



**MOD**

Contract Number:

**701434377**

Description:

# **ARMCEN SUPPORT CONTRACT (ASC)**

**TERMS AND CONDITIONS**

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**THIS CONTRACT** is dated

2021

**BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR DEFENCE** represented by ARMY Commercial Land Warfare Centre, Imber Road, Warminster BA12 0DJ (the “**Authority**”); and
- (2) [●] a company incorporated and registered in England and Wales with company registration number [●] whose registered address is [●] (the “**Service Provider**”).

**BACKGROUND:**

- (A) On [INSERT DATE] ARMY Commercial, on behalf of the Authority, advertised on the Defence Sourcing Portal (“**DSP**”) inviting prospective suppliers to submit proposals for training delivery and ancillary support services in accordance with the published Statement of Requirements (SOR) for the provision of such services to the ARMOUR Centre (ARMCEN).
- (B) On [INSERT DATE], ARMY Commercial issued an Invitation to Negotiate (ITN) on the DSP seeking tenders from providers of such services.
- (C) In response to the ITN, the Service Provider submitted a tender to the Authority on [INSERT DATE] through which it represented to the Authority that it is capable of delivering the Services in accordance with the Authority's requirements as set out in the ITN and, in particular, the Service Provider made representations to the Authority in its tender response in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.
- (D) On the basis of the Service Provider's tender response, the Authority selected the Service Provider as its preferred service provider to provide the Services.
- (E) Following negotiations, the Authority now wishes to engage the Service Provider and the Service Provider wishes to deliver and perform the Services in accordance with, and subject to, the terms and conditions set out in this Contract.

**1 DEFINITIONS AND INTERPRETATION**

1.1 The following DEFCONs shall be incorporated into this Contract:

- (a) DEFCON 501 (Edn. 07/21) - Definitions and Interpretations.

1.2 In this Contract, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions and Acronyms*).

**2 INCLUSION OF DEFCONs**

2.1 Where expressly stated throughout, DEFCONs are incorporated into the terms and conditions of this Contract.

- 2.2 Any updates to the DEFCONs listed in this Contract shall be deemed to be incorporated into this Contract on the date of such update and the Service Provider shall comply with the updated DEFCONs from such date.

### **3 PRECEDENCE**

- 3.1 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

- (a) the Clauses and Schedule 1 (*Definitions and Acronyms*);
- (b) Schedule 2 (*Statement of Requirement*);
- (c) all other Schedules and their Annexes (other than Schedule 7 (*Service Provider's Proposal*)); and
- (d) Schedule 7 (*Service Provider's Proposal*) and its Annexes (if any).

- 3.2 Each Party shall notify the other in writing immediately becoming aware of any discrepancy, inconsistency or divergence between the documents referred to in Clause 3.1. The Authority shall resolve any such discrepancy, inconsistency or divergence at its absolute discretion and inform the Service Provider of its decision.

### **4 COMMENCEMENT AND DURATION**

- 4.1 This Contract shall:

- (a) come into force on the Contract Award Date, save for Clauses 1 (*Definitions and Interpretation*), 2 (*Inclusion of DEFCONs*), 3 (*Precedence*), 4 (*Commencement and Duration*), 6 (*Warranties*), 24 (*Security*), 25 (*Confidentiality and Freedom of Information*), 26 (*Publicity*), 27 (*Liability*), 28 (*Insurance*), 37 (*Disputes*), 38 (*Conduct of Claims*), 39 (*Bribery*), 40 (*Compliance*), 41 (*Notices*), 43 (*Relationship of the Parties*), 44 (*Entire Agreement*), 45 (*Third Party Rights*), 46 (*Severance*), 47 (*Waiver*), 48 (*Counterparts*) and 49 (*Governing Law and Jurisdiction*), which shall be binding and enforceable as between the Parties from the date of signature; and
- (b) subject to Clause 4.2 (*Commencement and Duration*), unless terminated at an earlier date by operation of Applicable Law or in accordance with Clause 34 (*Termination Rights*), terminate on the Expiry Date.

- 4.2 The Authority may elect in exceptional circumstances (such circumstances to be determined at the Authority's absolute discretion) to extend the Contract Term by up to twelve (12) months giving the Service Provider at least three (3) months' notice prior to the end of the Contract Term. The Parties agree to work together in good faith to agree the terms of such extension.

## **Condition Precedent**

- 4.3 Save for Clauses 1 (*Definitions and Interpretation*), 2 (*Inclusion of DEFCONs*), 3 (*Precedence*), 4 (*Commencement and Duration*), 6 (*Warranties*), 24 (*Security*), 25 (*Confidentiality and Freedom of Information*), 26 (*Publicity*), 27 (*Liability*), 28 (*Insurance*), 37 (*Disputes*), 38 (*Conduct of Claims*), 39 (*Bribery*), 40 (*Compliance*), 41 (*Notices*), 43 (*Relationship of the Parties*), 44 (*Entire Agreement*), 45 (*Third Party Rights*), 46 (*Severance*), 47 (*Waiver*), 48 (*Counterparts*) and 49 (*Governing Law and Jurisdiction*), this Contract is conditional upon the valid execution and delivery to the Authority of an Admission Agreement in the form set out in Annex A to Schedule 24 (*TUPE and Pensions*) (the "**Condition Precedent**").
- 4.4 The Authority may in its sole discretion at any time agree to waive compliance with the Condition Precedent by giving the Service Provider notice in writing.
- 4.5 The Service Provider shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible. In the event that the Condition Precedent is not satisfied within twenty (20) Business Days after the date of this Contract then, unless the Condition Precedent is waived by the Authority in accordance with Clause 4.4 (*Condition Precedent*):
- (a) this Contract shall automatically cease and shall not come into effect; and
  - (b) neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.
- 4.6 The Service Provider shall consult with the Authority in relation to the steps it takes to satisfy the condition set out in Clause 4.3 (*Condition Precedent*) and shall keep the Authority fully informed of its progress in satisfying the condition and of any circumstances which are likely to result in the condition not being satisfied by the date set out in Clause 4.5 (*Condition Precedent*).

## **5 DUE DILIGENCE**

- 5.1 The Service Provider acknowledges that:
- (a) the Authority has delivered or made available to the Service Provider all of the information and documents that the Service Provider considers necessary or relevant for the performance of its obligations under this Contract;
  - (b) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;

- (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Contract Award Date) of all relevant details relating to:
  - (i) the Statement of Requirements;
  - (ii) the suitability of the Site;
  - (iii) information relating to local conditions and facilities and the quality of existing structures;
  - (iv) information on the GFA, GFI, GFF, Issued Property and the Site;
  - (v) the operating processes and procedures and the working methods of the Authority;
  - (vi) the ownership, functionality, capacity, condition and suitability for use in the Services of the GFA and Issued Property;
  - (vii) the existing contracts referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Service Provider under this Contract and/or which the Service Provider will require the benefit of for the provision of the Services; and
- (d) it has advised the Authority in writing of:
  - (i) each aspect, if any, of the Site that is not suitable for the provision of the Services; and
  - (ii) the actions needed to remedy each such unsuitable aspect,

and such actions are fully reflected in this Contract.

5.2 The Service Provider shall not be excused from the performance of any of its obligations under this Contract on the grounds of, nor shall the Service Provider be entitled to recover any additional costs or charges, arising as a result of:

- (a) any information, whether obtained from the Authority or otherwise (including information made available by the Authority), being incorrect or insufficient;
- (b) any unsuitable aspects of the Site;
- (c) any misinterpretation of the Statement of Requirements; and/or
- (d) any failure by the Service Provider to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

5.3 The Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Due Diligence Information.

- 5.4 The Authority, and its agents or employees, shall not be liable to the Service Provider in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:
- (a) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Due Diligence Information;
  - (b) any failure to make available to the Service Provider any materials, documents, drawings, plans or other information relating to the Services; or
  - (c) on account of or in connection with the Site.
- 5.5 No claim by the Service Provider for additional payment will be allowed on the grounds of any misunderstanding or misinterpretation of the Statement of Requirements or any instruction given. The Service Provider shall not be released from any risks or obligations imposed on or undertaken by it under the Contract on any such grounds or on the grounds that it did not or could not foresee any matter which might affect or have affected that execution of the Contract. The Service Provider shall be deemed to have satisfied itself as regards the nature and extent of the Services as specified in the Statement of Requirements, the means of communication with the Authority, the supply and conditions affecting labour and the suitability of GFA subject to all such matters being discoverable by the Service Provider.

## **6 WARRANTIES**

- 6.1 The Service Provider represents and warrants that:
- (a) it is validly incorporated, organised and subsisting in accordance with Applicable Law of its place of incorporation;
  - (b) it has full capacity and authority to enter into and to perform this Contract;
  - (c) this Contract is executed by its duly authorised representative;
  - (d) it has all Necessary Consents and regulatory approvals to enter into this Contract;
  - (e) it is not subject to any claim, litigation, arbitration, proceedings or any other obligation which shall or is likely to have a material adverse effect on the ability of the Service Provider to perform its obligations under the Contract;
  - (f) so far as it is aware, there is not, nor has there been, any infringement or alleged infringement of any third party's Intellectual Property Rights in connection with the Contract;
  - (g) its entering into, delivery and performance of the Contract has been validly authorised by all appropriate corporate and other action and that all its obligations under the Contract constitute legally valid, binding and enforceable obligations;
  - (h) all written statements and representations in any written submissions made by the Service Provider as part of the procurement process, including without limitation its



response to the selection questionnaire and ITN, its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Service Provider has otherwise disclosed to the Authority in writing prior to the date of this Contract; and

- (i) all personnel engaged by the Service Provider in providing the Services are vetted in accordance with Good Industry Practice, the Statement of Requirements and the security requirements under this Contract.

6.2 The representations and warranties set out in Clause 6.1 (*Warranties*) shall be deemed to be repeated by the Service Provider on the Contract Award Date (if later than the date of signature of this Contract) and Vesting Day by reference to the facts then existing.

6.3 Each of the representations and warranties set out in Clause 6.1 (*Warranties*) shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.

6.4 If at any time the Service Provider becomes aware that a representation or warranty given by it under Clause 6.1 (*Warranties*) has been breached, is untrue or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.

6.5 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Service Provider.

6.6 The Service Provider shall immediately notify the Authority in writing if any investigations are instituted into the affairs of the Service Provider, its directors or key managers under Applicable Law, of any police or Serious Fraud Office enquiries or any involvement in Government investigations, and enquiries into the affairs of others which might result in public criticism or action against the Service Provider.

## 7 STANDARD OF SERVICES

7.1 The following DEFCONs shall be incorporated into this Contract:

- (a) DEFCON 601 (Edn. 04/14) - Redundant Materiel;
- (b) DEFCON 602A (Edn. 12/17) – Quality Assurance (With Deliverable Quality Plan);
- (c) [DEFCON 608 (Edn. 07/21) – Access And Facilities To Be Provided By The Service Provider;] and ***[DN: note to bidders that this DEFCON may be removed if it is not required.]***
- (d) DEFCON 627 (Edn. 12/10) – Quality Assurance – Requirement for a Certificate of Conformity.

- 7.2 The Service Provider shall provide the Services from the Vesting Day.
- 7.3 In performing its obligations under this Contract, the Service Provider shall:
- (a) provide the Services and carry out all other obligations under this Contract in accordance with the terms of this Contract, all relevant Applicable Law, Guidance and Good Industry Practice and in accordance with Schedule 2 (*Statement of Requirements*) and Schedule 4 (*Standards*);
  - (b) in consultation with the Authority and where appropriate develop such policies and procedures which are likely to improve the provision of the Services, and shall comply with such policies and procedures once they have been agreed with the Authority; and
  - (c) obtain and maintain all Necessary Consents and export licences.

### **Performance**

- 7.4 The Service Provider shall at all times allocate sufficient resources with the appropriate technical expertise to perform all of its obligations and the Services in accordance with this Contract and have the necessary facilities (other than those provided by the Authority under the terms of the Contract) and employees of appropriate qualifications and experience to undertake the said obligations with all due care, skill and diligence.
- 7.5 The Service Provider shall deliver the Services as specified in the Statement of Requirements to the complete satisfaction of the Authority.
- 7.6 Subject to Schedule 6 (*Performance Monitoring*), if the Authority considers that any Service provided by the Service Provider is not in accordance with the Contract, it may (without prejudice to any other remedy available) require the Service to be provided again in a satisfactory manner at no additional cost to the Authority.
- 7.7 In addition to the provision of Clause 19.1 (*Change*), the Service Provider will be expected to show flexibility in order to meet the demands of a continually changing work requirement and the Authority Representative may request that minor elements of the Services shall not be done and alternative services conducted in lieu, always provided that:
- (a) any instructions given under the provisions of this Clause shall be given in writing;
  - (b) the alternative services shall be within the capacity of the Service Provider's organisation (in accordance with Clause 7.4);
  - (c) any such requests shall not be a matter of contention or dispute between the Authority and the Service Provider; and
  - (d) any such requests shall be achieved within the Contract Price.

- 7.8 The Service Provider and the Authority agree to monitor performance under the Contract in accordance with Schedule 6 (*Performance Monitoring*).
- 7.9 It is recognised that certain technical information made available in support of maintenance and other requirements under the Contract may contain errors and omissions and is not, at any given point in time, fully up to date. The Authority shall not be liable as a result of such errors or omissions to the above mentioned technical information. Where in the course of any work under this Contract, the Service Provider identifies any errors, omissions or other potential shortcomings in the technical information furnished by the Authority, it shall undertake such workarounds, corrective action and liaison with the Authority as is necessary to the complete the requirement as stated in the Statement of Requirements.
- 7.10 The Service Provider shall:
- (a) minimise any disruption to the Services and/or the Authority's operations when carrying out its obligations under this Contract;
  - (b) ensure that any documentation provided by the Service Provider to the Authority is comprehensive, accurate and prepared in accordance with Good Industry Practice;
  - (c) to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Service Provider;
  - (d) unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Service Provider any such warranties and/or indemnities as are referred to in Clause 7.10(c);
  - (e) co-operate with any other contractors on the Site and minimise any disruption to their operations;
  - (f) provide the Authority with such assistance as the Authority may reasonably require during the Contract Term in respect of the supply of the Services;
  - (g) gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Service Provider's compliance with its obligations under this Contract;
  - (h) notify the Authority in writing within ten (10) Business Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract;
  - (i) ensure that neither it, nor any of its Affiliates, brings the Authority into disrepute by engaging in any act or omission in relation to this Contract which is reasonably likely to diminish the trust that the public places in the Authority; and

- (j) comply with the provisions of Schedule 20 (*Service Continuity and Corporate Resolution Planning*).

7.11 An obligation on the Service Provider to do, or to refrain from doing, any act or thing shall include an obligation upon the Service Provider to procure that all Sub-Contractors and Service Provider Personnel also do, or refrain from doing, such act or thing.

#### **Continuing obligation to provide the Services**

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

- (a) the existence of an unresolved dispute; and/or
- (b) any failure by the Authority to pay the Contract Price.

#### **Legal and Statutory Responsibilities**

7.13 Whilst attention is drawn herein and in the Statement of Requirements to specific legislation, it shall be the sole responsibility of the Service Provider to ensure that it complies with all Applicable Law.

#### **Quality Assurance**

7.14 The Service Provider shall implement its quality management system on or before the Vesting Day.

7.15 The Service Provider shall achieve ISO 9001:2015 and Environmental ISO 14001:2015 certification by an accreditation body recognised by the Authority for its quality management system prior to the first anniversary of Vesting Day and provide evidence to the Authority of such certification.

### **8 TRANSITION PERIOD**

8.1 From the Contract Award Date, the Service Provider shall commence the Transition Period during which the Service Provider shall fully set up its operations in accordance with the Transition Plan and to the satisfaction of the Authority so as to commence performance of the Services in accordance with the Statement of Requirements on the Vesting Day.

8.2 In the event that the Authority is not satisfied that the Service Provider is able to commence performance of the Services in accordance with the Statement of Requirements by the Vesting Day, the Authority shall have the right at its absolute discretion, without prejudice to any other remedy available and taking into account any representations made by the Service Provider, to exercise and subsequently to re-exercise any or all of the following rights:

- (a) to postpone the Vesting Day to such other day as the Authority and the Service Provider may agree or the Authority may otherwise determine; or

- (b) to authorise the Vesting Day in respect of those elements of the Statement of Requirements which the Authority is satisfied that the Service Provider is ready to assume full responsibility, and to postpone the Vesting Day in respect of those elements of the Statement of Requirements which the Authority is not satisfied that the Service Provider is ready to assume full responsibility to such other day as the Authority and the Service Provider may agree or the Authority may otherwise determine.

8.3 Where the Authority exercises or re-exercises its rights under Clause 8.2 (*Transition Period*) then the exercising or re-exercising of such rights shall be without prejudice to any other right or remedy available to the Authority under this Contract and shall be subject to the Service Provider putting right to the satisfaction of the Authority and within the timescale agreed or otherwise laid down by the Authority the deficiencies of which the Authority has given due notice.

8.4 Where in exercising or re-exercising any of its rights under Clause 8.2 (*Transition Period*) the Authority incurs additional costs then, without prejudice to any other remedy available, the Authority shall have the right to recover from the Service Provider such additional costs. For the purposes of this Clause, where the Authority is obliged to retain or reintroduce its own personnel for the rendering of any of the elements of the Statement of Requirements for which the Service Provider has failed to assume responsibility then the costs for their provision by the Authority will be established at full repayment cost.

8.5 The Parties shall comply with the provisions of Schedule 12 (*Transition Plan*) in relation to the agreement and maintenance of the Transition Plan.

## **9 PERFORMANCE INDICATORS**

9.1 The Parties shall comply with their obligations as set out in Schedule 6 (*Performance Monitoring*) from the Vesting Day and throughout the Contract Term.

## **10 SERVICE IMPROVEMENT**

10.1 The Service Provider shall have an ongoing obligation throughout the Contract Term to identify new or potential improvements to the Services in accordance with this Clause 10 (*Service Improvement*). As part of this obligation the Service Provider shall identify and report to the Monthly Contract Performance Review any such improvements including but not limited to:

- (a) the emergence of new and evolving relevant technologies which could improve the Services, and those technological advances potentially available to the Service Provider and the Authority which the Parties may wish to adopt;
- (b) new or potential improvements to the Services including the quality, responsiveness, procedures and likely performance mechanisms in relation to the Services;

- (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties, or the Authority, which might result in efficiency or productivity gains or in reduction of operational risk;
  - (d) changes in business processes and ways of working that would enable the Services to be delivered with greater benefits to the Authority; and/or
  - (e) changes to the business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.
- 10.2 The Service Provider shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Service Provider shall provide any further information that the Authority requests.
- 10.3 If the Authority wishes to incorporate any improvement identified by the Service Provider the Authority shall send the Service Provider an Authority Notice of Change in accordance with the Change Control Procedure.

## **11 AD-HOC TASKS**

- 11.1 The Authority may require the Service Provider to provide Ad-Hoc Tasks at any time by giving written notice to the Service Provider in the form of a completed Ad-Hoc Tasking Form.
- 11.2 Ad-Hoc Tasks shall be provided by the Service Provider in accordance with the terms and conditions of this Contract.
- 11.3 The Service Provider acknowledges that the Authority is not obliged to request any Ad-Hoc Tasks that are not provided for in the SOR from the Service Provider and that nothing shall prevent the Authority from receiving services that are the same as or similar to the Ad-Hoc Tasks from any third party.
- 11.4 The Service Provider shall respond to the Authority's request within ten (10) Business Days (or such shorter time as the Authority requests) in accordance with the rate card in Schedule 5 (*Pricing*).
- 11.5 Where the Service Provider provides a quotation, the Authority shall either accept or reject the quotation, giving reasons for such rejection, within ten (10) Business Days of receipt of such quotation.
- 11.6 Where the Authority rejects the quotation under Clause 11.5 (*Ad-Hoc Tasks*), the Service Provider shall provide an amended quotation within three (3) Business Days (or such shorter time as the Authority requests) of such rejection and the Authority shall either accept or reject the amended quotation.

- 11.7 If the Authority accepts the Service Provider's quotation under Clause 11.5 (*Ad-Hoc Tasks*) or 11.6 (*Ad-Hoc Tasks*), the Service Provider shall commence the Ad-Hoc Tasks in accordance with the timescales agreed between the Parties ("**Approved Ad-Hoc Tasks**"). If the Service Provider commences the Ad-Hoc Tasks prior to the Authority accepting the quotation, the Service Provider shall have no recourse against the Authority in respect of any costs and/or liabilities incurred.
- 11.8 Where the Service Provider does not perform the Approved Ad-Hoc Tasks to the Authority's required standard, the Service Provider shall:
- (a) where possible, redeliver the Approved Ad-Hoc Tasks at the Service Provider's cost; or
  - (b) where it is not possible to redeliver the Approved Ad-Hoc Tasks, the Authority may pay a reduced fee for the Approved Ad-Hoc Tasks which it believes (acting in good faith) is reasonable for the Approved Ad-Hoc Tasks provided. Any dispute over the reduce fee shall be determined in accordance with the Dispute Resolution Procedure.
- 11.9 Once the Approved Ad-Hoc Tasks have been completed to the satisfaction of the Authority Representative, the Service Provider shall provide an invoice for the Approved Ad-Hoc Tasks, which shall be payable in accordance with Clause 16 (*Payment*).
- 11.10 Where the Authority requires an Ad-Hoc Tasks to be provided frequently over the Contract Term, the Parties shall agree to amend the Statement of Requirements to include such Ad-Hoc Tasks through the Change Control Procedure.

## **12 USE OF SITE**

### **Environmental Protection Act 1990**

- 12.1 All Service Provider activities are to be performed so as not to breach the Environmental Protection Act 1990. In particular Section 34 of the Environmental Protection Act 1990 places a "Duty of Care" on "Waste Producers", "Waste Transporters" and "Waste Disposers". The Service Provider shall comply with Section 34 of the Environmental Protection Act 1990. In exercising "Duty of Care", the Service Provider shall ensure that waste is transferred only to an "authorised person" within the meaning of the Act Environmental Protection Act 1990.
- 12.2 The Service Provider shall provide evidence within five (5) Business Days that it is complying with the Environmental Protection Act 1990 when requested by the Authority.
- 12.3 The Service Provider must comply with and assist the Authority with the implementation of the Armour Centre Environmental Management System (EMS) and, when required, the Spill Response Plan (SRP).

### **Health And Safety At Work**

- 12.4 The Service Provider shall comply with:

- (a) all applicable health and safety legislation including but not limited to the Health and Safety at Work Act 1974 and Management of Health and Safety at Work Regulations (MHSWR) 1999 and associated Approved Code Of Practice (ACOP); and
  - (b) the Authority HS&EP Policy and all other health and safety requirements put in place by the Authority.
- 12.5 The Service Provider shall ensure that whenever its health and safety plan or health and safety policy statement is updated it is supplied to the Authority identifying the changes made.

### **Risk Assessment**

- 12.6 The Service Provider shall conduct a formal risk assessment ensuring that it is suitable and sufficient as per Regulation 3 Management of Health and Safety at Work Regulations 1999 on all endeavours, tasks or activities undertaken in connection with this Contract. The Service Provider shall take whatever measures are necessary to comply with the requirements and prohibitions imposed upon it by or under the relevant statutory provisions.
- 12.7 Where the Authority has sold, loaned or specified either hardware or documentation, the Service Provider shall ensure the health, safety and welfare of its employees by conducting its own risk assessment. This requirement is not waived, even if documentation, equipment, facilities, hardware or even risk assessments have been supplied by the Authority. In all cases, the Service Provider shall ensure the health, safety and welfare of its employees and those that may be affected by its activities.
- 12.8 The Service Provider shall record any significant findings in accordance with paragraph 25 of Regulation 3 Management of Health and Safety at Work Regulations 1999. Under the terms of this Contract these must be available to the Authority on request and a copy must be provided to any persons who may be affected by these significant risks or hazards.

### **Co-operation and Co-ordination**

- 12.9 The Service Provider shall appoint a qualified Health and Safety Co-ordinator in order to ensure the most efficient exchange of information.
- 12.10 Prior to the Vesting Day the Service Provider shall propose and have accepted by the Authority its arrangements for Co-ordination and Co-operation as per Regulation 11 of Management of Health and Safety at Work Regulations 1999. These proposals are fundamental to ensuring the safe management of the Contract.
- 12.11 The Authority shall be the lead focal point for Co-operation and Co-ordination to which the Service Provider's Health and Safety Co-ordinator will interface. The Service Provider's Health and Safety Co-ordinator shall be responsible for the Co-operation and Co-ordination of all of the Service Provider's employees.
- 12.12 The Service Provider shall integrate into the Authority's HS&EP organisation as required by the Authority and shall participate fully in such meetings, discussions and committees as the Authority may from time to time direct. The Service Provider shall be responsible for drawing



to the attention of the Authority any procedures, practices or processes which it may introduce and which may have a direct bearing on health and safety.

#### **Crown Exemption and External H&S Advice**

- 12.13 The Authority may in the interests of national security, by certificate in writing, exempt the Armed Forces, any visiting force or any Headquarters from certain obligations imposed by applicable legislation. The Service Provider must never assume exemption may be applied in the interests of national security.
- 12.14 The Service Provider shall consult the Authority in the appointment of any external H&S adviser and the Authority has the right to refuse the proposed appointment at its absolute discretion.

#### **Areas of Responsibility**

- 12.15 The Service Provider shall be responsible for its employees in connection with this Contract at all times.
- 12.16 Where shared workplaces and systems are used to provide the Services, the Service Provider's Health and Safety Co-ordinator shall ensure the hazards and risks are recognised and that safe working practices are used at all times. The Authority and the Service Provider shall ensure that all risks are suitably mitigated and risk assessments are produced for all hazards or hazardous working practices to reduce the risk to the lowest level that is reasonably practicable.
- 12.17 The Service Provider shall be responsible for ensuring that adequate training and instruction has been given to its employees including in respect of utilising Authority owned or provided equipment, tooling, facilities, materials and/or documentation. Suitable training and instruction shall be identified in the risk assessment approach to any task.

#### **Risk Assessment - Transfer of Information**

- 12.18 The Service Provider is responsible for researching the information necessary to provide a risk assessment in accordance with Regulation 3 of MHSWR 1999 and that such information is seen and understood by all persons coming into contact with the hazard.

#### **Use of Pesticides**

- 12.19 All pesticides, pesticidal products and, where appropriate, pest control techniques used in the performance of the Contract, shall have been cleared for their intended use under the Control of Pesticides Regulations (COPR) 1986 and any pesticides used experimentally shall have been cleared for trials under COPR. All pesticides shall be clearly and correctly identifiable by labels.
- 12.20 The Service Provider shall comply with the procedures laid down by the COPR and ensure suitable and sufficient risk assessments are produced for their use and are seen by all persons coming into contact with any hazardous substance.
- 12.21 Although in general all pesticides used in accordance with the requirements of the COPR shall be acceptable, the Authority may prohibit or restrict the use of certain pesticides and will give

the Service Provider due notice of any prohibition or restriction. The Service Provider shall comply with any such notice.

- 12.22 The Service Provider shall give due notice and confirm in writing to its intention to use smoke formulations together with the time and place of use.

#### **Ammunition and Explosive Safety at Lulworth Camp**

- 12.23 The Service Provider shall comply with all current ammunition and explosives statutory requirements and strictly adhere to all signs relating to explosives safety at the Site.

#### **AFV and Vehicle Safety And Operation**

- 12.24 The Service Provider shall adhere strictly to all rules and regulations concerning vehicle and Armoured Fighting Vehicle (AFV) safety including but not limited to Armoured Vehicle Standing Orders (AVSOs) and Garrison Standing Orders, JSP 800 and any such rules and regulations listed in the SOR. Particular attention is to be taken regarding the movement of AFVs, speed limits within and outside of the Armour Centre, commanding AFVs, out of bounds areas, damage reports and the carriage of civilians in military vehicles. When vehicles are required to be used on the Training Area the Service Provider shall ensure that all bookings are directed through the Bovington Training Office.

#### **Radiological Safety**

- 12.25 Radioactive Sources

- (a) The Authority is approved under the Radioactive Substances Act 1993 to keep and use radioactive material and to dispose of radioactive waste. The Service Provider shall comply with the provisions of this Act at all times.

- 12.26 Other Similar Hazards

- (a) Ionising radiation may be present in the Site where luminous compounds, gaseous tritium devices and high voltage electron guns are used.

- 12.27 Inspections

- (a) Radiological inspections shall be carried out by representatives of the Authority outside the terms of this Contract and at no cost to the Service Provider. The Service Provider shall co-operate with and provide all necessary facilities for the representatives of the Authority carrying out any required remedial action.

#### **Economy**

- 12.28 The Service Provider shall ensure that its employees are made aware of the need for economy in the use of fuel, electricity, gas, water, telephone, postage, consumables and resources and to avoid waste as far as is practicable.

- 12.29 The Service Provider Representative shall be responsible for such economy among the Service Provider's employees. They will co-operate with the Authority on fuel and economy matters and ensure that relevant orders and instructions are obeyed. The Service Provider shall take all reasonable precautions to ensure economy consistent with not only efficiency in the use of these services but also in accordance with the measures operating within the Site including the setting of targets for consumption.

### **13 CONTROLLED ITEMS**

- 13.1 The Authority shall provide all reasonable assistance, including the execution and/or delivery of any and all documents and information required from the Authority by any relevant Trade Control Laws or any Issuing Authority, necessary to allow the Service Provider to obtain and maintain any and all Licences applicable to the Service Provider Controlled Items and/or, subject to the Authority's prior obligations pursuant to Clause 13.2 (*Controlled Items*), the Controlled Services.

- 13.2 Where the Authority is, pursuant to the terms of this Contract, to provide any Items to the Service Provider, the Authority shall use all reasonable endeavours to:

- (a) give the Service Provider prior written notice of any such Items which are Authority Controlled Items stating clearly:
  - (i) what the Authority Controlled Items are;
  - (ii) the identity of the supplier of the Authority Controlled Items;
  - (iii) the specific Trade Control Laws to which those Authority Controlled Items are subject; and
  - (iv) the identity of any applicable License under which the Authority Controlled Items will be Exported (including to employees and third parties);
- (b) ensure that all necessary Licences, including insofar as may be required to allow the Service Provider (including the Service Provider's affiliates, employees, officers, directors, agents and subcontractors) to provide the Services pursuant to this Contract, are in place in respect of the Authority Controlled Items prior to providing any such Authority Controlled Items to the Service Provider;
- (c) clearly mark such Authority Controlled Items and any physical packaging or, where the Authority Controlled Item is included within an email or other electronic media, the media including the Authority Controlled Item as such, identifying the specific Trade Control Laws to which the Authority Controlled Items are subject, prior to providing any such items to the Service Provider so that such Authority Controlled Items are clearly identifiable by the Service Provider; and
- (d) provide the Service Provider with no less than 48 hours prior written notice of any Authority Controlled Items to be transferred to the Service Provider confirming that Clauses 13.2(b) (*Controlled Items*) and 13.2(c) (*Controlled Items*) have been complied with in relation thereto.

- 13.3 Unless otherwise directed by the Authority, the Service Provider shall assume that there are no restrictions preventing the Service Provider from handling and using Authority Controlled Items as Government Furnished Assets for the purposes of the Service Provider performing the Contract.
- 13.4 Neither Party shall knowingly do or omit to do anything which would:
- (a) put the other Party in breach of any applicable Trade Control Laws; or
  - (b) cause any Licence maintained by the other in respect of any Controlled Item or Controlled Service necessary for the performance of their respective obligations under this Contract to be withdrawn by the relevant Issuing Authority or which would otherwise cause or result in a breach of the terms and conditions of a License by that Party or any other Party.
- 13.5 The obligations of the Service Provider under this Contract, insofar as they may relate to or are dependent upon any Controlled Items or Controlled Services, are conditional upon and subject to the issuance by the relevant Issuing Authority of any necessary Licences.
- 13.6 Any Items, whether Controlled Items or not, received by the Service Provider from or on behalf of the Authority shall be used solely for and in accordance with the Contract.

## **14 ASSETS**

- 14.1 The following DEFCONs shall be incorporated into this Contract:
- (a) DEFCON 611 (Edn. 02/16) - Issued Property; and
  - (b) DEFCON 694 (Edn. 07/21) - Accounting For Property of the Authority.

### **Provision of Government Furnished Assets (GFA)**

- 14.2 On the Vesting Day and for the Term, the Authority shall provide to the Service Provider the GFA listed in Schedule 13 (*Government Furnished Assets*) for use solely in connection with this Contract in accordance with DEFCON 611. All GFA shall remain the property of the Authority. The Authority does not warrant the condition of the GFA provided under this Contract.
- 14.3 For the duration of the Contract, the Authority shall endeavour to ensure the continued availability to the Service Provider of the GFA listed in Schedule 13 (*Government Furnished Assets*).
- 14.4 From the Vesting Day, the Service Provider shall be responsible for the GFA in accordance with Schedule 13 (*Government Furnished Assets*), the Statement of Requirements, DEFCON 611 and DEFCON 694. The Service Provider shall give due regard and special consideration to any environmental conditions and weather factors whilst maintaining the GFA during the Contract Term.

- 14.5 The Authority shall carry out all required maintenance of the GFA that it issues to the Service Provider under this Contract to ensure the GFA is "fit for use" and maintained to a sufficient workable condition for appropriate use in the provision of the Services.
- 14.6 The Service Provider shall be responsible for any shortfalls in GFA identified during the Contract Term as a result of an audit or at the end of the Contract Term. Any shortfalls which result from the Service Provider back-loading to the Authority during the Contract Term shall be accounted for by production of the applicable documentation, including but not limited to the Authority's receipt.
- 14.7 The updated Schedule 13 (*Government Furnished Assets*) and the Public Store Account will form the basis of a reconciliation to be carried out jointly by the Contractor and the Authority immediately prior to termination or expiry of the Contract, following a stock check by the Contractor, to identify all changes resulting from utilisation of the GFA at the Site. The results shall be agreed with the Authority.
- 14.8 The Contractor shall supply to the Authority a draft copy of its updated Schedule 13 (*Government Furnished Assets*) and the Public Store Account no later than ninety (90) days prior to the Termination Date or Expiry Date. Following validation by the Authority, a completed copy of the agreed Schedule 13 (*Government Furnished Assets*) and the Public Store Account shall be submitted within thirty (30) days.
- 14.9 For the duration of the Contract, the Service Provider shall act with due care and diligence in respect of all GFA and shall ensure that all GFA is used in the most efficient and appropriate manner, avoiding waste where reasonably practicable.
- 14.10 Notwithstanding Clause 6 of DEFCON 611 and Clause 14 (*Assets*), if the Service Provider fails to notify the Authority within the specified periods, the Authority shall have no liability in respect of the consequences of such GFA non-availability before the date of the Service Provider's notification to the Authority.
- 14.11 The Service Provider shall consult the Authority before pursuing any claim against a third party for loss of or damage to GFA and shall notify the Authority of the circumstances in which the loss or damage occurred and the estimated cost of repairs or replacements.
- 14.12 The Service Provider shall return all GFA to the Authority on the earlier of:
- (a) the Expiry Date; or
  - (b) the Termination Date.

#### **Provision of Government Furnished Facilities**

- 14.13 On the Vesting Day and for the Term, the Authority shall provide to the Service Provider, free of charge, the GFF listed in Schedule 13 (*Government Furnished Assets*).
- 14.14 The GFF provided in accordance with Clause 14.13 (*Provision of Government Furnished Facilities*) is provided solely for use in connection with this Contract.

- 14.15 The Service Provider shall have the access and/or use of the GFF as licensee only solely for the delivery of the Services.
- 14.16 The Service Provider shall vacate the GFF upon the earlier of:
- (a) the Expiry Date; or
  - (b) the Termination Date.
- 14.17 The Service Provider's occupation and use of the GFF is subject to the terms of this Contract.
- 14.18 The Service Provider shall not display any external advertisement, sign or notice of any description unless:
- (a) the Authority has provided prior written agreement; or
  - (b) the display of such advertisement, sign, or notice is required by law.
- 14.19 The Authority may make any alteration or addition to the GFF provided it has given ten (10) Business Days' notice to the Service Provider, save where such alteration or addition is required for health and safety reasons in which instance the Authority may make such alteration or addition without prior notice.
- 14.20 If any alteration or addition made under Clause 14.19 (*Provision of Government Furnished Facilities*) adversely affects the ability of the Service Provider to perform any of its obligations under the Contract, the Service Provider may apply for relief from the Authority's rights under Clause 31 (*Authority Cause*). The decision to accept alleviation under Clause 31 (*Authority Cause*) is at the sole discretion of the Authority.
- 14.21 The Authority is responsible for providing any additional fire protection or prevention equipment where:
- (a) it is required to do so by a change in statutory requirements; or
  - (b) an action of the Authority leads to a change in working practice that:
    - (i) increases the risk of fire; or
    - (ii) will cause new hazards in the event of an outbreak of fire.
- Any additional fire protection or prevention equipment provided under this Clause 14.21 shall become part of the fixtures and fittings and remain the property of the Authority.
- 14.22 The Service Provider is responsible for identifying any additional fire protection or prevention equipment where:
- (a) a change in the Service Provider's own working practice; or
  - (b) other action on the Service Provider's part,

increases the fire risk or causes new hazards in the event of an outbreak of fire.

- 14.23 The Service Provider, Service Provider Personnel, the Service Provider's agents and Sub-Contractors must ensure that appropriate fire precautions and security measures are taken in:
- (a) buildings provided for the use of the Service Provider; and
  - (b) buildings and facilities which have not been provided for the use of the Service Provider but where the Service Provider, Service Provider Personnel, the Service Provider's agents and Sub-Contractors occupy or utilise part of those buildings or facilities.
- 14.24 The Service Provider Personnel, the Service Provider's agents and Sub-Contractors must participate in any fire drills and practices or other evacuation procedures initiated by the Authority.
- 14.25 The Service Provider shall keep the GFF in a tidy condition and as a safe working environment at all times. The Service Provider shall keep drains, gullies and manholes free from obstruction at all times.
- 14.26 The Service Provider is responsible for monitoring the condition of the GFF and initiating requests for maintenance and repair without delay through its appointed building custodian.
- 14.27 Maintenance and repair of the GFF provided for the use of the Service Provider shall be performed by the Authority within reasonable timescales and shall be without charge to the Service Provider.
- 14.28 The Service Provider shall appoint a building custodian as its point of contact to report any issues with the GFF in accordance with the Statement of Requirements.

#### **Government Furnished Information**

- 14.29 On the Contract Award Date and for the duration of the Contract, the Authority shall provide to the Service Provider free of charge, the GFI set out in Schedule 13 (*Government Furnished Assets*).
- 14.30 The GFI provided in accordance with Clause 14.29 (*Government Furnished Information*) is provided solely for use in connection with this Contract.
- 14.31 The Service Provider shall return all GFI to the Authority on the earlier of:
- (a) the Expiry Date; or
  - (b) the Termination Date.

#### **Authority Sites**

14.32 During the Contract Term, the Authority shall afford the following rights to the Service Provider and the Service Provider Related Parties solely for the purpose of the provision of the Services:

- (a) a non-exclusive licence to enter and remain upon those parts of the Authority Sites that the Service Provider and/or any Sub-Contractor requires access to;
- (b) such non-exclusive rights of access to and egress from the Authority Sites as are necessary for the Service Provider and/or Service Provider Related Parties to perform their obligations and exercise their rights under the Contract or their relevant contracts and in particular for the purposes of providing the Services, provided that such routes may be varied by the Authority to such alternative routes as the Authority may reasonably specify from time to time if such variation does not have a material adverse effect on the provision of the Service Provider Deliverables; and
- (c) use of services and utilities including water, waste water, gas, electricity, telephone and other services serving the Authority Sites as set out in Schedule 13 (*Government Furnished Assets*), provided that:
  - (i) the rights shall not in any circumstances entitle the Service Provider or any Sub-Contractor to exclusive occupancy or exclusive possession of any part of the Authority Sites (save as may be required by the Service Provider and approved by the Authority (such approval not to be unreasonably withheld or delayed) in order to comply with relevant health and safety legislation) on a temporary basis; and
  - (ii) the Service Provider and the Service Provider Related Parties do not cause any material disruption to the operations or activities carried out by the Authority on or at the Authority Sites or any of the Authority's legal duties or other functions.

14.33 The Service Provider shall, and/or shall procure, that in providing the Services at the Authority Sites it and/or any Sub-Contractor shall:

- (a) not act or omit to act in any way which shall give rise to a right for any person to obtain title to or any right or interest over an Authority Site or any part of it (save in accordance with the terms of the Contract);
- (b) not use or occupy the Authority Sites for any purpose other than the provision of the Services;
- (c) not deposit or manufacture on the Authority Sites any materials which are not required for the provision of the Services;
- (d) not store materials or park vehicles in the immediate external vicinity of the boundaries of the Authority Sites other than for reasonable periods necessary for loading and unloading; and



- (e) not without the written consent of the Authority Representative (not to be unreasonably withheld or delayed) erect any temporary structure.

#### **Provision of Temporary Accommodation**

- 14.34 Should the Service Provider require additional accommodation over and above that which is made available to it by the Authority as listed in Schedule 13 (*Government Furnished Assets*), it shall seek the prior approval of the Authority for the provision of such accommodation, which approval shall be at the Authority's sole discretion.
- 14.35 In the event the Authority does not approve such temporary accommodation but has no objection to such additional accommodation being provided, the Service Provider shall undertake all the associated activities (including removal where required) at no additional cost to the Authority.
- 14.36 In all cases where the Service Provider provides temporary accommodation, it shall:
  - (a) obtain all necessary planning permissions, which permissions shall only be sought by the Service Provider following consultation with the Authority;
  - (b) carry out all required installation activities, including the positioning of the temporary accommodation in accordance with the Authority's instructions; and
  - (c) carry out, where required by the Authority, the subsequent removal of such temporary accommodation from the Site and make good any and all damage to any property of the Authority resulting from such removal.
- 14.37 In the event the Service Provider fails to remove such temporary accommodation within a reasonable timescale, the Authority reserves the right to remove and dispose of, or have removed and disposed, such accommodation as it sees fit.
- 14.38 In the event the Authority incurs costs as a result of such removal and disposal, it shall at its sole discretion charge those costs, to the extent they are reasonable, to the Service Provider.
- 14.39 The Authority shall not be liable to the Service Provider for any costs, losses or expenses incurred or suffered by the Service Provider as a result of such removal.

#### **Fuel and Utilities**

- 14.40 All bulk fuels to be dispensed or used by the Service Provider in the performance of the Contract will be furnished by the Authority at no cost to the Service Provider. No Authority fuel will be dispensed into Service Provider owned/leased vehicles or equipments unless it is to be used exclusively in support of this Contract. All fuels and petroleum products other than those supplied by the Authority are the responsibility of the Service Provider.
- 14.41 Utilities (electricity, gas, water and sewage) will be made available to the Service Provider by the Authority to fulfil Contract obligations at no charge. The Service Provider and its employees, agents and servants shall employ the utmost economy in the use of heating, lighting and other

environmental services. Additionally, the Service Provider shall participate fully and effectively in any Sustainable Development Action Plan.

#### **Use of the Authority's Vehicles by the Service Provider**

- 14.42 Whilst using the Authority's vehicles for the purposes of the Contract, the Service Provider shall comply with the requirements of the Authority as to the routes to be traversed and limitations on weights, speeds and classes of vehicles.
- 14.43 All vehicles, and in particular Armoured Vehicles, exiting from range areas can deposit large quantities of mud and other debris on the public roads. In such event, the Service Provider shall exercise all care to advise other road users of potential danger including correctly positioned hazard warning signs and traffic sentries and shall ensure that affected roads are cleaned as quickly, but safely, as possible.
- 14.44 Where vehicles owned by the Authority are provided for the use of the Service Provider for its sole use in connection with this Contract on Authority sites and establishments or public roads, the Service Provider shall ensure that it has adequate insurance provision including to cover for third party risks, death or bodily injury or damage to property.

#### **Service Provider Supplied Items and Property**

- 14.45 All assets, articles, and equipment purchased by the Service Provider, with the Authority's prior written approval, solely for the purposes of the Contract shall become the property of the Authority upon purchase and shall subsequently be recorded as appropriate in the Public Store Account and treated in accordance with Clause 14.2 (*Provision of Government Furnished Facilities*) and DEFCON 611. The Service Provider shall be wholly responsible for their maintenance (including repair by replacement where necessary) for the duration of the Contract.
- 14.46 Where the Service Provider brings to the Site any property which is demonstrably its own property (having been purchased either in advance of contract award or for purposes other than the Contract) then the Service Provider shall register that property with the Authority Representative and Clause 14.45 (*Service Provider Supplied Items and Property*) and Clause 14.2 (*Provision of Government Furnished Assets (GFA)*) shall not apply.
- 14.47 All Service Provider owned assets, articles or equipment shall at all reasonable times be subject to and available for inspection by the Authority. If at any time the Authority considers that such assets are unsuitable for use within the Site then their use shall be suspended and shall only be resumed when the Authority agrees and confirms that any fault, omission or any other defect leading to the suspension has been properly rectified. In exceptional cases, the Authority may direct that removal of the assets from the Site is necessary.
- 14.48 The acceptance by the Authority's personnel that any Service Provider owned assets, articles or equipment is suitable for use on the Site shall not remove or in any way limit, nor transfer to the Authority, any of the Service Provider's obligations be they statutory or otherwise under the Contract.

- 14.49 All property of the Service Provider registered under Clause 14.46 (*Service Provider Supplied Items and Property*) shall be at the risk of the Service Provider and the Authority shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby except where any loss or damage was caused or contributed to by the wilful default of the Authority or any Government servant including where any of the property has been taken on charge by the Authority and a proper receipt has been given therefore.
- 14.50 In the event that the Service Provider fails to register any of its property under Clause 14.46 (*Service Provider Supplied Items and Property*) then the Authority shall have no liability under Clause 14.49 (*Service Provider Supplied Items and Property*) irrespective of the actions of the Authority or its servants and the like. For the avoidance of doubt, the act of registration does not constitute the Authority taking such equipment on charge which shall only occur in circumstances where the Authority takes such equipment for its own use.

### **Army Supply System**

- 14.51 Except as stated at Clause 14.55, the Service Provider's shall use the Army Supply System for the provision of items including but not limited to materials, supplies, equipment and parts required in order to perform the Services required under the Contract.
- 14.52 Under no circumstances shall the Service Provider use the Army Supply System for any other items or uses whatsoever without the express permission, in writing, of the Authority. All items procured via the Army Supply System shall be supplied free of charge in accordance with Clause 14.2 (*Provision of Government Furnished Assets (GFA)*). All associated costs shall be excluded from the Contract Price. All items procured from the Army Supply System shall be accounted for in accordance with Clause 14.45 (*Service Provider Supplied Items and Property*).
- 14.53 When requesting items from the Authority, the Service Provider shall ensure that all orders are placed on the Army Supply System in accordance with approved and established procedures. The Authority will provide advice and assistance where appropriate.
- 14.54 The Authority does not warrant the timely supply or suitability of any items provided from the Army Supply System. Any failure by the Service Provider to meet the requirements of the Contract which can be evidenced to the satisfaction of the Authority to result directly from the use of spares or other material from the Army Supply System will result solely in a fair and reasonable extension of the delivery period of the item for which such spares or other material were required or in which such spares or other material were installed or otherwise used.
- 14.55 Any use of the Army Supply System associated with repairs to damaged GFA for which the Service Provider is liable shall be subject to the express permission, in writing, of the Authority. Appropriate charges for such use will be levied on the Service Provider.

### **Procedure for Disease and Accidents/Incidents Occurring on Government Furnished Assets**

- 14.56 Any injury, disease, dangerous occurrences or near misses involving the Service Provider's employees which require to be reported under the Injuries, Diseases and Dangerous Occurrences Regulations 1995 and any other accidents/incidents which ordinarily require to be reported to the Health and Safety Executive in accordance with the Health and Safety at Work

Act 1974 shall, in addition to any report which it is the responsibility of the Service Provider to make to the Health and Safety Executive, be reported immediately by telephone and subsequently in writing to the Authority SHEF Cell.

- 14.57 The Service Provider shall provide to the Authority all relevant information, documentation and facilities, including access to its employees for the purposes of immediate and detailed investigations. If requested by the Authority, the Service Provider shall undertake an investigation and submit a written report.

#### **First Aid Personnel and Equipment**

- 14.58 The Service Provider shall to provide its own first aid personnel and equipment in accordance with the Health and Safety (First Aid) Regulations 1981 and the SOR.

### **15 AUTHORITY MAIL SYSTEM**

The Service Provider shall have access to the Authority Mail System for mail pursuant to the Contract but shall be required to make alternative arrangements, at its own expense, for mail not in connection with the Contract (including for third party income generation activities).

### **16 PAYMENT**

- 16.1 The following DEFCONs shall be incorporated into this Contract:

- (a) DEFCON 5J (Edn. 18/11/16) – Unique Identifiers;
- (b) DEFCON 513 (Edn. 07/21) - Value Added Tax;
- (c) DEFCON 522 (Edn. 11/17) – Payment and Recovery of Sums Due; and
- (d) DEFCON 670 (Edn. 02/17) - Tax Compliance.

#### **Contract Price**

- 16.2 In consideration of the Service Provider carrying out its obligations under this Contract, including the provision of the Services, the Authority shall pay the Contract Price in accordance with this Clause. The Contract Price shall be a Firm Price calculated in accordance with Schedule 5 (*Pricing*).
- 16.3 The Authority shall pay to the Service Provider the Contract Price in equal monthly instalments in arrears, less any Service Level Deductions calculated in accordance with Schedule 6 (*Performance Monitoring*). The Contract Price shall be exclusive of any UK custom and excise or other duty payable. The Service Provider shall not make any claim for drawback of UK import duty on any part of the Service Provider Deliverables supplied which may be for shipment outside of the UK.

#### **Payment for Ad-Hoc Tasks**

- 16.4 Any payments for Approved Ad-Hoc Tasks shall be paid monthly in arrears.

- 16.5 Where an Approved Ad-Hoc Task have been completed to the satisfaction of the Authority Representative in accordance with Clause 11.9 (*Ad-Hoc Tasks*), the Service Provider shall submit an invoice for the agreed amount for such Approved Ad-Hoc Task in accordance with the process set out in DEFCON 522. Such invoice shall be submitted separately from any invoice for the Contract Price or any other payments due under this Contract.
- 16.6 The Authority shall pay to the Service Provider any payments for Approved Ad-Hoc Tasks in accordance with Clause 3 of DEFCON 522.

#### **Travel and subsistence expenses**

- 16.7 The Service Provider may request travel and subsistence expenses that are reasonably and properly incurred and are calculated in accordance with Schedule 5 (*Pricing*). If agreed by the Parties, any such expenses shall be paid on a reimbursable basis monthly in arrears.
- 16.8 The Service Provider shall provide such evidence as the Authority may require to support the claim for payment. Supporting evidence of receipts for all travel, accommodation and expenses are to be submitted with the claim for payment.
- 16.9 Where the Parties agree any travel and subsistence expenses requested pursuant to Clause 16.7 (*Travel and subsistence expenses*), the Service Provider shall submit an invoice for such expenses in accordance with the process set out in DEFCON 522. Such invoice shall be submitted separately from any invoice for the Contract Price or any other payments due under this Contract, save where such expenses are incurred in respect of Ad-Hoc Tasks in which instance it shall be included in the invoice submitted in accordance with Clause 16.5 (*Payments for Ad-Hoc Tasks*).
- 16.10 The Authority shall pay to the Service Provider any agreed expenses in accordance with Clause 3 of DEFCON 522.

#### **Overtime expenses**

- 16.11 The Service Provider may request payment for any overtime worked calculated in accordance with Schedule 5 (*Pricing*) and as agreed by the Parties. If agreed by the Parties, any such overtime payment shall be paid monthly in arrears.
- 16.12 The Service Provider shall provide such evidence as the Authority may require to support the claim for payment. Supporting evidence of overtime worked is to be submitted with the claim for payment.
- 16.13 Where the Parties agree any overtime payment requested pursuant to Clause 16.12 (*Overtime expenses*), the Service Provider shall submit an invoice for such payment in accordance with the process set out in DEFCON 522. Such invoice shall be submitted separately from any invoice for the Contract Price or any other payments due under this Contract, save where such overtime is incurred in respect of Ad-Hoc Tasks in which instance it shall be included in the invoice submitted in accordance with Clause 16.5 (*Payments for Ad-Hoc Tasks*).
- 16.14 The Authority shall pay to the Service Provider any agreed overtime payment in accordance with Clause 3 of DEFCON 522.

## **17 THIRD PARTY INCOME GENERATION**

- 17.1 If either Party wishes to propose any third party income generation, the Parties shall discuss and agree such third party income generation at the time it is raised under a separate contractual arrangement.

## **18 CONTRACT MANAGEMENT**

- 18.1 The following DEFCONs shall be incorporated into this Contract:

- (a) DEFCON 604 (Edn. 06/14) – Progress Reports;
- (b) DEFCON 605 (Edn. 06/14) - Financial Reports;
- (c) DEFCON 609 (Edn. 07/21) - Contractor's Records;
- (d) DEFCON 642 (Edn. 07/21) - Progress Meetings;
- (e) DEFCON 647 (Edn. 05/21) - Financial Management Information; and
- (f) DEFCON 678 (Edn. 09/19) – SME Spend Data Collection.

- 18.2 The Service Provider shall comply with the provisions of:

- (a) Schedule 15 (*Governance*); and
- (b) Schedule 16 (*Reports and Records*).

### **Representatives**

- 18.3 Each Party shall have a representative for the duration of this Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Contract.
- 18.4 The Service Provider shall appoint a Service Provider Representative on or before the Contract Award Date and shall notify the Authority of the identity of the Service Provider Representative within five (5) Business Days of the Contract Award Date. Any changes to such appointment shall be in accordance with Clause 18.6 (*Representatives*).
- 18.5 The Authority shall notify the Service Provider of the identity of the initial Authority Representative within five (5) Business Days of the Contract Award Date. The Authority may, by written notice to the Service Provider, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.
- 18.6 The Service Provider shall not remove or replace the Service Provider Representative (including when carrying out Exit Management) unless:
- (a) requested to do so by the Authority;

- (b) the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave or long-term sick leave;
- (c) the person's employment or contractual arrangement with the Service Provider or a Sub-Contractor is terminated for material breach of contract by the employee; or
- (d) the Service Provider obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

**18.7 The Service Provider shall:**

- (a) notify the Authority promptly of the absence of the Service Provider Representative (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Service Provider shall ensure appropriate temporary cover);
- (b) ensure that the Service Provider Representative position is not vacant for any longer than ten (10) Business Days;
- (c) give as much notice as is reasonably practicable of its intention to remove or replace the Service Provider Representative and, except in the cases of death, unexpected ill health or a material breach of the Service Provider Representative's employment contract, this will mean at least sixty (60) Business Days' notice;
- (d) ensure that all arrangements for planned changes in the Service Provider Representative position provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
- (e) ensure that any replacement for the Service Provider Representative:
  - (i) has the appropriate level of qualifications and experience; and
  - (ii) is fully competent to carry out the tasks assigned to the Service Provider Representative.

**Meetings**

18.8 Upon reasonable notice the Service Provider shall be required to attend any other meetings arranged by the Authority. The Authority will make the necessary arrangements for these meetings.

18.9 A record of all meetings, including but not limited to those set out in Schedule 15 (*Governance*) shall be made by the Service Provider.

**Boards of Enquiry**

18.10 The Service Provider shall arrange for the attendance of such members of its staff and those of any Sub-Contractor staff who may be required by the Authority to attend as witnesses at any forum or similar investigation convened by the Authority or the Crown. Attendance at such

proceedings may be required following expiry or early termination of the Contract. The Authority shall meet the reasonable costs of the Service Provider procuring such attendances (including the cost of producing necessary documents and data but excluding management time and internal overheads relating to the Service Provider and Sub-Contractors).

### **Risk Management**

18.11 The Service Provider acknowledges that any general risk assessment (as distinct from health and safety) which has been, or may be, undertaken in connection with this Contract has been, or will be, a project management function only. Such risk assessment does not affect the legal relationship between the Parties. The issuing of any risk assessment questionnaire or request for a risk assessment plan and the process of risk assessment generally, including without limitation, the identification of (or failure to identify):

- (a) particular risks and their impact; or
- (b) risk reduction measures, contingency plans and remedial actions,

shall not in any way limit or exclude the Service Provider's obligations under this Contract and shall be entirely without prejudice to the Authority's rights, privileges and powers under this Contract. The risks identified as a result of any risk assessment questionnaire or risk assessment plan and risk assessment process generally remain the risks of the Service Provider and are not assumed by the Authority except to the extent that the Authority expressly and unequivocally accepts those risks under the Contract. Any risk assessment questionnaire or request for a risk assessment plan was or will be issued by the Authority solely on this basis.

### **Service Provider Deliverable Requirement List**

18.12 The Service Provider shall deliver such plans as set out in Schedule 3 (*Contract Deliverables Requirement List*).

## **19 CHANGE**

19.1 The following DEFCONs shall be incorporated into this Contract:

- (a) DEFCON 503 (Edn. 07/21) – Formal Amendments to Contract; and
- (b) DEFCON 620 (Edn. 08/21) – Contract Change Control Procedure.

### **Changes**

19.2 The Parties acknowledge that changes to the SOR may be required during the Contract Term, including but not limited to the replacement of vehicles in line with the technical roadmap. Any such changes to the SOR shall be made through the Change Control Procedure.

19.3 In the event of major Authority exercises, limited operations, requests from the Local Authority or Police for emergency assistance, Transition To War (TTW) or War affecting the Contract requirement, the Authority will advise the Service Provider of any necessary alterations to the Contract using the pro-forma at Schedule 17 (*Change Control Procedure*) and the Service



Provider shall use all reasonable endeavours to put these into effect immediately.

- 19.4 No later than six (6) months prior to the start of the relevant Contract Year, the Authority shall provide to the Service Provider its Statement of Training Task (SOTT). The SOTT may be subject to change and will be provided for outline planning purposes only. No later than three (3) months prior to the start of the relevant Contract Year, the Authority shall provide to the Service Provider an updated Statement of Training Task (SOTT) including an indicative course schedule. The SOTT and indicative course schedule may be subject to change and will be provided for planning purposes only. The Service Provider shall analyse the course schedule and seek to agree in good faith with the Authority the number of instructors required to deliver Section 3 of the SOR in each instructional cadre that the Authority requires the Service Provider to provide for the forthcoming Contract Year (the “**Baseline Requirement**”). The SOTT figures for the Contract Year (and any consequent changes to instructor numbers agreed with the Authority) shall be the subject of a Authority Notice of Change raised by the Authority using the Change Control Procedure. The Authority shall be responsible for providing military instructors to resource peaks in demand above the Baseline Requirement to the extent that the Service Provider acting reasonably is unable to provide surge instructors (being suitably qualified and experienced personnel who are otherwise employed on the contract) for the task.
- 19.5 Should the introduction of new technology, changes in operating requirements, or any other change in circumstances require an amendment to the Contract, the Service Provider shall provide a Service Provider Change Proposal.
- 19.6 Any Changes shall only be deemed validly accepted under DEFCON 620 where the prior written approval of the Authority is provided in accordance with DEFCON 503 prior to implementation. In exceptional circumstances, including but not limited to those arising under the events described at Clause 19.3 (*Changes*), required Changes may be notified by the Authority Representative and ratified by the Authority’s Commercial Branch as soon as is practicable thereafter in accordance with DEFCON 620 and DEFCON 503. Save as expressly set out in this Clause 19.6 (*Changes*), nothing said, done or written by any person or anything omitted to be said, done or written by any person including, without limitation any servant or agent of the Authority shall in any way affect the rights of the Authority or modify, affect or reduce or extinguish the obligations and liability of the Service Provider under the Contract or be deemed to be a waiver of the rights of the Authority unless stated in writing by the Authority’s Commercial Branch.

#### **Changes In Law**

- 19.7 The Service Provider shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Contract Price as the result of:
- (a) a General Change in Law; or
  - (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Contract Award Date.
- 19.8 If a Specific Change in Law occurs or will occur during the Contract Term (other than as referred to in Clause 19.7(b) (*Changes in Law*)), the Service Provider shall:

- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
  - (i) whether any Change is required to the Services, the Contract Price or this Contract; and
  - (ii) whether any relief from compliance with the Service Provider's obligations is required, including any obligation to meet the Key Performance Indicators; and
- (b) provide the Authority with evidence:
  - (i) that the Service Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
  - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
  - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 10 (*Service Improvement*), has been taken into account in amending the Contract Price.

19.9 Any variation in the Contract Price or relief from the Service Provider's obligations resulting from a Specific Change in Law (other than as referred to in Clause 19.7(b) (*Changes in Law*)) shall be implemented in accordance with the Change Control Procedure.

## **20 CONTRACTOR PERSONNEL**

20.1 The following DEFCONs shall be incorporated into this Contract:

- (a) DEFCON 76 (Edn. 06/21) - Service Provider's Personnel at Government Establishments.

### **Contract Management and Personnel**

- 20.2 The Service Provider shall appoint one member of its staff as Contract Manager who will be in charge of all Service Provider's employees at the Site.
- 20.3 Any changes to the Service Provider's management team as set out in its Management Plan shall be subject to the approval of the Authority.
- 20.4 The Service Provider shall ensure the continuity in post, as far as lies within its control, of skilled and supervisory staff. It shall maintain sufficient employees to carry out the Contract and ensure that all of its employees are adequately trained and experienced to achieve the required standards.
- 20.5 Where minimum qualifications and experience are specified in the Statement of Requirements (Reference A) for staff appointed in a specific position or grade the Service Provider must employ suitably qualified and experienced staff. Upon the request of the Authority, proof of qualification shall be provided by the Service Provider.

- 20.6 Where it is a statutory requirement that an employee of the Service Provider be licensed or authorised before undertaking particular work, the Service Provider shall ensure the validity of the licence or authorisation throughout the term of employment. Upon the request of the Authority the Service Provider shall demonstrate the validity of that licence or authorisation.
- 20.7 The Service Provider shall keep the Authority informed on any industrial relations problems or other impending difficulties likely to delay the performance of the Contract and use all reasonable endeavours to avoid industrial disputes or stoppages involving staff employed for the purposes of the Contract. Notwithstanding the foregoing, such disputes and industrial stoppages are strictly a matter for the Service Provider and the Authority will grant no relief under the terms of the Contract in such event.
- 20.8 In addition to the requirements of Clause 25.3(c) (*Confidentiality and Freedom of Information*), the Service Provider shall require all of its employees engaged in providing Services under this Contract to agree to observe duties of confidence at least as stringent as those which are in force in relation to individuals in the Crown Servant including without limitation:
- (a) an obligation to comply with all security rules and regulations which the Authority may consider to apply to them;
  - (b) compliance with such measures as the Authority may consider necessary to impose at any time in the interests of National Security; and
  - (c) obligations which both during and/or after the termination of their employment by the Service Provider, prohibit the unauthorised use and disclosure of protectively marked information.
- 20.9 The Service Provider shall be responsible for ensuring that its representatives have the necessary probity (by undertaking a basic check) and, where applicable, are cleared to the appropriate level of security when employed within the boundaries of a Government establishment. The Service Provider's representatives shall comply with such rules, regulations and requirements as may be in force whilst at the Site. Where the Service Provider requires information on the basis check procedure or security clearance for its representatives and/or is not in possession of all the relevant rules, regulations and requirements and/or requires guidance thereon, it shall apply in the first instance to the Authority. The following requirements relating to DBS checks also apply:
- (a) where a post has been identified as requiring a DBS check the Service Provider shall ensure that all personnel are DBS checked and cleared prior to commencement of work on the Contract in accordance with the Statement of Requirements (Section 1.6.3);
  - (b) for existing personnel any DBS disclosures are to be brought to the attention of the Authority Representative when a disclosure requires referral in accordance with the Statement of Requirements (Section 1.6.3).
- 20.10 If in the opinion of the Authority, any employee, representative or agent and the like of the Service Provider shall misconduct itself (including a breach of obligations under Clause 20.8 (*Contract Management and Personnel*) and Clause 25.3 (*Confidentiality and Freedom of Information*)) or be incapable of efficiently performing its duties or it shall not be in the public or

National interest for any such person to be employed or engaged by the Service Provider in the performance of the Contract then the Service Provider shall remove such person without delay on being required to do so by the Authority Representative and shall cause the work to be performed by such other person or persons as may be necessary in default.

- 20.11 The Service Provider shall ensure that its employees are suitably dressed whilst on duty as detailed in the Statement of Requirements (paragraphs 22 to 27). Standards of dress shall be as agreed with the Authority.
- 20.12 The Service Provider shall ensure that no employee, agent or Sub-Contractor shall use or occupy any allotted facilities and buildings as living or sleeping quarters, or carry out any business or trading activity within the confines of the Site. It shall also ensure that no advertisement, sign or notice of any description shall be exhibited other than with the prior written agreement of the Authority (at its absolute discretion).
- 20.13 The decision of the Authority upon any matter arising under this Clause shall be final and conclusive.

### **Training**

- 20.14 Except as stated in Clauses 20.15 (*Training*) and 20.16 (*Training*), the Service Provider shall be wholly responsible for the training of its employees including the transfer of all necessary and appropriate skills, knowledge and expertise required to perform the Services under the Statement of Requirements.
- 20.15 The following training will be provided by the Authority free of charge but all other costs, including travel and subsistence costs will be the responsibility of the Service Provider:
- (i) Limited new equipment training (as and when equipments are introduced);
  - (ii) Armour Centre provided training, within spare capacity, as detailed in the Armour Centre Programme of Courses;
  - (iii) Mandatory Continuous Professional Development Courses (CPD) for PTI's only; and
  - (iv) Any Authority supplied mandatory training as per SQEP document, Statement of Requirements (Reference A).
- 20.16 The Authority reserves the right to charge the Service Provider, on terms to be agreed, for any additional training that the Service Provider may request and the Authority agrees to provide.
- 20.17 For the avoidance of doubt, except as otherwise agreed under the terms of Clause 20.15 (*Training*), all other necessary training (and any follow-on training after the initial provision of training by the Authority) is for responsibility of the Service Provider.

### **Employment Legislation Matters**

- 20.18 Transfer Regulations

- (a) Where the Transfer Regulations are applicable to any of the Service Provider's employees, the terms and conditions in Schedule 24 (*TUPE and Pensions*) attached shall apply.

#### 20.19 New Fair Deal

- (a) The Parties agree that the provisions of Schedule 24, Part 3 (*TUPE and Pensions*) shall apply to this Contract.
- (b) All Sub-Contracts which may result in the employment of any Former Authority Employee, as defined in Schedule 24, Part 3 (*TUPE and Pensions*), being transferred to a Sub-Contractor pursuant to the Transfer Regulations, as defined in Schedule 24, Part 3 (*TUPE and Pensions*), shall include those provisions required under Paragraph 2.2 of Schedule 24, Part 3 (*TUPE and Pensions*) in respect of such Sub-Contracts.

#### 20.20 Pensions

- (a) The Parties agree that the provisions of Schedule 24, Part 3 (*TUPE and Pensions*) will apply to this Contract.

#### 20.21 Sub-contracting: Pensions

- (a) All Sub-Contracts which may result in the employment of any Formal Authority Employee being transferred to a Sub-Contractors pursuant to the Transfer Regulations shall include those provisions required under Paragraph 1.2 of Schedule 24, Part 3 (*TUPE and Pensions*) in respect of such Sub-Contracts.

#### 20.22 Members Of The Reserve Forces

- (a) The Reserve Forces Act 1996 and the Reserve Forces (Call-out and Recall) (Exemptions Etc.) Regulations 1997/307 allows for the employers of Reservists (ex-regular service personnel who have a liability for call out, known as ex-Regular Reserves, or members of the Volunteer Reserve) to make an application for a Reservist to be exempt or deferred from being called out into permanent service, or for them to be released from service if already accepted into service. Where the Service Provider employs members of the Reserve Forces on tasks which are required to be carried out in Transition to War or War, the Service Provider should seek such an exemption or deferral. Should an exemption or deferral not be granted by the Authority, or on Appeal, the Service Provider will undertake to replace any member of the Reserve Forces called out for permanent service with suitably qualified and experienced personnel within a period to be agreed with the Authority Representative.

### 21 SUB-CONTRACTORS

#### 21.1 The following DEFCONs shall be incorporated into this Contract:

- (a) DEFCON 534 (Edn. 06/21) – Subcontracting and Prompt Payment; and
- (b) DEFCON 675 (Edn. 03/21) - Advertising Sub-Contracts (DSPCR 2011 only).

## **Appointment of Sub-Contractors**

- 21.2 The Service Provider shall exercise due skill and care in the selection and appointment of any Sub-Contractors to ensure that the Service Provider is able to:
- (a) manage any Sub-Contractors in accordance with Good Industry Practice;
  - (b) comply with its obligations under this Contract in the delivery of the Services; and
  - (c) assign, novate or otherwise transfer to the Authority or any Replacement Service Provider any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Contract.
- 21.3 Prior to approaching a potential Sub-Contractor with the intention of Sub-Contracting any of its obligations under this Contract, the Service Provider shall obtain Approval and shall notify the Authority in writing of:
- (a) the proposed Sub-Contractor's name, registered office and company registration number;
  - (b) the scope of any Services to be provided by the proposed Subcontractor;
  - (c) where the proposed Sub-Contractor is an Affiliate of the Service Provider, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-Contract has been agreed on "arm's-length" terms; and
  - (d) confirmation that it has included suitable provisions in its Sub-Contract to flow down obligations under this Contract.
- 21.4 If requested by the Authority, the Service Provider shall, within ten (10) Business Days of receipt of the Service Provider's notice issued pursuant to Clause 21.3 (*Appointment of Sub-Contractors*):
- (a) provide a copy of the proposed Sub-Contract. For the avoidance of doubt, any conflict between the provisions of the Sub-Contract and this Contract shall not relieve the Service Provider of its obligations under this Contract, nor shall the Authority's receipt of a copy of the Sub-Contract amount to any waiver of the Service Provider's obligations under this Contract;

- (b) facilitate such inspection of the premises of any prospective Sub-Contractors, as the Authority may at any time reasonably require, and shall procure the prospective Sub-Contractor's co-operation with any such inspection and with the disclosure of any requisite information to the Authority; and
- (c) provide any further information reasonably requested by the Authority.

21.5 The Authority may, within ten (10) Business Days of receipt of the Service Provider's notice issued pursuant to Clause 21.3 (*Appointment of Sub-Contractors*) (or, if later, receipt of any further information requested pursuant to Clause 21.4 (*Appointment of Sub-Contractors*)), object to the appointment of the relevant Sub-Contractor if it considers (in its absolute discretion) that:

- (a) the appointment of a proposed Sub-Contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;
- (b) the proposed Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers;
- (c) the proposed Sub-Contractor employs unsuitable persons; and/or
- (d) the proposed Sub-Contractor should be excluded in accordance with Clause 21.12 (*Termination of Sub-Contracts*);

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

21.6 The Authority shall, within ten (10) Business Days of receipt of the Service Provider's notice issued pursuant to Clause 21.3 (*Appointment of Sub-Contractors*) (or, if later, receipt of any further information requested pursuant to Clause 21.4 (*Appointment of Sub-Contractors*)), confirm in writing to the Service Provider the appointment of the relevant Sub-Contractor if it considers (in its sole discretion) the Sub-Contractor suitable and the Service Provider may proceed with the proposed appointment. Where the Authority confirms the appointment of a Sub-Contractor in accordance with this Clause, the Service Provider shall notify the Authority that the relevant Sub-Contract shall constitute a Third Party Contract and update Schedule 10 (*Third Party Contracts*) accordingly.

#### **Appointment of Key Sub-contractors**

21.7 Where the Service Provider wishes to enter into a Key Sub-contract or replace a Key Sub-

contractor, it must obtain Approval. The Service Provider shall provide such information in respect of the proposed Key Sub-contractor as requested by the Authority, including but not limited to the proposed Key Sub-contractors financial and legal status and criminal record history. The Authority may withhold its consent to the appointment of a Key Sub-contractor if it considers (in its absolute discretion) that:

- (a) the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;
- (b) the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
- (c) the proposed Key Sub-contractor employs unsuitable persons; and/or
- (d) the proposed Key Sub-contractor should be excluded in accordance with Clause 21.12 (*Termination of Sub-Contracts*).

21.8 The Authority consents to the appointment of the Key Sub-contractors listed in Schedule 9 (*Key Subcontractors*).

21.9 Except where the Authority has given Approval, the Service Provider shall ensure that each Key Sub-contract shall include:

- (a) provisions which will enable the Service Provider to discharge its obligations under this Contract;
- (b) a right under Contracts (Rights of Third Parties) Act 1999 for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;
- (c) a provision enabling the Authority to enforce the Key Sub-contract as if it were the Service Provider;
- (d) a provision enabling the Service Provider to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority or any Replacement Service Provider without restriction (including any need to obtain any consent or approval) or payment by the Authority;



- (e) obligations no less onerous on the Key Sub-contractor than those imposed on the Service Provider under this Contract in respect of:
  - (i) data protection requirements set out in Clause 23 (*Data Protection*);
  - (ii) Freedom of Information Act 2000 requirements set out in Clause 25 (*Confidentiality and Freedom of Information*);
  - (iii) confidentiality requirements set out in Clause 25 (*Confidentiality and Freedom of Information*);
  - (iv) security requirements;
  - (v) DBS requirements; and
  - (vi) the keeping of records in respect of the services being provided under the Key Sub-contract;
- (f) provisions enabling the Service Provider to terminate the Key Sub-contract on notice on terms no more onerous on the Service Provider than those imposed on the Authority under Clauses 34.1 (*Authority Termination Rights*) and Clause 36 (*Compensation on Termination*) of this Contract;
- (g) a provision restricting the ability of the Key Sub-contractor to Sub-Contract all or any part of the services provided to the Service Provider under the Key Sub-contract without first seeking the written consent of the Authority; and
- (h) a provision enabling the Service Provider, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 30 (*Step In*).

21.10 The Service Provider shall not terminate or materially amend the terms of any Key Sub-contract without the Authority's prior written consent, which shall not be unreasonably withheld or delayed.

#### **Supply chain protection**

21.11 The Service Provider shall ensure that all Sub-Contracts (which in this sub-clause includes any contract in the Service Provider's supply chain made wholly or substantially for the purpose of

performing or contributing to the performance of the whole or any part of this Contract) contain provisions giving the Service Provider a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law.

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

21.12 The Authority may require the Service Provider to terminate:

- (a) a Sub-Contract where:
  - (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 34.1 (*Authority Termination Rights*);
  - (ii) the relevant Sub-Contractor or any of its Affiliates have brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Services or otherwise;
  - (iii) the relevant Sub-Contractor has failed to comply in the performance of its Sub-Contract with legal obligations in the fields of environmental, social or labour law; and/or
  - (iv) the Authority has found grounds for exclusion of the Sub-Contractor in accordance with Clause 21.14 (*Exclusion of Sub-Contractors*); and
- (b) a Key Sub-contract where there is a change of Control of the relevant Key Sub-contractor, unless:
  - (i) the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
  - (ii) the Authority has not served its notice of objection within six (6) months of the later of the date the change of Control took place or the date on which the Authority was given notice of the change of Control.

### **Retention of Legal Obligations**

- 21.13 Notwithstanding the Service Provider's right to Sub-Contract pursuant to this Clause 21 (*Sub-Contractors*), the Service Provider shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own. In respect of any element of the Services delivered by Service Provider Personnel and/or which are Sub-Contracted by the Service Provider, an obligation on the Service Provider to do or to refrain from doing any act or thing under this Contract, shall include an obligation on the Service Provider to procure that the Service Provider Personnel and the Sub-Contractor also do or refrain from doing such act or thing in their delivery of those elements of the Services.

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

- 21.14 Where the Authority considers whether there are grounds for the exclusion of a Sub-Contractor under Regulation 23 of the Defence and Security Public Contracts Regulations 2011, then:
- (a) if the Authority finds there are compulsory grounds for exclusion, the Service Provider shall replace or shall not appoint the Sub-Contractor; and
  - (b) if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Service Provider to replace or not to appoint the Sub-Contractor and the Service Provider shall comply with such a requirement.

## **22 INTELLECTUAL PROPERTY RIGHTS**

- 22.1 The following DEFCONs shall be incorporated into this Contract:

- (a) DEFCON 632 (Edn. 06/21) - Third Party Intellectual Property - Rights and Restrictions; and
- (b) DEFCON 703 (Edn. 06/21) – Intellectual Property Rights – Vesting in the Authority.

#### **IPR in MOD held documentation**

- 22.2 The performance of the Contract will require the Service Provider to have access to, and to use, documentation which is held by the Authority and which includes, but is not limited to, Army Equipment Support Publications (AESPs) and the like, and some of which may be in the form of computer records. Some of the information contained in this documentation belongs to the Authority and some of it belongs to third parties with the Authority having certain defined rights of use.
- 22.3 This Clause 22 (*Intellectual Property Rights*) shall apply to the use of the documentation to which the Service Provider is given access and to any Intellectual Property generated during

the performance of the Contract.

#### **Background IP Owned by the Crown or the Authority**

- 22.4 The Service Provider is hereby licensed to use, non-exclusively and royalty-free, any Background IP owned by the Crown or the Authority for the purposes of performing work for the Authority pursuant to the Contract.
- 22.5 The Service Provider shall not use any Background IP owned by the Crown or the Authority other than for the purpose of performing work for the Authority pursuant to the Contract without the prior written agreement of the Authority. Any such agreement will include the terms relating to such use.
- 22.6 The Authority gives no warranty as to the validity of any such Background IP. The Service Provider shall not do anything or act in any way which is inconsistent with the ownership by the Crown or the Authority of any such Background IP.

#### **Background IP Owned by a Third Party**

- 22.7 Where relevant Background IP owned by a third party is the subject of a licence or other agreement between the third party and the Authority, the Authority, so far as it is lawfully able to do so, hereby grants to the Service Provider the right to use such Relevant Background IP non-exclusively and royalty-free for the purposes of performing work for the Authority pursuant to the Contract. The right granted to the Service Provider under the provisions of this Clause shall cover use of the relevant Background IP solely on the Authority's premises. The right granted to the Service Provider under the provisions of this Clause shall not extend to Relevant Background IP which belongs to a Design Rights Owner (DRO) with whom the Service Provider is in competition for the development or manufacture of equipment's of the same type, broadly speaking, as the equipment which is the subject of the Relevant Background IP, unless and until either:
- (a) the Service Provider shall first have established a separate legal entity within its operation to perform the Contract in a manner which ensures that no commercial damage will result to the DRO's rights in the Relevant Background IP; or
  - (b) the DRO has given prior written approval that the Service Provider may use the Relevant Background IP in its performance of the Contract.

In this connection, but without commitment of any kind, a list of DROs is in Schedule 14 (*IPR*). It shall be the Service Provider's sole responsibility to secure all approvals required by Clause 22.7(b) (*Background IP Owned by a Third Party*) above and the Service Provider warrants that it has accomplished this. The provisions of Clauses 22.8 (*Background IP Owned by a Third Party*) to 22.18 (*Background IP Owned by a Third Party*) below shall not apply to such approvals.

- 22.8 Except when and as expressly authorised by the Authority under the provisions of the Patents Act 1977, the Defence Contracts Act 1958 or any future legislation, or when exercising the right granted under Clause 22.7 (*Background IP Owned by a Third Party*) above, the Service Provider shall not use any Background IP owned by a third party for the purpose of performing

work for the Authority pursuant to the Contract without the prior written approval of the IP owner.

- 22.9 The Service Provider shall promptly notify the Authority whenever the Service Provider becomes aware of the need to use third party owned Background IP, being other than Background IP which the Service Provider has the right to use by virtue of either the provisions of Clause 22.7 (*Background IP Owned by a Third Party*) above or an express authorisation from the Authority, for the purpose of performing work pursuant to the Contract.
- 22.10 The Authority shall promptly notify the Service Provider whenever the Authority becomes aware that the Service Provider may need to use third party owned Background IP, being other than Background IP which the Service Provider has the right to use by virtue of either the provisions of Clause 22.7 (*Background IP Owned by a Third Party*) above or an express authorisation from the Authority, for the purpose of performing work for the Authority pursuant to the Contract.
- 22.11 In the situations foreseen by Clauses 22.9 (*Background IP Owned by a Third Party*) and 22.10 (*Background IP Owned by a Third Party*) above, the Authority shall have a first option to take a licence directly from the owner of such Background IP. The Service Provider shall neither take a licence for such purpose in respect of such IP, nor enter into negotiations for such purpose, until it has been informed in writing that the Authority has decided not to take such a licence and has approved the taking of a licence by the Service Provider.
- 22.12 If the Authority exercises the option referred to in Clause 22.11 (*Background IP Owned by a Third Party*), the Authority shall ensure that the terms and conditions contained in the licence obtained from the owner of such Background IP shall be the best terms and conditions reasonably obtainable.
- 22.13 If the Authority decides not to exercise the option referred to in Clause 22.11 (*Background IP Owned by a Third Party*), and if the Service Provider, having obtained prior written approval from the Authority to the taking of a licence, wishes to use the third party owned Background IP for the purpose of performing work for the Authority pursuant to the Contract, then the Service Provider shall ensure that the terms and conditions contained in the licence obtained from the owner of such Background IP shall be the best terms and conditions reasonably obtainable.
- 22.14 If the Authority exercises the option referred to in Clause 22.11 (*Background IP Owned by a Third Party*), the Authority shall ensure that it is able to grant to the Service Provider on request a sub-licence in respect of such Background IP, on terms no less favourable to the Service Provider than those granted to the Authority. For its part, if the Service Provider secures a licence to use Background IP as provided for in Clauses 22.10 (*Background IP Owned by a Third Party*) or 22.13 (*Background IP Owned by a Third Party*) above, the Service Provider shall ensure that the licence is irrevocable and transferable, at the Authority's request, to the Authority, together with the right for the Authority to exercise the licence or have it exercised on its behalf by its agents and contractors on terms no less favourable than those granted to the Service Provider. The Service Provider undertakes that it shall, if requested to do so by the Authority, transfer the licence to the Authority at any time after completion of the Contract and the Service Provider shall indemnify the Authority in respect of any loss which the Authority may suffer as a result of the Service Provider's inability to effect such a transfer. Any costs falling to the Service Provider as a result of requiring to secure licences will be contained within the Contract Price.

- 22.15 Where any third party owned Background, IP is disclosed on condition that the licensee maintains the confidentiality of such IP, then:
- (a) the licensee shall only be required to disclose such IP to the sub-licensee to the extent that the licensee may lawfully make disclosure under the conditions of disclosure by the third party;
  - (b) the sub-licensee shall, prior to disclosure under Clause 22.15(a) (*Background IP Owned by a Third Party*) above, undertake to maintain the confidentiality of the IP on like conditions to those undertaken by the licensee in favour of the third party; and
  - (c) as prescribed in this Clause 22 (*Intellectual Property Rights*) and Clause 25 (*Confidentiality and Freedom of Information*), the Service Provider shall impose on its employees an obligation to maintain the secrecy and confidentiality of all confidential information, including third party owned IP, disclosed to such employees or of which they may become aware in the course of their employment during the period of the Contract.
- 22.16 The Service Provider shall exercise all necessary discretion in using any Background IP which it may believe to belong to a third party.
- 22.17 If the Service Provider wishes to use third party owned Background IP other than for the purposes of performing work for the Authority pursuant to the Contract, then it will be for the Service Provider to agree terms with the owner, in which event none of the foregoing Clauses 22.7 (*Background IP Owned by a Third Party*) to 22.14 (*Background IP Owned by a Third Party*) shall apply to the agreement of such terms.
- 22.18 The expression “licensee” in Clause 22.15 (*Background IP Owned by a Third Party*) above shall include the recipient of IP, which is not capable of being licensed, and “sub-licensee” shall be construed accordingly.

#### **Background IP owned by the Contractor**

- 22.19 The Service Provider shall make no charge, over and above the Contract Price, for the use of its Background IP in its performance of the Contract.
- 22.20 In the event that the material which the Service Provider is obligated to deliver to the Authority under the Contract contains Background IP owned by the Contractor, the Authority shall have an irrevocable, non-exclusive, royalty-free right to copy and use, or have copied and used, such Background IP for any UK Governmental purpose whatsoever. For the avoidance of doubt, it is hereby confirmed that this provision shall apply equally to any such Background IP which is contained in the material provided by the Authority to the Service Provider under this Contract as it shall apply to any such Background IP which the Service Provider brings to the Contract during its performance of it.

#### **New IP**

- 22.21 Subject to the rights of third parties and to any rights of the Crown or the Authority arising otherwise than by virtue of the Contract:

- (a) all New IP in the results of work undertaken by or on behalf of the Contractor for the performance of the Contract, including any data, reports, drawings, computer software, specifications, designs, inventions or other material produced or acquired in the course of such work, shall vest in and be the property of the Authority, which reserves the right to determine whether any application for a patent or similar protection or for registration of a design shall be made or the results of the work published, and if so, on what conditions; and the Service Provider shall ensure, where necessary, that it secures the right to effect such vesting;
- (b) the Service Provider shall be entitled to use New IP non-exclusively and royalty-free for the performance of the Contract;
- (c) the Service Provider shall, as requested by and at the expense of the Authority, do all things necessary to enable the Authority to obtain patent or similar protection or registration of a design as the Authority may require and to execute any formal assignment or other documents as may be necessary to vest title to a New IP in the Authority;
- (d) the Service Provider shall apply to the Authority for approval prior to making an application for a patent, or similar protection, or for registration of a design or a trademark resulting from its performance of work for the Authority pursuant to the Contract.

#### **IT Equipment**

- 22.22 In the event that the Service Provider elects to install IT equipment for its own use in the performance of the Contract, the Service Provider shall ensure that any licence which the Service Provider requires to utilise such IT equipment shall, together with the right for the Authority to exercise the licence or have the licence exercised by an agent or contractor on its behalf, be transferable to the Authority.
- 22.23 The Service Provider shall indemnify the Authority in respect of any loss which the Authority may suffer as a result of the Service Provider's inability to effect such transfer.

#### **Indemnities**

- 22.24 The Service Provider shall promptly inform the Authority in the event that any legal proceedings are threatened or commenced against the Contractor in respect of the alleged use by the Service Provider or its Sub-Contractors of any third party owned Background IP in the performance of work for the Authority pursuant to the Contract.
- 22.25 With the exception of those companies listed in Schedule 14 (*IPR*) hereto the Authority shall at all times hereafter indemnify, and keep indemnified, the Service Provider against any action, claim or legal proceedings brought by a third party against the Service Provider or the Authority in respect of any breach or infringement of any rights in Background IP owned by such third party insofar as such action, claim or legal proceeding shall arise directly out of, or result from, either the exercise by the Service Provider of rights granted to it under the provisions of these conditions, or any use of Background IP by the Service Provider which has been expressly authorised or approved in writing by the Authority; provided always that:

- (a) upon becoming aware of any matter which might give rise to, or render likely any claim or demand by a third party in respect of Background IP, or being notified of any such claim or demand, the Service Provider shall:
  - (i) promptly furnish in writing to the Authority full thereof, and thereafter shall afford to the Authority such assistance and shall furnish such and information as the Authority may from time to time require;
  - (ii) if the Authority shall so direct, and subject to the Authority issuing such amendment to the Contract as may be necessary to enable the Contractor to carry out the work pursuant to the Contract satisfactorily without use of such IP, cease to make use of the IP which is the subject matter thereof, and use all reasonable endeavours to develop alternative technology to enable the Service Provider to carry out work for the Authority pursuant to the Contract without infringing such IP;
  - (iii) the Contractor shall allow the Authority to have control of all actions, legal proceedings and claims above referred to, together with the exclusive right to determine the conduct of such actions, legal proceedings and claims, including the right to appoint counsel and solicitors;
  - (iv) the Contractor shall not pay, compound or settle any action, legal proceeding or claim within the scope of this indemnity, nor permit anything to be done which may prejudice or adversely affect the defence or disposal thereof, without the prior written consent of the Authority; and
  - (v) the Service Provider shall take all reasonable precautions and use all reasonable endeavours to prevent and minimise any damages which may result in any claim hereunder and to mitigate the effect thereof. The benefit of the indemnity hereby given shall be reduced by the extent, if any, to which the Contractor shall be in breach of this requirement.

22.26 Save as provided for in Clause 22.25 (*Indemnities*), the Service Provider shall at all times hereafter indemnify, and keep indemnified, the Authority in respect of any claim against the Service Provider or the Authority arising out of the use by the Service Provider of any third party owned Background IP in its performance of the Contract.

#### **Protection of IP**

22.27 The provisions of this Clause 22 (*Intellectual Property Rights*) and Clause 25 (*Confidentiality and Freedom of Information*) shall apply at all times to all information relating to New IP and Background IP.

#### **Disposition of IP on Termination of the Contract**

22.28 On termination of the Contract, the Service Provider shall deliver up to the Authority all material of any description (and all copies thereof) then in its possession or under its control which relate wholly or partially to New IP, Relevant Background IP, or any other Background IP used in the performance of the Contract.



- 22.29 The licences, rights and authorisations granted to the Service Provider pursuant to Clauses 22.4 (*Background IP Owned by the Crown or the Authority*) to 22.25 (*Indemnities*) inclusive shall terminate forthwith on the termination of the Contract.

#### **Use of IP for Private Venture Work**

- 22.30 IP provided in support of the Contract may not be used for Private Venture work without the express written agreement of the owner of the IP. Where such written agreement is provided, any such use of IP shall be in accordance with this Clause 22 (*Intellectual Property Rights*) and Clause 25 (*Confidentiality and Freedom of Information*).

### **23 DATA PROTECTION**

- 23.1 The following DEFCONs shall be incorporated into this Contract:
- (a) DEFCON 532B (Edn. 04/20) - Protection Of Personal Data (Where Personal Data is being processed on behalf of the Authority).
- 23.2 Both Parties warrant that they will duly observe all their obligations under the Data Protection Legislation, which arise in connection with this Contract.
- 23.3 The Service Provider shall ensure that any e-mail transmissions containing Personal Data are done so using password protected word or excel documents. The password shall be communicated to the address separately from the email containing the document.
- 23.4 Where the Authority is the Processor in respect of Personal Data for which the Service Provider is Controller, the Authority shall ensure that Personal Data is protected in accordance with DEFCON 532B as if they were the Service Provider processing Personal Data on behalf of the Authority.

### **24 SECURITY**

- 24.1 The following DEFCONs shall be incorporated into this Contract:
- (a) DEFCON 658 (Edn. 09/21) – Cyber; and
  - (b) DEFCON 660 (Edn. 12/15) – Official-Sensitive Security Requirements.
- 24.2 The Service Provider shall enter into the Security Aspects Letter on or before the Contract Award Date in the form set out in Schedule 23 (*Security Aspects Letter*).
- 24.3 In addition to the requirements of DEFCON 660 and other conditions of this Contract, the security requirements as laid down in JSP 440 and associated Garrison Standing Orders/Instructions shall be complied with at all times by the Service Provider.
- 24.4 The Service Provider shall appoint one of its employees as the Service Provider's Security Officer who will be responsible, in consultation as necessary with the Authority Representative and the Garrison/Unit Security Officer, for the implementation of all security arrangements concerning the Service Provider's employees together with the area(s) in which they are

employed, their offices and equipment.

24.5 The Service Provider shall provide the Authority with:

- (a) full personal details of all of the Service Provider's employees and visitors sponsored by the Service Provider and will not be permitted to introduce any such employees or visitors to the Site (or any other Government establishment) until they have been given prior security clearance by the Authority. The Authority reserves the right to refuse entry to any individuals, or to require that they be removed at any time without explanation; and
- (b) with the assistance of the Authority as appropriate, details of all of the Service Provider's employees requiring access to classified information and materials for their work at the Site. No employee of the Service Provider is to be allowed access to classified information or material unless prior clearance to receive information of the appropriate security classification has been authorised by the Authority.

24.6 The Service Provider shall additionally be responsible for:

- (a) making arrangements for its new employees to be briefed on their security responsibilities at the Site and arranging for additional security training of its employees as required by the Authority;
- (b) all OFFICIAL and OFFICIAL-SENSITIVE documents, and other material held, including the library department(s);
- (c) the proper disposal or destruction of OFFICIAL and OFFICIAL-SENSITIVE material held by it in accordance with Site specific requirements;
- (d) where a post has been identified as a DBS check is required the Service Provider shall ensure that all personnel are DBS checked and cleared prior to commencement of work on the contract; and
- (e) DBS certificates are to be made available to the Authority on request.

24.7 No OFFICIAL and OFFICIAL-SENSITIVE material held by the Service Provider in connection with this Contract is to be removed from the Site unless express permission has been given, in writing, by the Authority. Similarly, no OFFICIAL and OFFICIAL-SENSITIVE information stemming from lectures, discussions or other activities arising from this Contract is to be passed to any unauthorised person or anyone outside of the Contract, or is to be used for any purpose outside of the Contract unless express permission has been given, in writing, by the Authority.

24.8 The Service Provider shall ensure that the highest standards of privacy and confidentiality are maintained by its employees in relation to documents which bear privacy markings, whether OFFICIAL and OFFICIAL-SENSITIVE or not, with which they are entrusted. The same standards of privacy and confidentiality shall be applied to information acquired orally. Unauthorised divulgence of protected material or information (including, for example, reportable OFFICIAL and OFFICIAL- SENSITIVE) can damage the reputation of an individual, of the Service Provider, of the Authority or of the Garrison. The Service Provider shall be aware that

the Authority attaches great importance to the protection of such information.

- 24.9 The Service Provider's employees working in or visiting the Site shall display passes issued by the Authority. Passes shall remain the property of the Authority and shall be surrendered on demand.
- 24.10 The Authority shall be responsible for overall physical security at the Site including:
- (a) provision of security personnel or alternatives such as uniformed, all as determined by the Authority;
  - (b) issue of vehicle passes to those of the Service Provider's employees who have been authorised to bring vehicles into the grounds of the Site;
  - (c) random spot checks of the premises used by the Service Provider's employees and other areas within the Service Provider's control;
  - (d) notification and briefing of security alert states as necessary; and
  - (e) the provision, maintenance and checking of approved security furniture.
- 24.11 The Service Provider shall co-operate with and obey the instructions or directions given by the Authority appointees under Clause 24.10(a) (*Security*) in pursuance of their duties.
- 24.12 The Service Provider's employees shall consent to the servants or officers of the Authority searching any vehicles, containers, equipment, work bags and other chattels (together "**the chattels**") owned by the Service Provider and/or its employees whilst the chattels are on the Site and/or as a condition of their access to the Site. Routine checks may be carried out on any person within, entering or leaving the Site (and any other Government establishment), and such a person must be prepared to accept as a condition of entry the requirement to be stopped and searched and to have their vehicle(s) and chattels examined. The Authority reserves the right to expel persons from the Site (and any other Government establishment) who do not consent to being searched.
- 24.13 The Service Provider shall accept (without prejudice to any other remedies which the Authority may have) full responsibility for any loss or delay in performance of the Contract caused directly or indirectly by the expulsion of or refusal to allow entry to a Service Provider employee who does not consent to being searched.
- 24.14 It shall be the responsibility of the Service Provider to ensure that any windows and doors opened or unsecured by the Service Provider's employees are firmly closed at the conclusion of their activities.

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

- 24.15 The Service Provider shall comply with the provisions of:
- (a) the Official Secrets Acts 1911 to 1989; and

- (b) section 182 of the Finance Act 1989.

## 25 CONFIDENTIALITY AND FREEDOM OF INFORMATION

25.1 The following DEFCONs shall be incorporated into this Contract:

- (a) DEFCON 531 (Edn. 11/14) – Disclosure of Information; and
- (b) DEFCON 539 (Edn. 08/13) – Transparency.

### 25.2 Controlled Information

- (a) This Clause 25.2 (*Controlled Information*) shall apply in addition to and notwithstanding DEFCON 531 or any other confidentiality condition of the Contract.
- (b) For the purposes of this Clause '**Controlled Information**' shall mean any information in any written or tangible form which is disclosed to the Service Provider by or on behalf of the Authority under or in connection with the Contract, and which is identified by the legend 'Controlled Information' or other approved legend notified to the Service Provider. Controlled Information shall exclude information provided by oral communication.
- (c) The Service Provider shall:
  - (i) not to disclose the Controlled Information to any third party unless so authorised in writing beforehand by the Authority; and
  - (ii) protect the Controlled Information diligently against unauthorised access and against loss.
- (d) Where Controlled Information is provided to the Service Provider, it shall:
  - (i) compile a register of that Controlled Information, which shall include explicit description of the Controlled Information, a record of the number of copies made and a record of all access to the Controlled Information including access to any copies of the Controlled Information;
  - (ii) maintain this register for the duration of the Contract and for two years following completion of the Contract;
  - (iii) make the register of access available to the Authority upon reasonable notice for inspection and audit for so long as it is required to be maintained under this Clause; and
  - (iv) at the completion of the Contract, return to the Authority all original and duplicate copies of the Controlled Information, or at the Authority's option destroy these copies and provide a certificate of destruction to the Authority.

### 25.3 Confidentiality of Information

- (a) Subject to Clauses 5 to 9 of DEFCON 531, the Service Provider agrees that it shall not remove the information from the Site in any material form.
- (b) Nothing in this Clause 25.3 (*Confidentiality of Information*) or any other condition of the Contract shall be interpreted as constituting or implying a transfer, assignment or licence of rights in any of the information made available by the Authority.
- (c) In addition to Clauses 3 and 4 of DEFCON 531, the Service Provider shall take all reasonable precautions to ensure that the information is made available only to the minimum number of its employees and then only to the extent strictly necessary to enable each such person to discharge their duties associated with the Service Provider's performance of the Contract. The Service Provider shall make each of its employees involved in the performance of the Contract aware of the legal obligations placed upon the Service Provider by virtue of this Clause 25.3 (*Confidentiality of Information*) and DEFCON 531 by placing them under a legally binding obligation to observe the strict confidentiality of the information which shall survive termination of this Contract. The form of such legally binding obligation shall be submitted for the approval of the Authority on or before the Contract Award Date.
- (d) The Service Provider shall at all times hereafter indemnify, and keep indemnified, the Authority in respect of any claim against the Service Provider or the Authority arising out of the failure to discharge fully its responsibilities under this Clause.
- (e) Information deriving from or relating to the Contract and the Services, the Authority or the Site as a whole may not be communicated to a third party without the prior specific permission to do so, in writing, from the Authority Representative.
- (f) The provisions of this Clause 25 (*Confidentiality and Freedom of Information*) and DEFCON 531 shall survive indefinitely notwithstanding the termination of the Contract.

## **26 PUBLICITY**

- 26.1 Responsibility for communicating with representatives of the press, both popular and technical, radio, television, and other communication media on all matters concerning this Contract and the Sites as a whole is borne solely by the Authority. The Service Provider and its Sub-contractors or their agents shall not communicate with any such representatives in relation to any aspect of this Contract, the Sites or the Authority's operations without the prior consent of the Authority Representative.
- 26.2 The Service Provider, its Sub-contractors and their agents and employees shall not without the prior written consent of the Authority Representative other than to fulfil its reporting obligations to the Authority under this Contract, take photographs or video recordings of the provision of the Services, and shall take all necessary steps to ensure that no photographs or video recordings shall at any time be taken or published or otherwise circulated by any third party including but not limited to any visitors to the Sites.
- 26.3 The Authority reserves the right to publish information about the performance of the Service Provider and/or any other information as it may deem appropriate (acting reasonably) in order to comply with its statutory obligations.

- 26.4 The Service Provider, its Sub-Contractors, their agents and employees shall not at any time identify themselves as working on a Government establishment or put any photographs of the Site online, including but not limited to on social media.

## 27 LIABILITY

### Definitions

- 27.1 In this Clause 27 (*Liability*) the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

- (a) **“Charges”** means any of the charges for the provision of the Services, Service Provider Deliverables and the performance of any of the Contractor’s other obligations under this Contract, as determined in accordance with this Contract;
- (b) **“Data Protection Legislation”** means all applicable data protection and privacy legislation in force from time to time in the UK, including but not limited to:
  - (i) the General Data Protection Regulation ((EU) 2016/679) as retained in UK law by the EU (Withdrawal) Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (the "UK General Data Protection Regulation" or "UK GDPR");
  - (ii) the Data Protection Act 2018;
  - (iii) the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and
  - (iv) all applicable legislation and regulatory requirements in force from time to time which apply to a party relating to the processing of personal data and privacy and the guidance and codes of practice issued by the Information Commissioner’s Office which apply to a party;
- (c) **“Default”** means any breach of the obligations of the relevant Party (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or Sub-Contractors in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other. In no event shall a failure or delay in the delivery of an Authority responsibility or an activity to be carried out by the Authority or its representatives in accordance with the Contract be considered a Default;
- (d) **“Law”** means any applicable law, statute, by-law, regulation, order, regulatory policy, guidance or industry code that has the equivalent of legal effect, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body;
- (e) **“Service Credits”** means the amount that the Contractor shall credit or pay to the

Authority in the event of a failure by the Contractor to meet the agreed Service Levels as set out/referred to in Schedule 6 (*Performance Monitoring*);

- (f) “**Term**” means the period commencing on the Contract Award Date and ending on the Expiry Date or on earlier termination of this Contract.

### **Unlimited liabilities**

27.2 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
- (b) fraud or fraudulent misrepresentation by it or its employees;
- (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any liability to the extent it cannot be limited or excluded by law.

27.3 The financial caps on the Service Provider's liability set out in Clause 27.5 (*Financial Limits*) below shall not apply to the following:

- (a) for any indemnity given by the Service Provider to the Authority under this Contract, including but not limited to DEFCON 656B (Termination for Convenience);
- (b) the Service Provider's indemnity in relation to DEFCON 91 (Intellectual Property in Software) and DEFCON 632 (Third Party IP - Rights and Restrictions);
- (c) the Service Provider's indemnity in relation to TUPE at Schedule 24 (*TUPE and Pensions*); and
- (d) breach by the Service Provider of DEFCON 532B and Data Protection Legislation.

27.4 The financial caps on the Authority's liability set out in Clause 27.6 (*Financial Limits*) below shall not apply to the following:

- (a) for any indemnity given by the Authority to the Service Provider under this Contract, including but not limited to DEFCON 656B, DEFCON 91, DEFCON 632 and DEFCON 532B; and
- (b) the indemnity given by the Authority in relation to TUPE under Schedule 24 (*TUPE and Pensions*) shall be unlimited.

### **Financial limits**

27.5 Subject to Clauses 27.2 (*Unlimited Liabilities*) and 27.3 (*Unlimited Liabilities*) and to the maximum extent permitted by Law:

- (a) throughout the Term the Service Provider's total liability in respect of losses that are caused by Defaults of the Service Provider shall in no event exceed:
    - (i) in respect of DEFCON 76 £50M in aggregate;
    - (ii) in respect of DEFCON 514 £20M in aggregate;
    - (iii) in respect of DEFCON 611 £25M in aggregate; and
    - (iv) in respect of DEFCON 612 £0 in aggregate;
  - (b) without limiting Clause 27.5(a) (*Financial Limits*) and subject always to Clauses 27.2 (*Unlimited Liabilities*), 27.3 (*Unlimited Liabilities*) and 27.5(c) (*Financial Limits*), the Service Provider's total liability throughout the Term in respect of all other liabilities (but excluding any Service Credits paid or payable in accordance with Schedule 6 (*Performance Monitoring*), whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be £10M in aggregate;
  - (c) on the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Service Provider's total liability (in aggregate) set out in Clauses 27.5(a) (*Financial Limits*) and 27.5(b) (*Financial Limits*) above shall be fully replenished such that on and from each such exercise or extension of the Term, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 27.5(a) (*Financial Limits*) and 27.5(b) (*Financial Limits*) of this Contract.
- 27.6 Subject to Clauses 27.2 (*Unlimited Liabilities*), 27.4 (*Unlimited Liabilities*) and 27.7 (*Financial Limits*), and to the maximum extent permitted by Law the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.
- 27.7 Clause 27.6 (*Financial Limits*) shall not exclude or limit the Service Provider's right under this Contract to claim for the Charges.

### **Consequential loss**

- 27.8 Subject to Clauses 27.2 (*Unlimited Liabilities*), 27.3 (*Unlimited Liabilities*) and 27.9 (*Consequential Loss*), neither Party shall be liable to the other Party or to any third party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:
- (a) indirect loss or damage;
  - (b) special loss or damage;
  - (c) consequential loss or damage;



- (d) loss of profits (whether direct or indirect);
- (e) loss of turnover (whether direct or indirect);
- (f) loss of business opportunities (whether direct or indirect); or
- (g) damage to goodwill (whether direct or indirect),

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

27.9 The provisions of Clause 27.8 (*Consequential Loss*) shall not restrict the Authority's ability to recover any of the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Service Provider:

- (a) any additional operational and administrative costs and expenses arising from the Service Provider's Default, including any costs paid or payable by the Authority:
  - (i) to any third party;
  - (ii) for putting in place workarounds for the Service Provider Deliverables and other deliverables that are reliant on the Service Provider Deliverables; and
  - (iii) relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- (b) any or all wasted expenditure and losses incurred by the Authority arising from the Service Provider's Default, including wasted management time;
- (c) the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable for the relevant Service Provider Deliverables);
- (d) any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority data, or other data or software, including, to the extent the Authority data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority data, data or software;
- (e) damage to the Authority's physical property and tangible assets, including damage under DEFCON 76 and 611;
- (f) costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third-party Intellectual Property Rights or breach of any obligations of confidence;
- (g) any additional costs incurred by the Authority in relation to the Authority's contracts with a third party (including any compensation or interest paid to a third party by the Authority) as a result of the Default (including the extension or replacement of such

contracts);

- (h) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or
- (i) any savings, discounts or price reductions during the Term and any option period or agreed extension to the Term committed to by the Service Provider pursuant to this Contract.

### **Invalidity**

- 27.10 If any limitation or provision contained or expressly referred to in this Clause 27 (*Liability*) is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Clause 27 (*Liability*).

### **Third party claims or losses**

- 27.11 Without prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under DEFCONs 91 and 632 or at Law), the Authority shall be entitled to make a claim under this Contract against the Service Provider in respect of any losses incurred by the Authority which arise out of a claim made against the Authority by a third party under any contract with that third party provided that such third party claim:
- (a) arises naturally and ordinarily as a result of the Service Provider's failure to provide the Service Provider Deliverables or failure to perform any of its obligations under this Contract; and
  - (b) is a type of claim or loss that would have been recoverable under this Contract if the third party were a party to this Contract (whether as the Authority or the Service Provider), such claim to be construed as direct losses for the purpose of this Contract.

### **No double recovery**

- 27.12 Neither Party shall be entitled to employ such rights and remedies available to it so as to seek to recover more than once in respect of the same loss, but the Authority shall be entitled to use (singly or together) such rights and remedies available to the Authority so as to recover the full extent of any recoverable losses suffered or incurred, including any remedies the Authority may have against any guarantor.

## **28 INSURANCE**

- 28.1 Without prejudice to its liability to indemnify or otherwise be liable to the Authority under this Contract, the Service Provider shall for the periods specified in Schedule 21 (*Insurances*) take out and maintain or procure the taking out and maintenance of the insurances as set out under this Clause 28 (*Insurance*) and Schedule 21 (*Insurances*) and any other insurances as may be required by Applicable Law, together the Required Insurances. The Service Provider shall ensure that each of these Required Insurances are effective in each case not later than the

date of this Contract.

- 28.2 The Required Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 28.3 Where specified in Schedule 21 (*Insurances*) the Service Provider shall ensure that the relevant policy of insurance:
- (a) shall contain an indemnity to principals clause or additional insureds equivalent, under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury or third party property damage, and for which the Service Provider is legally liable in respect of this Contract;
  - (b) names the Authority as co-insured for its separate interest with attendant non vitiation, waiver of subrogation and notice of cancellation provisions.
- 28.4 The Service Provider shall discharge in full all duties and obligations in respect of the Insurance Act 2015 when procuring, maintaining or amending any insurance(s) required by this Contract, including in circumstances where the Service Provider is required to name the Authority on any such insurance policies to protect the Authority's separate interests.
- 28.5 Where the minimum limit of indemnity required in relation to any of the Required Insurances is specified as being "in the aggregate" and a claim or claims which do not relate to this Contract are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Service Provider shall ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Contract.
- 28.6 The Service Provider shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 28.7 The Authority may elect (but shall not be obliged) where notice has been provided to the Service Provider to purchase any insurance which the Service Provider is required to maintain pursuant to this Contract but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Service Provider.
- 28.8 The Service Provider shall from the date of this Contract and within fifteen (15) Business Days after the renewal of each of the Required Insurances, provide evidence, in a form satisfactory to the Client, that the Required Insurances are in full force and effect and meet in full the requirements of this Clause 28 (*Insurance*) and Schedule 21 (*Insurances*). Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Service Provider of its liabilities and obligations under this Contract.
- 28.9 The Contactor shall notify the Client in writing at least ten (10) Business Days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances. This Clause 28.9 (*Insurance*) 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 28 (*Insurance*).

- 28.10 The Service Provider shall promptly notify to insurers any matter arising from, or in relation to, this Contract for which it may be entitled to claim under any of the Required Insurances. In the event that the Authority receives a claim relating to this Contract, the Authority shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 28.11 Except where the Authority is the claimant party, the Service Provider shall give the Authority notice within twenty (20) Business Days after any insurance claim in excess of fifty thousand pounds (£50,000) relating to this Contract on any of the Required Insurances or which, but for the application of the applicable policy excess, would be made on any of the Required Insurances and (if required by the Authority) full details of the incident giving rise to the claim.
- 28.12 Where any Required Insurance requires payment of a premium, the Service Provider shall be liable for such premium.
- 28.13 Where any insurance referred to in this Clause 28 (*Insurance*) and Schedule 21 (*Insurances*) is subject to an excess or deductible below which the indemnity from insurers is excluded, the Service Provider shall be liable for such excess or deductible and shall indemnify the Authority against any loss or claims which would otherwise be insured but for the excess or deductible. The Service Provider shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.
- 28.14 All insurance proceeds received in respect of the Property Damage "All Risks" Insurance as specified in Schedule 21 (*Insurances*) shall be used to reinstate, repair or replace the insured property in respect of which the insurance proceeds were received.

## **29 RECTIFICATION**

- 29.1 In the event that the Service Provider commits a material Default which is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default) ("**Notifiable Default**"), the Service Provider shall notify the Authority of the Notifiable Default as soon as practicable but in any event within three (3) Business Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default.
- 29.2 Save where the Notifiable Default also constitutes a Rectification Plan Failure or other termination event under Clause 34.1 (*Authority's Termination Rights*), the Authority may not terminate this Contract in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process.
- 29.3 If:
- (a) the Service Provider notifies the Authority pursuant to Clause 29.1 (*Rectification*) that a Notifiable Default has occurred; or

- (b) the Authority notifies the Service Provider that it considers that a Notifiable Default has occurred,

then, unless the Authority serves a Termination Notice, the Service Provider shall comply with the Rectification Plan Process.

29.4 The Service Provider shall submit a draft Rectification Plan to the Authority for review as soon as possible and in any event within five (5) Business Days (or such longer period as may be agreed by the Authority) from the date the Service Provider becomes aware of the Notifiable Default (by notification from the Authority or otherwise) pursuant to Clause 29.3 (*Rectification*).

29.5 The draft Rectification Plan shall set out:

- (a) the steps which the Service Provider proposes to take to rectify the Notifiable Default and to prevent such default from recurring; and
- (b) the timescales for such steps and for the rectification of such default.

29.6 The Service Provider shall promptly provide to the Authority any further documentation that the Authority reasonably requests.

29.7 The Authority shall notify the Service Provider in writing whether it accepts or rejects the draft Rectification Plan within ten (10) Business Days of receipt of the draft Rectification Plan.

29.8 Where the Authority rejects the draft Rectification Plan under Clause 29.7 (*Rectification*), it shall give its reasons for such decision and the Service Provider shall submit a revised draft Rectification Plan to the Authority within five (5) Business Days (or such other period as agreed by the Authority) of receipt of the Authority's notice rejecting the first draft. The Parties shall use reasonable endeavours to agree any necessary amendments to the draft Rectification Plan within five (5) Business Days of the Authority's receipt of the revised draft Rectification Plan.

29.9 If the Authority accepts the draft Rectification Plan under Clauses 29.7 (*Rectification*) or 29.8 (*Rectification*):

- (a) the Service Provider shall immediately start work on the actions set out in the Rectification Plan; and
- (b) the Authority may no longer terminate this Contract in whole or in part on the grounds of the relevant Notifiable Default.

29.10 If:

- (a) no acceptable Rectification Plan has been put forward by the Service Provider pursuant to this Clause 29 (*Rectification*); and/or
- (b) the Service Provider fails to rectify the Notifiable Default within the time period specified in the Rectification Plan,

the Authority may issue a Termination Notice stating that this Contract will terminate on the date

set out in the Termination Notice.

- 29.11 In the event of termination pursuant to Clause 29.10 (*Rectification*), the provisions of Clauses 35 (*Consequences of Termination*) and 36 (*Compensation on Termination*) shall apply.

## **30 STEP IN**

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

- 30.1 If the Authority reasonably believes that it needs to take action in connection with the Services:

- (a) because a serious risk exists to the health or safety of persons or property or to the environment;
- (b) to discharge a statutory duty; and/or
- (c) because a Default by the Service Provider has taken place that is materially preventing or materially delaying the performance of the Services or any material part of the Services;

then the Authority shall be entitled to take action in accordance with this Clause 30 (*Step In*).

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

- 30.2 If Clause 30.1 (*Right to Step-In*) applies and the Authority wishes to take action, the Authority shall notify the Service Provider in writing of the following:

- (a) the action it wishes to take;
- (b) the reason for such action;
- (c) the date it wishes to commence such action;
- (d) the time period which it believes shall be necessary for such action; and
- (e) to the extent practicable, the effect on the Service Provider and its obligation to carry out the Services during the period such action is being taken ("**Step In Notice**").

- 30.3 Following service of such Step In Notice, the Authority shall take such action as notified under Clause 30.2 (*Procedure for Authority Step-In*) and any consequential additional action as it reasonably believes is necessary (together, the "**Required Action**") and the Service Provider shall give all reasonable assistance to the Authority while it is taking the Required Action. The Authority shall provide the Service Provider with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice, as is reasonably practicable, of its anticipated completion.

- 30.4 If the Service Provider is not in breach of any of its obligations under the Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Service Provider from providing any of the Services:

- (a) the Service Provider shall be entitled to relief from its obligations to provide such part of the Services to the extent that the Service Provider's failure in performance is wholly attributable to the Required Action;
- (b) in respect of the period in which the Authority is taking the Required Action and provided that the Service Provider provides the Authority with reasonable assistance, the payment due from the Authority to the Service Provider shall equal the amount the Service Provider would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period; and
- (c) the Service Provider shall be entitled to claim reasonable costs in relation to any activities that the Service Provider is required to perform in support of the Required Action the Authority undertakes. No profit shall be applied to these costs.

30.5 If the Required Action is taken as a result of a breach of the obligations of the Service Provider under the Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Service Provider from providing any of the Services:

- (a) the Service Provider shall be relieved of its obligations to provide the affected Services; and
- (b) in respect of the period in which the Authority is taking the Required Action, the Authority shall pay the Service Provider for the obligations satisfied under this Contract and the Services provided by the Service Provider only over that period, less an amount equal to all the Authority's costs of operation in taking the Required Action.

## 31 AUTHORITY CAUSE

31.1 Notwithstanding any other provision of this Contract, if the Service Provider has failed to:

- (a) provide the Services in accordance with the Key Performance Indicators; and/or
- (b) comply with its obligations under this Contract,

(each a "**Service Provider Non-Performance**"),

and can demonstrate that the Service Provider Non-Performance would not have occurred but for an Authority Cause, then (subject to the Service Provider fulfilling its obligations in this Clause 31 (*Authority Cause*)):

- (a) the Service Provider shall not be treated as being in breach of this Contract to the extent the Service Provider can demonstrate that the Service Provider Non-Performance was caused by the Authority Cause;
- (b) the Authority shall not be entitled to exercise any rights that may arise as a result of that Service Provider Non-Performance:

- (i) to terminate this Contract pursuant to Clause 34.1 (*Authority's Termination Rights*); or
  - (ii) to take action pursuant to Clause 30 (*Step In*); and
- (c) where the Service Provider Non-Performance constitutes a KPI Failure:
- (i) the Service Provider shall not be liable to accrue Service Level Deductions;
  - (ii) the Service Provider shall be entitled to invoice for the Contract Price for the relevant Services affected by the Authority Cause,

in each case, to the extent that the Service Provider can demonstrate that the KPI Failure was caused by the Authority Cause.

31.2 In order to claim any of the rights and/or relief referred to in Clause 31.1 (*Authority Cause*), the Service Provider shall as soon as reasonably practicable (and in any event within ten (10) Business Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Service Provider Non-Performance, give the Authority notice (a "**Relief Notice**") setting out details of:

- (a) the Service Provider Non-Performance;
- (b) the Authority Cause and its effect, or likely effect, on the Service Provider's ability to meet its obligations under this Contract;
- (c) any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
- (d) the relief claimed by the Service Provider.

31.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Service Provider Non-Performance and the alleged Authority Cause and whether it agrees with the Service Provider's assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief, consulting with the Service Provider where necessary.

31.4 The Service Provider shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the Service Provider may incur.

31.5 Without prejudice to Clause 7.12 (*Continuing obligation to provide the Services*), if a dispute



arises as to:

- (a) whether a Service Provider Non-Performance would not have occurred but for an Authority Cause; and/or
- (b) the nature and/or extent of the relief claimed by the Service Provider,

either Party may refer the dispute to the Dispute Resolution Procedure. Pending the resolution of the dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Service Provider Non-Performance.

## **32 FORCE MAJEURE EVENTS**

32.1 The Service Provider shall not be in breach of this Contract, nor liable for late or non-performance of any of its obligations under this Contract, if such delay or failure result from a **"Force Majeure Event"**. For the purposes of this Contract a Force Majeure Event is defined as one of the following:

- (a) acts of nature;
- (b) war;
- (c) hostilities; and
- (d) fire at the Site except to the extent that the fire was caused by the Service Provider's own negligence.

32.2 The Service Provider shall immediately notify the Authority in writing on the occurrence of a Force Majeure Event, including details of the Force Majeure Event, its effect on the Service Provider's obligations under this Contract, and the actions proposed to mitigate its effect.

32.3 Subject to Clause 32.4 (*Force Majeure Events*) below, the Service Provider shall be entitled to an appropriate extension of time for performing such obligations provided always that the Service Provider has used, to the satisfaction of the Authority, all reasonable endeavours, both to mitigate the effects of the Force Majeure Event, and to facilitate the continued performance of its obligations under this Contract.

32.4 The maximum extension of time granted under this Clause shall be limited to six (6) months after which time the Authority may, on giving written notice to the Service Provider, terminate this Contract, without seeking compensation from the Service Provider, with immediate effect.

## **33 COVID-19: EXTENSION OF TIME AND RELIEF FROM PERFORMANCE**

***[Drafting Note for Bidders: this Clause 33 will be reviewed at Preferred Bidder stage to determine whether it is still required.]***

33.1 The Parties recognise that the continuance of the COVID-19 pandemic may have an adverse

impact on the ability of the Service Provider to perform its obligations under this Contract. The Service Provider shall not therefore be in breach of its obligations under this Contract, nor liable for late or non-performance of any of its obligations under this Contract, if such delay or failure is a sole and direct result of the continuance of the COVID-19 pandemic.

33.2 The Service Provider shall immediately notify the Authority in writing that the continuance of the COVID-19 pandemic has solely and directly resulted or is likely to solely and directly result in a delay or failure to perform its obligations under this Contract, which obligations are adversely impacted, and the actions proposed to mitigate such adverse impact.

33.3 Subject to Clause 32.4 (*Covid-19: Extension of time and relief from performance*) below, the Service Provider shall be entitled to request an appropriate period of:

- (a) additional time for performing; and/or
- (b) relief from other contractual consequences, of late or non-performance of such obligations provided always that the Service Provider has used, to the satisfaction of the Authority, all reasonable endeavours, both to mitigate the adverse impact of the continuance of the COVID-19 pandemic, and to facilitate the continued performance of its obligations under this Contract.

33.4 The maximum period of additional time and/or for which relief will be granted under this Clause shall be limited to [●], after which the Authority may terminate this Contract on giving [●] days' notice in writing to the Service Provider. On termination of this Contract, the Service Provider shall be entitled to be paid an amount equal to any and all charges payable (but as yet unpaid) for the Services delivered up to the date of termination but shall otherwise have no claim against the Authority in relation to such termination.

## **34 TERMINATION RIGHTS**

### **34.1 Authority's Termination Rights**

- (a) The following DEFCONs shall be incorporated into this Contract:
  - (i) DEFCON 514 (Edn. 08/15) – Material Breach;
  - (ii) DEFCON 515 (Edn. 06/21) – Bankruptcy and Insolvency;
  - (iii) DEFCON 656B (Edn. 08/16) – Termination for Convenience (Contracts over £5m); and
  - (iv) DEFCON 566 (Edn. 10/20) - Change of Control of Contractor.
- (b) In addition to the Authority's rights under the DEFCONs listed in Clauses 16.1(d) (*Payment*), 34.1(a) (*Authority's Termination Rights*) and 39.1(a) (*Bribery*), the Authority may terminate this Contract at any time before the Expiry Date by issuing a Termination Notice to the Service Provider:
  - (i) if the Service Provider does not enter into the Admission Agreement by 31

March 2023 in accordance with Clause 4.5 (*Condition Precedent*);

- (ii) if the Service Provider breaches the provisions of the Admission Agreement provided that where the breach is remediable the right to terminate shall only arise where the Service Provider fails to remedy the breach within ten (10) Business Days of service of a notice from the Minister for the Cabinet Office setting out particulars of the breach and requiring the Service Provider to remedy it;
- (iii) where notice to terminate the Admission Agreement has been served under the Admission Agreement; and
- (iv) in accordance with the following Clauses:
  - (A) Clause 32.4 (*Force Majeure Events*); and
  - (B) Clause 33.4 (*Covid-19: Extension of time and relief from performance*).

#### **Persistent Breach**

- (c) If a particular breach (other than a breach for which Service Level Deductions have or could have been made) has continued for more than twenty (20) Business Days or occurred more than three (3) times in any three (3) month period, then the Authority may serve a notice on the Service Provider ("**Warning Notice**"):
  - (i) specifying that it is a formal Warning Notice;
  - (ii) giving reasonable details of the breach; and
  - (iii) stating that the breach is a breach which, if it recurs frequently or continues, may result in a termination of this Contract.
- (d) If, following service of such a Warning Notice the breach specified has continued beyond twenty (20) Business Days or recurred more than three (3) times in any three (3) month period after the date of service, then the Authority may serve another notice (a "**Final Warning Notice**") on the Service Provider:
  - (i) specifying that it is a Final Warning Notice;
  - (ii) stating that the breach specified has been the subject of a warning notice served within the six (6) month period prior to the date of service of the Final Warning Notice; and
  - (iii) stating that, if such breach continues for more than twenty (20) Business Days or recurs in more than three (3) times in any three (3) month period after the date of service of the Final Warning Notice, this Contract may be terminated.
- (e) A warning notice may not be served in respect of any incident of breach which has previously been counted in the award of a separate warning notice.

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

#### 34.2 Service Provider's Termination Rights

- (a) Without affecting any other right or remedy available to it, the Service Provider may, by issuing a Termination Notice to the Authority, terminate this Contract if:
  - (i) the Authority fails to pay an undisputed sum due to the Service Provider under this Contract which in aggregate exceeds an amount equivalent to the aggregate of three months' payment of the Contract Price; and
  - (ii) such amount remains outstanding 40 Business Days after the receipt by the Authority of a notice of non-payment from the Service Provider,

and, subject to Clause 34.2(b) (*Service Provider's Termination Rights*), this Contract or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Business Days from the date of the issue of the Termination Notice).

- (b) Termination under Clause 34.2(a) (*Service Provider's Termination Rights*) shall take effect on the date specified in the Termination Notice (which shall not be less than twenty (20) Business Days from the date of the issue of the Termination Notice) provided that the Authority has not paid the undisputed sum by the specified date of termination. If the Authority has paid the undisputed sum by the specified date of termination, then the right to terminate shall lapse and the Termination Notice shall be deemed to have been withdrawn.

### 35 CONSEQUENCES OF TERMINATION

- 35.1 Save as otherwise expressly provided in this Contract, termination of this Contract shall be without prejudice to any accrued rights and obligations under this Contract as at the Termination Date.

- 35.2 The provisions of Clauses 3 (*Precedence*), Clause 14.1(b) (*Assets*), 18 (*Contract Management*), 22 (*Intellectual Property Rights*), 23 (*Data Protection*), 24 (*Security*), 25 (*Confidentiality and Freedom of Information*), 26 (*Publicity*), 27 (*Liability*), 28 (*Insurance*), 35 (*Consequences of Termination*), 36 (*Compensation on Termination*), 37 (*Disputes*), 38 (*Conduct of Claims*), 41 (*Notices*), 43 (*Relationship of Parties*), 44 (*Entire Agreement*), 45 (*Third Party Rights*), 46 (*Severance*), 47 (*Waiver*), 49 (*Governing Law and Jurisdiction*), Schedule 1 (*Definitions and Acronyms*), 8 (*Commercially Sensitive Information (DEFFORM 539A)*), 16 (*Reports and Records*), 18 (*Dispute Resolution Procedure*), 19 (*Exit Management*), 21 (*Insurances*), 23 (*Security Aspects Letter*), 24 (*TUPE and Pensions*) and 25 (*Personal Data*

(DEFFORM 532)) shall survive the termination or expiry of this Contract. **[Drafting Note for Bidders: This Clause 35.2 will be reviewed and finalised at Preferred Bidder stage]**

- 35.3 The Parties shall comply with the provisions of Schedule 19 (*Exit Management*) and any current Exit Plan in relation to orderly transition of the Services to the Authority or a Replacement Service Provider.

### **36 COMPENSATION ON TERMINATION**

- 36.1 If this Contract is terminated by the Authority pursuant to the DEFCONs listed in Clauses 16.1(d) (*Payment*), 34.134.1(a) (*Authority's Termination Rights*) and 39.1(a) (*Bribery*), any payment owed on termination shall be calculated and paid in accordance with the relevant DEFCON.

- 36.2 If this Contract is terminated by the Authority:

- (a) pursuant to Clause 32.4 (*Force Majeure Events*), the terms of Clauses 32.4 (*Force Majeure Events*) shall apply in respect of any payments due and payable upon termination;
- (b) pursuant to Clause 33.4 (*Covid-19: Extension of time and relief from performance*), the terms of Clauses 33.4 (*Covid-19: Extension of time and relief from performance*) shall apply in respect of any payments due and payable upon termination;
- (c) pursuant to Clause 34.1(b)(i) (*Authority's Termination Rights*), Clause 4.5 (*Condition Precedent*) shall apply in respect of any payments due and payable upon termination;
- (d) pursuant to Clauses 34.1(b)(ii) (*Authority's Termination Rights*), 34.1(b)(iii) (*Authority's Termination Rights*) and 34.1(f) (*Persistent Breach*), such breach shall be considered a material breach and Clause 2 of DEFCON 514 shall apply in respect of any payments due and payable upon termination; and

- 36.3 Where the Service Provider terminates this Contract pursuant to Clause 34.2 (*Service Provider's Termination Rights*), DEFCON 656B shall apply in respect of any payments due and payable upon termination.

### **37 DISPUTES**

- 37.1 The following DEFCONs shall be incorporated into this Contract:

- (a) DEFCON 530 (Edn. 12/14) – Dispute Resolution (English Law).

- 37.2 The Parties shall comply with the provisions of Schedule 18 (*Dispute Resolution Procedure*).

### **38 CONDUCT OF CLAIMS**

38.1 Where under this Contract one Party (the "**Indemnifying Party**") indemnifies the other Party (the "**Indemnified Party**"), in relation to claims made by a third person against the Indemnified Party:

(a) the Indemnified Party shall:

- (i) give notice in writing to the Indemnifying Party of any such claim as soon as reasonably practicable after receipt of the claim;
- (ii) not make any admission that could be prejudicial to the defence or settlement of such claim without the Indemnifying Party's prior written consent; and
- (iii) at the Indemnifying Party's cost, provide all reasonable cooperation, access and assistance for the purposes of such claim; and

(b) the Indemnifying Party shall:

- (i) keep the Indemnified Party fully informed and consult with, and take due and proper account of the interests of, the Indemnified Party on all substantive issues which arise in the conduct of the claim;
- (ii) not bring the name of the Indemnified Party into disrepute;
- (iii) in respect of any claim which the Indemnified Party (acting reasonably) considers is likely to have an adverse impact on the general public perception of the Indemnified Party, the Indemnifying Party shall be entitled to take conduct of any defence, dispute, compromise or appeal only with the Indemnified Party's prior written consent (such consent not to be unreasonably withheld or delayed); and
- (iv) not pay or settle such a claim without the prior written consent of the Indemnified Party (such consent not to be unreasonably withheld or delayed).

## **39 BRIBERY**

39.1 The following DEFCONs shall be incorporated into this Contract:

- (a) DEFCON 520 (Edn. 08/21) – Corrupt Gifts and Payments of Commission.

## **40 COMPLIANCE**

40.1 The following DEFCONs shall be incorporated into this Contract:

- (a) DEFCON 516 (Edn. 04/12) – Equality;
- (b) DEFCON 550 (Edn. 02/14) – Child Labour and Employment Law; and
- (c) DEFCON 528 (Edn. 07/21) - Import and Export Licences.

#### **41 NOTICES**

41.1 The following DEFCONs shall be incorporated into this Contract:

- (a) DEFCON 526 (Edn. 08/02) – Notices.

41.2 For the purposes of DEFCON 526, any Notice given under or in connection with this Contract shall be delivered in accordance with DEFCON 526 to the addresses of the Parties at Clauses 41.3 (*Notices*) and 41.4 (*Notices*) and may be delivered by electronic mail.

41.3 Authority address:

[●]

Email: [●]

41.4 Service Provider address:

[●]

Email: [●]

#### **42 ASSIGNMENT**

42.1 The following DEFCONs shall be incorporated into this Contract:

- (a) DEFCON 518 (Edn. 02/17) – Transfer.

#### **43 RELATIONSHIP OF PARTIES**

43.1 The following DEFCONs shall be incorporated into this Contract:

- (a) DEFCON 681 (Edn. 06/02) – Decoupling Clause – Subcontracting with the Crown.

##### **Relationship Between the Parties**

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

43.3 The Service Provider will be treated as an independent contractor and will be responsible for all taxation, National Insurance contributions and similar liabilities arising in relation to the fees payable for the work.

43.4 The Service Provider shall not place or cause to be placed any orders with suppliers or incur liabilities in the name of the Authority or any representative of the Authority.

#### **44 ENTIRE AGREEMENT**

44.1 This Contract constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

44.2 Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.

44.3 Nothing in this Clause 44 (*Entire Agreement*) shall exclude any liability in respect of misrepresentations made fraudulently.

#### **45 THIRD PARTY RIGHTS**

The following DEFCONs shall be incorporated into this Contract:

(a) DEFCON 537 (Edn. 06/02) – Rights of Third Parties.

#### **46 SEVERANCE**

46.1 The following DEFCONs shall be incorporated into this Contract:

(a) DEFCON 538 (Edn. 06/02) – Severability.

#### **47 WAIVER**

47.1 The following DEFCONs shall be incorporated into this Contract:

(a) DEFCON 527 (Edn. 09/97) – Waiver.

#### **48 COUNTERPARTS**

48.1 This Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one contract.

48.2 No counterpart shall be effective until each Party has executed at least one counterpart.

#### **49 GOVERNING LAW AND JURISDICTION**

49.1 The following DEFCONs shall be incorporated into this Contract:



- (a) DEFCON 529 (Edn. 09/97) – Law (English).