client* all property (including materials, documents, information and access keys) provided to the *Contractor* for the purposes of this Contract. Such property is to be handed back in good working order (allowance to be made for reasonable wear and tear);

- 9.2.3 assist and co-operate with the *Client* to ensure an orderly transition of the *services* to any Follow-On Contractor and/or the completion of any Work in progress; and
- 9.2.4 promptly provide all information concerning the *services* which may reasonably be requested by the *Client* for the purposes of adequately understanding the provision of the *services* or for the purpose of allowing the *Client* or any Follow-On Contractor to conduct due diligence,

and if the *Contractor* does not immediately return all Confidential Information, IP Materials relating to this Contract and property, the *Client* may recover possession thereof and the *Contractor* hereby grants a licence to the *Client* or its appointed agents to enter (for the purposes of such recovery) any premises of the *Contractor* or any Contractor Related Party.

### **Partial Termination**

92.3 On a partial termination of this Contract, the following procedure shall apply:

**P7** The *Client* may instruct the *Contractor* to remove any Equipment used in the provision of the Terminated Service and/or assign the benefit of any Sub-Contract or other contract which relates to the performance of the Terminated Service to the *Client*.

The *Client* may, at its discretion take over from the *Contractor* at a fair and reasonable price, if payment has not already been made, all used and undamaged Materials, bought-out parts and components, and Works in course of design or construction, in the possession of the *Contractor* and properly provided by or supplied to the *Contractor* for the provision of the Terminated Service.

The *Contractor* shall prepare and deliver to the *Client* within an agreed period, or in default of agreement within such period as the *Client* may specify, a list of all such unused and undamaged Materials, in addition to Materials vested in the *Client*, bought-out parts and components and Works in the course of design or construction liable to be taken over by or previously belonging to the *Client* and used in the provision of the Terminated Service and will deliver these in accordance with the directions of the *Client*, except where the *Contractor* is able to demonstrate to the *Client's* reasonable satisfaction that such Materials, parts and components are required in order to continue to Provide the Service following the termination of the Terminated Service.

**P8** The *Client* may use any Equipment to complete the Terminated Service. The *Contractor* shall promptly remove the Equipment when the *Service Manager* notifies it that the *Client* no longer requires it to complete the Terminated Service.

**P9** The *Contractor* shall, if requested, provide all reasonable co-operation, assistance and information to the *Client* (and to any Follow-On Contractor appointed by the *Client*) for a period of up to six (6) months from the date of termination of the Terminated Service, to the extent necessary to effect an orderly assumption of the Terminated Service by the *Client* or a Follow-On Contractor and shall comply with Booklet 3, Module A, Leaflet AL-20 (*Exit Strategy*).

**P10** On the termination of the *Contractor's* employment to provide the Terminated Service, the *Contractor* shall:

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- (a) immediately return to the *Client* all Confidential Information, Personal Data and IP Materials relating to the Terminated Service in its possession or in the possession or under the control of any Contractor Related Party which was obtained or produced in the course of providing the Terminated Service;
- (b) immediately deliver to the *Client* all property (including materials, documents, information and access keys) provided to the *Contractor* for the purposes of providing the Terminated Service. Such property is to be handed back in good working order (allowance to be made for reasonable wear and tear);
- (c) assist and co-operate with the *Client* to ensure an orderly transition of the Terminated Service to any Follow-On Contractor and/or the completion of any Works and/or services in progress; and
- (d) promptly provide all information concerning the Terminated Service which may reasonably be requested by the *Client* for the purposes of adequately understanding the provision of the Terminated Service or for the purpose of allowing the *Client* or any Follow-On Contractor to conduct due diligence,

and if the *Contractor* does not immediately return all Confidential Information, IP Materials and property relating to the Terminated Service, the *Client* may recover possession thereof and the *Contractor* hereby grants a licence to the *Client* or its appointed agents to enter (for the purposes of such recovery) any premises of the *Contractor* or any Contractor Related Party.

92.4 Where the *Client* is terminating part of this Contract, the Parties shall, subject to Clause 97 (*Continuing Obligations*), owe each other no further obligations in respect of the Terminated Service from the date of issue of a termination certificate pursuant to Clause 90.1 (*Termination*).

92.5 For the avoidance of doubt, where Clause 92.4 applies, the Parties shall continue to fulfil their respective obligations under this Contract other than the Terminated Service.

### **93 Payment on Termination**

93.1 The Termination Sum will be comprised of one or more of the amounts defined as A1 to A6 and in Clause 93 (*Payment on Termination*), as specified in the Termination Table in relation to the relevant reason for termination:

- A1** any amount outstanding to the *Contractor* in respect of the services carried out until the termination of the *Contractor's* employment under this Contract;
- A2** a fair and reasonable price for any Equipment or other Materials, components or parts purchased by the *Client* pursuant to Clause 92 (*Procedures on Termination*); and/or
- A3** an amount required to reimburse the *Contractor* for any losses which have been reasonably and properly incurred by the *Contractor* as a direct result of the termination of the *Contractor's* employment under this Contract by the *Client*, but only to the extent that:

93.1.1 the losses incurred are in respect of:

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- (i) any Materials or goods ordered, or Sub-Contracts placed that cannot be cancelled without greater losses being incurred than would otherwise have been the case;
- (ii) such proportion of the initial Capital Expenditure as has already been invested by the *Contractor* in accordance with the Accepted Plan, less the aggregate of the following:
  - (A) any monies that the *Contractor* has recovered in relation to that Capital Expenditure in accordance with the depreciation proposals in the Accepted Plan, provided that the *Contractor* shall not be entitled to recover any monies from the *Client* that the *Contractor* has been unable to recover due to the failure by the *Contractor* to generate the anticipated revenue in accordance with the *Contractor's* income generation proposals detailed in the Accepted Plan;
  - (B) the open market value (being independently advised and/or demonstrated as being reasonable) of any Equipment that the *Contractor* intends to recover or remove from the Establishment;
  - (C) any sums that the *Contractor* may recover through any insurance policies in relation to the items which are subject of Capital Expenditure,

and taking account of whether the *Contractor* shall be able to assign and guarantee that the full title free from encumbrances can be transferred and whether any warranties and maintenance contracts can be assigned to the *Client*; and

9.3.2 the *Contractor* and, where relevant, the Contractor Related Parties have each used reasonable endeavours to mitigate the losses.

- A4** any amount outstanding to the *Contractor* in respect of the Terminated Service carried out until the termination of the Terminated Service; and
- A5** a fair and reasonable price for any Equipment or other Materials, components or parts purchased by the *Client* pursuant to Clause 92 (*Procedures on Termination*).

Where so specified in the Termination Table, the Termination Sum will be reduced by:

- A6** an amount equal to the costs which the *Service Manager* assesses will be reasonably incurred (including reasonable administration costs) by the *Client* in respect of the supply of the services by the *Client* or a Follow-On Contractor for the remainder of the Service Period to the extent that such costs exceed the payment which would otherwise have been payable to the *Contractor* for the remainder of the Service Period;
- A7** any other sums that the *Client* is entitled to deduct under or in connection with this Contract (whether arising under any term of this Contract or under any Law or of equity);
- A8** the amount or value of any gift, consideration or commission entailed by the commission of any Fraud or any Prohibited Act;
- A9** an amount equal to the costs which the *Service Manager* assesses will be reasonably incurred (including reasonable administration costs) by the *Client* in



respect of the supply of the Terminated Service by the *Client* or a Follow-On Contractor for the remainder of the Service Period to the extent that such costs exceed the payment which would otherwise have been payable to the *Contractor* for the remainder of the Service Period in respect of such Terminated Service;

**A10** any other sums that the *Client* is entitled to deduct under or in connection with this Contract (whether arising under any term of this Contract or under any Law or of equity) in relation to the Terminated Service.

93.2 For the avoidance of doubt, the *Client* will not be liable on termination (including on or in connection with any partial termination of the *services* or all of the *services* provided in a Host Nation) for any *Contractor* loss of profits.

#### **94 Termination for Convenience**

94.1 The *Client* shall have the right to terminate this Contract in whole or in part at any time by giving the *Contractor* at least twenty (20) Working Days' written notice (or such other period as may be stated in this Contract). Upon expiry of the notice period this Contract, or relevant part thereof, shall terminate without prejudice to the rights of the Parties already accrued up to the date of termination. Where only part of this Contract is being terminated, the *Client* and the *Contractor* shall owe each other no further obligations in respect of the part of this Contract being terminated but will continue to fulfil their respective obligations on all other parts of this Contract not being terminated.

94.2 Following the above notification, the *Client* shall be entitled to exercise any of the following rights in relation to this Contract (or part being terminated) to direct the *Contractor* to:

- 94.2.1 not start work on any element of the Contractor Deliverables not yet started;
- 94.2.2 complete in accordance with this Contract the provision of any element of the Contractor Deliverables;
- 94.2.3 as soon as may be reasonably practicable take such steps to ensure that the production rate of the Contractor Deliverables is reduced as quickly as possible;
- 94.2.4 terminate on the best possible terms any Sub-Contracts in support of the Contractor Deliverables that have not been completed, taking into account any direction given under Sub-Clauses 94.2.1 to 94.2.3 of this Clause 94 (*Termination for Convenience*).

94.3 Where this Clause 94 (*Termination for Convenience*) applies (and subject always to the *Contractor's* compliance with any direction given by the *Client* under Clause 94.2):

94.3.1 the *Client* shall take over from the *Contractor* at a fair and reasonable price all unused and undamaged Materials and any Contractor Deliverables in the course of manufacture that are:

- (i) in the possession of the *Contractor* at the date of termination; and
- (ii) provided by or supplied to the *Contractor* for the performance of this Contract,

except such Materials and Contractor Deliverables in the course of manufacture as the *Contractor* shall, with the agreement of the *Client*, choose to retain;

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94.3.2 the *Contractor* shall deliver to the *Client* within an agreed period, or in absence of such agreement within a period as the *Client* may specify, a list of:

(i) all such unused and undamaged Materials; and

(ii) Contractor Deliverables in the course of manufacture,

that are liable to be taken over by, or previously belonging to the *Client*, and shall deliver such Materials and Contractor Deliverables in accordance with the directions of the *Client*;

94.3.3 in respect of *services*, the *Client* shall pay the *Contractor* fair and reasonable prices for each part of the *services* performed, or partially performed, in accordance with this Contract.

94.4 The *Client* shall (subject to Clause 94.5 and to the *Contractor's* compliance with any direction given by the *Client* in Clause 94.2) indemnify the *Contractor* against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the *Contractor* by reason of the termination of this Contract, subject to:

94.4.1 the *Contractor* taking all reasonable steps to mitigate such loss; and

94.4.2 the *Contractor* submitting a fully itemised and costed list of such loss, with supporting evidence, reasonably and actually incurred by the *Contractor* as a result of the termination of this Contract or relevant part.

94.5 The *Client's* total liability under the provisions of this Clause 94 (*Termination for Convenience*) shall be limited to the total price of the Contractor Deliverables payable under this Contract (or relevant part), including any sums paid, due or becoming due to the *Contractor* at the date of termination.

94.6 The *Contractor* shall include in any Sub-Contract over the Euro equivalent at the date of the Sub-Contract to three hundred and twenty five thousand USD (\$325,000) which it may enter into for the purpose of this Contract, the right to terminate the Sub-Contract under the terms of Clauses 94.1 to 94.5 except that:

94.6.1 the name of the *Contractor* shall be substituted for the *Client* except in Clause 94.3.1;

94.6.2 the notice period for termination shall be as specified in the Sub-Contract, or if no period is specified twenty (20) Working Days; and

94.6.3 the *Contractor's* right to terminate shall be restricted by including the following additional clause "Provided that this right is not exercised unless the main contract, or relevant part, has been terminated by the Secretary of State for Defence in accordance with the provisions of Clause 81 of the main contract".

94.7 Claims for payment under this Clause 94 (*Termination for Convenience*) shall be submitted in accordance with the *Client's* direction.

## 95 Dispute Resolution

95.1 In the event of a dispute arising on any issue relating to Clause 41 (*Service Failure in the Delivery of Service*) that is not resolved through discussions between the Parties at the Formal In-Country Monthly Contract Meeting, the matter in dispute will be referred to the Quarterly Review Meeting for resolution.

- 95.2 Without prejudice to Clause 96 (*Dispute Resolution Procedure*), if the dispute is not resolved by the Parties at the Quarterly Review Meeting pursuant to Clause 95.1 either Party may elect to implement the Dispute Resolution Procedure as set out in Clause 96.

## **96 Dispute Resolution Procedure**

- 96.1 Subject to Clauses 95.1 and 95.2 (*Dispute Resolution*), the Parties shall attempt in good faith to resolve any dispute or claim arising out of or relating to this Contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any Alternative Dispute Resolution (“**ADR**”) procedure on which the Parties may agree.
- 96.2 In the event that the dispute or claim is not resolved by negotiation, or where the Parties have agreed to use an ADR procedure, by the use of such procedure, the dispute shall be referred to arbitration.
- 96.3 The Party initiating the arbitration shall give a written notice of arbitration to the other Party (“**Notice of Arbitration**”). The Notice of Arbitration shall specifically state:
- 96.3.1 that the dispute is referred to arbitration; and
- 96.3.2 the particulars of this Contract out of or in relation to which the dispute arises.
- 96.4 Unless otherwise agreed in writing by the Parties, the arbitration and this Clause 96 (*Dispute Resolution Procedure*) shall be governed by the provisions of the Arbitration Act 1996.
- 96.5 It is agreed between the Parties that for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided for in Section 39 of the Arbitration Act 1996.
- 96.6 For the avoidance of doubt it is agreed between the Parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the Parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the Parties to the arbitration.

## **97 Continuing Obligations**

- 97.1 Save as otherwise expressly provided in this Contract:
- 97.1.1 termination or expiry of this Contract is without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract prejudices the right of either Party to recover any amount outstanding at such termination or expiry; and
- 97.2.2 termination of this Contract does not affect the continuing rights, remedies or obligations of the *Client* or the *Contractor* under:
- (i) Clause 12 (*Interpretation and the Law*);
  - (ii) Clause 29W (*Parent Company Guarantee*);
  - (iii) Clause 24 (*Sub-Contracting*);

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- (iv) Clause 45 (*Defects Liability*);
- (v) Clause 59B (*Recovery of Sums Due*);
- (vi) Clause 72 (*Accounting for the Property of the Client*);
- (vii) Clause 80 (*The Contractor's Risks*);
- (viii) Clause 81 (*Indemnities and Liability*);
- (ix) Clause 83 (*Insurance Cover*);
- (x) Clause 84 (*Required Insurances*);
- (xi) Clause 92 (*Procedures on Termination*);
- (xii) Clause 93 (*Payment on Termination*);
- (xiii) Clause 95 (*Dispute Resolution*);
- (xiv) Clause 96 (*Dispute Resolution Procedure*);
- (xv) Clause 19BB (*Staff Employee Transfer Arrangements on Entry and Exit, Pensions and Employment and Intermediaries*);
- (xvi) Clause 19W6 and/or 19X.4 (*Audit*);
- (xvii) Clause 19M (*Disclosure of Information*);
- (xviii) Clause 19Y (*Security Measures*);
- (xix) Clause 29R (*Intellectual Property Rights*); and
- (xx) any other provision of this Contract which is expressed to survive termination, or which is required to give effect to such termination or the consequences of such termination.

### **98**      **Exit Strategy**

- 98.1 The Parties shall comply with their respective obligations set out in Booklet 3, Module D (*Mobilisation and Demobilisation*).
- 98.2 Upon the expiry of this Contract, the *Contractor* agrees to co-operate with the *Client* to such extent as it may be reasonably required to do so for a period of up to six (6) months from the date of expiry, such period to be determined by the *Client*, to ensure an orderly and efficient transition from the management of the services by the *Contractor* to management by the *Client* or some other person.
- 98.3 The *Client* and the *Contractor* shall agree a fair and reasonable price for satisfying the provisions of this Clause 98.3.

## OPTION CLAUSES

### Main Option Clauses

#### Option A: Priced contract with price list

### Secondary Option Clauses

#### **Option X4: *Ultimate Holding Company Guarantee***

##### **X4 Ultimate Holding Company Guarantee**

- X4.1 If the Contractor is a subsidiary of another company, the Contractor gives to the Client a guarantee of the Contractor's performance from the ultimate holding company of the Contractor in the form set out in the Scope. If the guarantee was not given by the Contract Date, it is given to the Client within four weeks of the Contract Date.
- X4.2 The Contractor may propose an alternative guarantor who is also owned by the ultimate holding company for acceptance by the Service Manager. A reason for not accepting the guarantor is that its commercial position is not strong enough to carry the guarantee.

#### **Option X20: *Key Performance Indicators***

Delete Clause X20 (*Key Performance Indicators*) and replace with:

##### **X20 Performance Management Regime**

- X20.1 The *Contractor* shall monitor its performance (and the performance of any other person or party for whom it is responsible) in the delivery of the services in accordance with the Performance Management Regime and shall provide the Service Manager with relevant particulars of its or their performance which fail to meet the requirements or standards as specified in Booklet 2, Annex D (*Performance Management Regime*) or elsewhere in this Contract.
- X20.2 The *Client* may at all reasonable times observe, inspect and satisfy itself as to the adequacy of the *Contractor's* monitoring of performance pursuant to the Performance Management Regime, and/or as set out elsewhere in the Service Information including carrying out any sample checks or other auditing the *Client* requires. The *Contractor* when complying with this Clause X20.2 shall also comply with Clause 29B (*Access and Facilities provided by the Contractor*).
- X20.3 Without prejudice to Clause 41 (*Service Failure in the Delivery of the Services*), the *Client* shall have the right to withhold or abate Payment depending on the performance of the services, in accordance with and as more particularly set out in Booklet 2, Annex D (*Performance Management Regime*).
- X20.4 The *Contractor* shall comply with Booklet 3, Module G Section G2 (*Reporting*) and Clause 29K.4 (*Progress Reports*).

## 10. Contract Data

PART ONE – DATA PROVIDED BY THE *CLIENT*

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

## 1 General

The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Term Service Contract June 2017 (with amendments January 2023)

Main Option  Option for resolving and avoiding disputes

Secondary Options

The *service* is

The *Client* is

Name

Address for communications

Address for electronic communications

The *Service Manager* is

Name

Address for communications

Address for electronic communications

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The Affected Property is

Identified in the Scope, Booklet 3 (as may be amended in accordance with the Contracts Change Management Process).

The Scope is in

Booklet 3, Booklet 4 and Booklet 5 (Booklet 6 is the Contractor's Plan and considers delivery of the Scope).

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The *shared services* which may be carried out outside the Service Areas are

N/A

The *language of the contract* is

English

The *law of the contract* is the law of

England and Wales

The *period for reply* is

10 (ten) working days

except that

• The *period for reply* for

is

• The *period for reply* for

is

The following matters will be included in the Early Warning Register

Early warning meetings are to be held at intervals no longer than

## 2 The Contractor's main responsibilities

If Option C or E is used

The *Contractor* prepares forecasts of the total Defined Cost for the whole of the *service* at intervals no longer than

N/A

## 3 Time

The *starting date* is

1 November 2024

The *service period* is

3 (three) years plus 2 (two) option years, the Mobilization Period from the Contract Date, subject to any extension pursuant to Clause 30 (*Contract Period, Mobilization, the Service Period and Options*).

The *Contractor* submits revised plans at intervals no longer than

4 (four) weeks

The period within which the *Contractor* is to submit a Task Order programme for acceptance is

4 (four) weeks

If no plan is identified in part two of the Contract Data

The period after the Contract Date within which the *Contractor* is to submit a first plan for acceptance is

4 (four) weeks



## OFFICIAL

### 4 Quality management

The period after the Contract Date within which the *Contractor* is to submit a quality policy statement and quality plan is

4 (four) weeks

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### 5 Payment

The *currency of the contract* is the

The *assessment interval* is

The *interest rate* is  % per annum (not less than 2) above the

rate of the  bank

If the period in which payments are made is not three weeks and Y(UK)2 is not used

The period within which payments are made is

If the period for certifying a final assessment is not thirteen weeks

The period for certifying a final assessment is

If Option C is used

The *Contractor's share percentages* and the *share ranges* are

<i>share range</i>			<i>Contractor's share percentage</i>
less than	<input type="text"/>	%	<input type="text"/> %
from	<input type="text"/> % to <input type="text"/>	%	<input type="text"/> %
from	<input type="text"/> % to <input type="text"/>	%	<input type="text"/> %
greater than	<input type="text"/>	%	<input type="text"/> %

The *Contractor's share* is assessed on (dates)


If Option C or E is used

The *exchange rates* are those published in   
on  (date)

### 6 Compensation events

If Option A is used

The *value engineering percentage* is 50%, unless another percentage is stated here, in which case it is  %

## OFFICIAL

If there are additional compensation events

These are additional compensation events

--

### 8 Liabilities and insurance

If there are additional *Client's* liabilities

These are additional *Client's* liabilities

(1)	
(2)	
(3)	

The minimum amount of cover for insurance against loss of or damage to property (except Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor* Providing the Service for any one event is

--

The minimum amount of cover for insurance against death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with the contract for any one event is

--

If the *Client* is to provide Plant and Materials

The insurance against loss of or damage to Plant and Materials and Equipment is to include cover for Plant and Materials provided by the *Client* for an amount of

--

If the *Client* is to provide any of the insurances stated in the Insurance Table

The *Client* provides these insurances from the Insurance Table

(1) Insurance against	
Minimum amount of cover is	
The deductibles are	
(2) Insurance against	
Minimum amount of cover is	
The deductibles are	
(3) Insurance against	
Minimum amount of cover is	
The deductibles are	

If additional insurances are to be provided

The *Client* provides these additional insurances

(1) Insurance against	
Minimum amount of cover is	

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The deductibles are

## OFFICIAL

(2) Insurance against	
Minimum amount of cover is	
The deductibles are	
(3) Insurance against	
Minimum amount of cover is	
The deductibles are	
The <i>Contractor</i> provides these additional insurances	
(1) Insurance against	
Minimum amount of cover is	
The deductibles are	
(2) Insurance against	
Minimum amount of cover is	
The deductibles are	
(3) Insurance against	
Minimum amount of cover is	
The deductibles are	

## Resolving and avoiding disputes

	The <i>tribunal</i> is	Arbitration
If the <i>tribunal</i> is arbitration	The <i>arbitration procedure</i> is	London Court of International Arbitration Rules
	The place where arbitration is to be held is	London

The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the *arbitration procedure* does not state who selects an arbitrator is

The President of the Chartered Institute of Arbitrators

The *Senior Representatives* of the *Client* are

Name (1)

Address for communications

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Address for electronic communications

## OFFICIAL

Name (2)

Address for communications

Address for electronic communications

The *Adjudicator* is

Name

The person agreed by the Parties from the list of Adjudicators published by the Chartered Institute of Arbitrators or nominated by the Adjudicators nominating body in the absence of agreement.

Address for communications

Technology and Construction Solicitors Association  
1 Glass Wharf  
Bristol  
BS2 0ZX

Address for electronic communications

The *Adjudicator nominating body* is

Chartered Institute of Arbiters

### X1: Price adjustment for inflation (used only with Options A and C)

If Option X1 is used

The proportions used to calculate the Price Adjustment Factor are

0.	<input type="text"/>	linked to the index for	<input type="text"/>
0.	<input type="text"/>		<input type="text"/>
0.	<input type="text"/>		<input type="text"/>
0.	<input type="text"/>		<input type="text"/>
0.	<input type="text"/>		<input type="text"/>
0.	<input type="text"/>		<input type="text"/>
0.	<input type="text"/>	non-adjustable	<input type="text"/>
1.00	<input type="text"/>		

The *base date* for indices is

The *inflation adjustment dates* are

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These indices are




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### X3: Multiple currencies (used only with Option A)

If Option X3 is used

The *Client* will pay for the items or activities listed below in the currencies stated

items and activities	other currency	total maximum payment in the currency
<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>
<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>
<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>

The *exchange rates* are those published in

on  (date)

### X8: Undertakings to the *Client* or Others

If Option X8 is used

The *undertakings to Others* are

provided to

  


The *Subcontractor undertakings to Others* are

works

provided to

<input style="width: 100%; height: 20px;" type="text"/>	<input style="width: 100%; height: 20px;" type="text"/>
<input style="width: 100%; height: 20px;" type="text"/>	<input style="width: 100%; height: 20px;" type="text"/>

The *Subcontractor undertakings to the Client* are

works

  


### X10: Information modelling

If Option X10 is used

If no *information execution plan* is identified in part two of the Contract Data

The period after the Contract Date within which the *Contractor* is to submit a first Information Execution Plan for acceptance is

The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use the skill and care normally used by professionals providing information similar to the Project Information is, in respect of each claim

The period following the end of the Service Period or earlier termination for which the *Contractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is

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NEC4 TSC Schedule of Amendments

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### X12: Multiparty collaboration (not used

with Option X20)

If Option X12 is used

The *Promoter* is

The Schedule of Partners is in

The *Promoter's objective* is

The Partnering Information is in

### X13: Performance bond

If Option X13 is used

The amount of the performance bond is

### X17: Low service damages

If Option X17 is used

The *service level table* is

## OFFICIAL

### X18: Limitation of liability

If Option X18 is used

The *Contractor's* liability to the *Client* for indirect or consequential loss is limited to

Refer to Clause 81

For any one event, the *Contractor's* liability to the *Client* for loss of or damage to the *Client's* property is limited to

Refer to Clause 81

The *Contractor's* liability for Defects due to its design of an item of Equipment is limited to

Refer to Clause 81

The *Contractor's* total liability to the *Client* for all matters arising under or in connection with the contract, other than excluded matters, is limited to

Refer to Clause 81

The *end of liability date* is  years after the end of the Service Period

### X19: Termination by either Party (not used with Option X11)

If Option X19 is used

The *minimum period of service* is  years after the *starting date*

The *notice period* is

### X20: Key Performance Indicators (not used with Option X12)

If Option X20 is used

The *incentive schedule* for Key Performance Indicators is in

Refer to Booklet 2, Annex D

A report of performance against each Key Performance Indicator is provided at intervals of

months

### X23: Extending the Service Period

If Option X23 is used

The *maximum service period* is  years after the *starting date*

The *periods for extension* are

Order	<i>period for extension</i> (months)	<i>notice date</i>
First	<input type="text"/>	<input type="text"/>
Second	<input type="text"/>	<input type="text"/>
Third	<input type="text"/>	<input type="text"/>
Fourth	<input type="text"/>	<input type="text"/>

If there are *criteria for extension*

The *criteria for extension* are

- (1)
- (2)

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NEC4 TSC Schedule of Amendments

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(3)

--

## OFFICIAL

### X24: The *accounting periods*

If Option X24 is used and  
Option C is not used

The *accounting periods* are


If Option X 24 is used with  
Option C

The *accounting periods* are the dates stated in the Contract Data of assessment of the  
*Contractor's* share

### X29: Climate change

If Option X29 is used

The *performance table* is in

--

If no *climate change plan* is  
identified in part two of the  
Contract Data

The period after the Contract Date  
within which the *Contractor* is to submit  
a first climate change plan for  
acceptance is

--

### Y(UK)1: Project Bank Account

If Option Y(UK)1 is used

The *Contractor* is/is not to pay any charges made and to be paid any interest paid by  
the *project bank* (Delete as applicable)

The *account holder* is the Contractor/the Parties (Delete as applicable)

### Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996

If Y(UK)2 is used and the  
date on which the final  
payment becomes due is  
not fifteen weeks after the  
end of the Service Period

The period is 



 weeks

If Y(UK)2 is used and the  
final date for payment is not  
seven days after the date on  
which payment becomes due

The period for payment is 



 days after the date on which payment  
becomes due

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Y(UK)3: The Contracts (Rights of Third Parties) Act 1999

If Option Y(UK)3 is used	term	<i>beneficiary</i>
	<div></div>	<div></div>
	<div></div>	<div></div>
	<div></div>	<div></div>
	<div></div>	<div></div>
If Y(UK)3 is used with Y(UK)1 the following entry is added to the table for Y(UK)3	term	<i>beneficiary</i>
	The provisions of Options Y(UK)1	Named Suppliers

Z: Additional conditions of contract

If Option Z is used	The <i>additional conditions of contract</i> are
	<div></div>

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### PART TWO – DATA PROVIDED BY THE

### CONTRACTOR

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

#### 1 General

The *Contractor* is

Name

Address for communications

Address for electronic communications

The *fee percentage* is

 %

The *service areas* are

The *key persons* are

Name (1)

Job

Responsibilities

Qualifications

Experience

Name (2)

Job

Responsibilities

Qualifications

Experience

The following matters will be included in the Early Warning Register



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### 2 The *Contractor's* main responsibilities

If the *Contractor* is to provide Scope for its plan

The Scope provided by the *Contractor* for its plan is in

### 3 Time

If a plan is to be identified in the Contract Data

The plan identified in the Contract Data is

### 5 Payment

If Option A, C or E is used

The *price list* is

If Option A or C is used

The tendered total of the Prices is

### Resolving and avoiding disputes

The *Senior Representatives* of the *Contractor* are

Name (1)

Address for communications

Address for electronic communications

Name (2)

Address for communications

Address for electronic communications

### X10: Information modelling

If Option X10 is used

If an *information execution plan* is to be identified in the Contract Data

The *information execution plan* identified in the Contract Data is

### X29: Climate change

If Option X29 is used

## OFFICIAL

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If a *climate change plan* is to be identified in the Contract Data

The *climate change* plan identified in the Contract Data is

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## Y(UK)1: Project Bank Account

If Option Y(UK)1 is used	The <i>project bank</i> is	<input type="text"/>
	<i>named suppliers</i> are	<input type="text"/>

## Data for the Schedule of Cost Components (used only with Options C or E)

The people listed in Contract Data who are employed by the *Contractor*, whose normal place of working is not within the Service Areas and who are working outside of the Service Areas other than on manufacture and fabrication and providing a *shared service* are

category of person	work
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

The listed items of Equipment purchased for work on the contract, with an on cost charge, are

Equipment	time-related on cost charge	per time period
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

The rates for special Equipment are

Equipment	rate
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

The rates for Defined Cost of manufacture and fabrication outside the Service Areas by the *Contractor* are

category of person	rate
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

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The rates for people providing shared services outside the Service Areas are

<i>shared service</i>	category of person	rate
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

Data for the Short Schedule of Cost Components (used only with Option A)

The *people rates* are

category of person	unit	rate
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

The published list of Equipment is the edition current at the Contract Date of the list published by

The percentage for adjustment for Equipment in the published list is  % (state plus or minus)

The rates for other Equipment are

Equipment	rate
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

The rates for Defined Cost of manufacture and fabrication outside the Service Areas by the *Contractor* are

category of person	rate
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

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The rates for people providing *shared services* outside the Service Areas are

<i>shared service</i>	category of person	rate

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