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THE SECRETARY OF STATE FOR DEFENCE
and
CH2M HILL INTERNATIONAL NUCLEAR SERVICES LTD

**THE MATERIEL STRATEGY
MANAGED SERVICE PROVIDER
FOR JOINT ENABLERS DOMAIN
WORK PACKAGE 1
(PROJECT DELIVERY)**

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THIS MANAGED SERVICE PROVIDER AGREEMENT is made on [insert date]:

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR DEFENCE** (the "**Authority**"); and
- (2) **CH2M HILL INTERNATIONAL NUCLEAR SERVICES LTD** a company incorporated in England and Wales (company registered number 05532606) whose registered office is at Elms House, 43 Brook Green, London W6 7EF (the "**Contractor**").

WHEREAS

- (A) Defence Equipment and Support ("**DE&S**") is a Bespoke Trading Entity that is part of the Ministry of Defence that procures defence equipment, its support and logistics and manages that equipment and support throughout its life on behalf of the Authority.
- (B) As part of the Materiel Strategy, the Authority has run a competition to appoint a number of Managed Service Providers ("**MSPs**") to help transform and improve DE&S project delivery ("**Work Package 1**"). Work Package 1 is split into 4 domains – Land, Fleet, Air and Joint Enablers (the "**Domains**"). Further details on the Domains are included in the Contract Notice and the ITN.
- (C) The Contractor has been chosen under the Competition to provide support as an MSP to DE&S in relation to the Joint Enablers Domain (the "**Contract Domain**") on the terms and conditions set out in this Contract.
- (D) The Contractor has further been chosen under the Competition to provide support as an MSP to DE&S in relation to the Land Domain on the terms and conditions set out in a contract entered into between the Contractor and the Authority in respect of Land Domain on or about the date of this Contract (the "**Second Domain Contract**").
- (E) As part of the Materiel Strategy, the Authority will run additional competitions to appoint MSPs to help transform and improve the financial and management information and IT capabilities within DE&S ("**Work Package 2**") and to help transform and improve the human resources capability within DE&S ("**Work Package 3**").

IT IS AGREED:

PART I – CORE CLAUSES

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Contract (including the Recitals, Schedules and Annexes) the following terms shall, unless the context otherwise requires, have the meanings ascribed below:

"**Affected Party**" has the meaning given to it in Clause 41 (*Force Majeure*);

"**Agile**" has the meaning given to it in Clause 20.4.3;

"**Agreed Sub-contractor Compliance Agreement**" means a conflict of interest compliance agreement entered into in accordance with Clause 20.4.2;

"**Applicable Laws**" means all laws, regulations, directives, statutes, subordinate legislation, common law and civil codes in the UK and any other relevant jurisdiction and all judgements, orders, notices, instruments, decisions and awards of any court or competent authority or tribunal and all codes of practice having force of law, statutory guidance and policy notes in the UK and any other relevant jurisdiction;

"**Approved Sub-contracts**" means each of the sub-contracts listed in Schedule 13 (*Approved Sub-contracts*);

"**Approved Monthly Report**" has the meaning given to it in Paragraph 1.3 of Part C of Schedule 3 (*Payment and Incentive Mechanism*);

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"Approved Quarterly Report" has the meaning given to it in Paragraph 2.3 of Part C of Schedule 3 (*Payment and Incentive Mechanism*);

"Associated Contract" means:

- (a) the Security Aspects Letter;
- (b) the Electronic Transaction Agreement;
- (c) the Parent Company Guarantee; and
- (d) any other contract, agreement or other arrangement (whether in writing or otherwise) which the Parties agree in writing (which for this purpose does not include email) is an **"Associated Contract"**;

"Authority Award Fees Report" has the meaning given to it in Paragraph 5.7 of Part A of Schedule 3 (*Payment and Incentive Mechanism*);

"Authority Commercially Confidential Information" means all Commercially Confidential Information other than (i) personal data and sensitive personal data (within the meaning of the DPA) relating to Personnel; and (ii) information which solely relates to the commercial interests, trade secrets, know-how or other IPR of the Contractor, any COI Associate or any Contractor Related Party;

"Authority Disclosed Data" means information relating to DE&S, the Competition, the Contract or the Services disclosed to the Contractor and its COI Associates and advisers by the Authority or an Authority Related Party prior to the date of this Contract including:

- (a) the Contract Notice;
- (b) the Pre-Qualification Questionnaire;
- (c) the ITN;
- (d) information, data and documents in the Data Room; and
- (e) the Clarification Responses;

"Authority Event of Default" has the meaning given to it in Clause 42.5 (*Authority Events of Default*);

"Authority Foreground IPR" has the meaning given to it in Clause 50.3;

"Authority Frustration Event" has the meaning given to it in Clause 42.5.1(B);

"Authority IPR" means IPR: (i) owned by the Authority; or (ii) licensed to the Authority and in respect of which the Authority has the appropriate right to disclose and/or grant sub-licences to third parties (including the Contractor and any Contractor Related Party), but only to the extent to which and subject to the terms and conditions on which the Authority is permitted to grant sub-licences; and includes:

- (a) IPR licensed to the Authority by other MSPs providing services in relation to DE&S;
- (b) Authority Foreground IPR which vests in or is owned by the Authority pursuant to Clause 50 (*Ownership of Intellectual Property*); and
- (c) Deliverables IPR which vests in or is owned by the Authority pursuant to Clause 50 (*Ownership of Intellectual Property*);

"Authority Related Party" means an officer, employee, representative, agent, adviser or contractor of the Authority or member of the armed forces (in each case acting in such capacity), other than the Contractor and Contractor Related Parties;

"Authority's Representative" is the person or persons appointed pursuant to Clause 9.4 (*Authority's Representative*);

"Award Fee" means the Award Fee calculated in accordance with Paragraph 5 of Part A of Schedule 3 (*Payment and Incentive Mechanism*);

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"Base Costs" means the agreed basic staff costs (including, where applicable, provision for actual salary costs, benefits and employment taxes, employment on-costs and overheads, and travel, subsistence and additional costs for Personnel who are not local to Abbey Wood and Personnel who are expatriates) for each of the respective types of Personnel, as established in accordance with the provisions of this Contract referred to in Paragraph 1.3 of Part A of Schedule 3 (*Payment and Incentive Mechanism*), and which shall be reimbursable to the Contractor through the Base Fees;

"Base Fee" means the amount calculated in accordance with Paragraph 2.4 of Part A of Schedule 3 (*Payment and Incentive Mechanism*, by reference to the Base Costs for Personnel and the time they are engaged in the Services each Month, together with other permissible expenses, and payable in accordance with Paragraph 1 of Part C of Schedule 3 (*Payment and Incentive Mechanism*) and Clause 34 (*Invoicing and Payment*), in order to allow the Contractor to recover its staff costs for Personnel;

"Baseline Resourcing Plan" means the baseline resourcing plan at Annex 4 (*Baseline Resourcing Plan*) to Schedule 6 (*Personnel Arrangements*);

"Bespoke Trading Entity" means the Bespoke Central Government Trading Entity, being the organisational construct to which most of the functions of DE&S were transferred on 2 April 2014;

"Bidder" means any bidder or potential bidder who participated in the Competition in any respect;

"Business Day" means any day excluding:

- a) Saturdays, Sundays and public and statutory holidays in England and Wales; and
- b) privilege days notified in writing by the Authority to the Contractor at least ten (10) days in advance;

"Claim" has the meaning given to it in Clause 42.2.1(E)(4);

"Clarification Responses" means answers, updates and other clarifications provided by the Authority to the Contractor during the Competition;

"Code" has the meaning given to it in Clause 63 (*Freedom of Information Act*);

"COI Associate" means, in relation to the Contractor:

- (a) its parent undertakings and subsidiary undertakings;
- (b) the subsidiary undertakings of any parent undertaking referred to in Paragraph (a) above;
- (c) any entity in which it and any parent undertaking or subsidiary undertaking referred to in Paragraphs (a) or (b) above (taken together): (i) hold, directly or indirectly, at least 20% of the capital or voting rights; or (ii) have appointed (or have the right to appoint), directly or indirectly, a director or manager or similar officer; and
- (d) any person: (i) who holds, directly or indirectly, at least 20% of the capital or voting rights in the Contractor or any parent undertaking or subsidiary undertaking referred to in Paragraphs (a) or (b) above; or (ii) who has appointed (or has the right to appoint), directly or indirectly, a director or manager or similar officer of the Contractor or any parent undertaking or subsidiary undertaking referred to in Paragraphs (a) or (b) above;

"COI Compliance Regime" means the conflict of interest compliance regime set out in Schedule 8 (*COI Compliance Regime*) in accordance with which the Contractor shall, and shall procure that the COI Associates and any Sub-contractors shall, manage actual and potential conflicts of interests;

"Commencement Conditions" has the meaning given to it in Clause 2.2 (*Commencement Conditions*);

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"Commencement Conditions Longstop Date" means twenty (20) Business Days after execution of this Contract by both Parties;

"Commencement Date" has the meaning given to it in Clause 2.1 (*Conditions*);

"Commencement Personnel" means each individual who the Parties have agreed shall be Personnel and who is identified as Commencement Personnel in Annex 2 (*Key Personnel*) to Schedule 6 (*Personnel Arrangements*);

"Commercially Confidential Information" means information, including Commercially Sensitive Information, which at the time of disclosure to the receiving Party ought to be considered by the receiving Party as commercially confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests, trade secrets, know-how or other IPR of either Party or any other person and all personal data and sensitive personal data within the meaning of the DPA;

"Commercially Sensitive Information" means the subset of Commercially Confidential Information identified as Commercially Sensitive Information in Schedule 12 (*Commercially Sensitive Information*);

"Competition" means the competition to appoint MSPs to support DE&S project delivery under Work Package 1;

"Compliance Agreement" means any conflict of interest compliance agreement with (and in a form required by) the Authority that is drawn up in accordance with the MOD Conflicts of Interest Commercial Policy Statement (as in force from time to time) and the COI Compliance Regime and under, and in accordance with, which the Contractor shall (and shall procure that the Contractor Related Parties and COI Associates shall) manage actual and potential conflicts of interests that arise from any proposal for the Contractor or a COI Associate to bid for or enter into a Domain Contract;

"Contract" means this contract, its Schedules and Annexures;

"Contract Domain" has the meaning given to it in the Recitals;

"Contract Management Meeting" has the meaning given to it in Clause 28 (*Monthly Contract Reviews*);

"Contract Notice" means the OJEU notice in relation to the Competition that was published on 14 April 2014;

"Contract Period" means:

- (a) the First Contract Period; and
- (b) thereafter each period of twelve (12) Months commencing on 1 July, save that the final contract period shall be shortened to end on the Expiry Date or Termination Date (as applicable);

"Contract Period Liability Cap" means the amount set out in the third column of the Table in Schedule 10 (*Contract Period Liability Cap*) against the relevant Contract Period;

"Contractor Background IPR" means:

- (a) IPR that is owned by or licensed to the Contractor or any Contractor Related Party or COI Associate before the Commencement Date; and
- (b) IPR that is or has been created, developed or acquired by or licensed to the Contractor or any Contractor Related Party or any COI Associate for purposes other than: (i) the Contractor fulfilling its obligations under this Contract; and (ii) the Contractor Related Party or any COI Associate performing the Contractor's obligations under this Contract,

which, in each case, is used (i) for the purposes of the Contractor fulfilling its obligations under this Contract; or (ii) for the purposes of the Contractor Related Party or any COI Associate performing the Contractor's obligations under this Contract;

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"Contractor Event of Default" means each event of default listed in Clause 42.2 (*Termination for Contractor Event of Default*);

"Contractor Insurances" has the meaning given to it in Clause 64 (*Insurance*);

"Contractor IPR Claim" has the meaning given to it in Clause 55.7;

"Contractor Related Parties" means one or more of:

- (a) an officer, employee, representative, agent or adviser of the Contractor;
- (b) a Sub-contractor; and
- (c) an officer, employee, representative, agent or adviser of a Sub-contractor;

and shall include any Personnel who are placed by the Contractor with the Authority in accordance with Clause 24.1 (*Obligations of the Contractor in relation to Personnel*) and Schedule 6 (*Personnel Arrangements*) but, other than in relation to Clause 20 (*Conflicts of Interest*), Clause 21 (*Prohibited Acts*) and Schedule 8 (*COI Compliance Regime*), shall only include such officers, employees, representatives, agents or advisers of the Contractor or a Sub-contractor engaged in the provision of the Services;

"Contractor's Representative" is the person appointed pursuant to Clause 9.1 (*Contractor's Representative*);

"Contractor's Warranted Data" means the warranties given pursuant to Paragraphs 1.2 and 1.3 of Schedule 8 (*COI Compliance Regime*) and the information relating to the Contractor, the Sub-contractors to the Approved Sub-contracts and the COI Associates contained in the Annex to Schedule 8 (*COI Compliance Regime*);

"Controlled Information" means any information in any written or tangible form which is disclosed to the Contractor or any Contractor Related Party 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 Contractor;

"Corrective Action" has the meaning given to it in Clause 27.5 (*Review Findings and Corrective Action*);

"COTS Software" means commercial off the shelf, being software that is ready-made, readily available for sale or licence and can be used without development;

"Crown" means one or more of Her Majesty's Secretaries of State, another Minister of the Crown, the Lords Commissioners of Her Majesty's Treasury, the Treasury Solicitor, any body corporate wholly owned by any of the foregoing or any other person acting on behalf of the Crown;

"Crown Use" means, in relation to a patent, the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent; in relation to a Registered Design, the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949; in relation to a design right, the meaning given in Section 240 of the Copyright, Designs and Patents Act 1988; and in relation to a registered Community design and unregistered Community design, the meaning given in Regulation 1 of the Community Design Regulations 2005;

"Data Room" means the documents (including correspondence and information) made available prior to the date of this Contract by or on behalf of the Authority for inspection by or on behalf of the Contractor in connection with the Competition;

"DE&S" has the meaning given to it in the Recitals;

"Defects" means any defect in any of the Government Furnished Assets, or any part of them, or anything installed in the Government Furnished Assets attributable to:

- (a) defective design;
- (b) defective workmanship or defective materials (which shall exclude asbestos), plant or machinery used in such construction or manufacture having regard to Good Industry Practice and to appropriate British Standards and Codes of

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- Practice current at the date of construction or manufacture of the Government Furnished Asset;
- (c) the use of materials in the construction or manufacture of any Government Furnished Assets which (whether or not defective in themselves) prove to be defective in the use to which they are put in the construction of any such Government Furnished Assets;
 - (d) defective installation of anything in or on the Government Furnished Assets;
 - (e) defective preparation of the site on which the Government Furnished Assets are constructed or installed; or
 - (f) defects brought about by adverse ground conditions or by reason of subsidence, water table change or any other change to ground conditions;

"**DEFCONS**" means the defence conditions for use in defence related contracts as published by the Authority from time to time;

"**DEFFORMS**" means the defence forms for use in defence related contracts as published by the Authority from time to time;

"**Deliverables**" means any outputs and products provided or produced by the Contractor (or any Contractor Related Party) pursuant to this Contract or the Services;

"**Deliverables IPR**" has the meaning given to it in Clause 50.4;

"**Deploy**" has the meaning given to it in DEFCON-697;

"**Dispute**" means any dispute, claim, or difference between the Parties (including any question regarding the existence, validity, interpretation or termination of the Contract) arising in connection with the Services or the Contract, and any dispute relating to any non-contractual obligations arising out of or in connection therewith;

"**Dispute Resolution Procedure**" means the procedure for the resolution of disputes set out in Schedule 4 (*Dispute Resolution Procedure*);

"**Disputed Amount**" has the meaning given to it in Clause 35 (*Disputed Amounts*);

"**Domain Contract**" means a contract awarded by the Authority in relation to the Contract Domain or in relation to the Fleet Domain (and any agreement or arrangement with any Third Party to support, directly or indirectly, any such contract awarded by the Authority);

"**Domains**" has the meaning given to it in the Recitals;

"**DPA**" means the Data Protection Act 1998;

"**Electronic Transaction Agreement**" means the agreement comprising general clauses for electronic transactions with the Authority, as set out in DEFFORM-30;

"**Encumbrance**" means any claim, option, charge (fixed or floating), mortgage, lien, pledge, equity, encumbrance, right to acquire, right of pre-emption, right of first refusal, title retention or any other third party right, or other security interest or any other agreement or arrangement having a similar effect or any agreement to create any of the foregoing;

"**Environmental Information Regulations**" means the Environmental Information Regulations 2004;

"**EU**" means the European Union;

"**Exit Plan**" has the meaning given to it in Clause 44.1 (*Exit Plan*);

"**Expiry Date**" means the date which is forty two (42) months after the Commencement Date or, where the Authority has extended the Term by twelve (12) months or twenty four (24) months pursuant to Clause 22.2 (Options), the date which is fifty four (54) months or sixty six (66) months after the Commencement Date (as applicable);

"**Final Performance Warning Notice**" has the meaning given to it in Clause 42.3 (*Termination for Poor Performance Breach*);

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"First Contract Period" means the period from (and including) the Commencement Date to (and including) the end of the second Quarter;

"FOIA" or "Freedom of Information Act" means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the Information Commissioner's Office from time to time in relation to such legislation;

"Force Majeure Event" means any event or occurrence which adversely impacts on the ability of a Party to perform its obligations (in whole or in any material respect) under this Contract, and which:

- (a) is outside the reasonable control of the Affected Party and which is not attributable to any act of, or failure to take reasonable preventative action by, the Affected Party concerned; and
- (b) does not include, in respect of the Affected Party, any industrial action originating within that organisation or its group undertakings;

"Good Industry Practice" means the exercise of that degree of skill, care, diligence, prudence, transparency, co-operation and foresight and operating practice which would reasonably and ordinarily be expected of an appropriately (and where relevant professionally) qualified, skilled and experienced person engaged in the UK (or an appropriate equivalent jurisdiction) in activities of a similar scope and complexity to the Services (where such contractor is seeking to comply with its contractual obligations and all Applicable Laws);

"Government Body" means any department, office, body or agency of the UK Government or the Crown but excluding the Authority;

"Government Furnished Assets" means any government furnished equipment, government furnished facilities or government furnished information to which the Authority shall retain title throughout the Term but which shall be made available to the Contractor for the purposes of the Contract and the Services, and for no other purpose without the prior approval of the Authority, in accordance with the terms set out in Clause 30 (*Government Furnished Assets*);

"Gross Negligence" means:

- (a) any act or failure to act (whether sole, joint or concurrent) by any person (or its officers, employees, representatives, agents or advisors) which was intended to cause harmful consequences or reckless in the sense of not caring whether or not harmful consequences would be caused or knowing that harmful consequences could be caused in relation to the safety or property of another person; and
- (b) any act of fraud by any person (or its officers, employees, representatives, agents or advisors).

"HMRC" means Her Majesty's Revenue and Customs;

"Incentive Fee" means the Incentive Fee calculated in accordance with Paragraph 3 of Part A of Schedule 3 (*Payment and Incentive Mechanism*);

"Infringing Part" has the meaning given to it in Clause 55.2;

"Insolvency Event" means, in relation to any person, the occurrence of any of the following (unless, in the case of the events set out in Paragraphs (b), (c) or (d) below, the proceedings to which they relate are frivolous or vexatious and are dismissed, stayed or discharged within fifteen (15) Business Days of their commencement):

- (a) the passing of a resolution for a person's winding-up or the summoning of a meeting to pass any such resolution (other than for the purpose of and followed by a solvent reconstruction or amalgamation);

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- (b) the person having a petition for a winding-up order presented against it (other than for the purpose of and followed by a solvent reconstruction or amalgamation);
- (c) an application being made to court, or an order being made, for the appointment of an administrator or any step is taken to appoint an administrator;
- (d) a receiver, administrative receiver, receiver and manager or similar officer being appointed by any person of all or any part of the person's property, assets or undertaking;
- (e) the person making a proposal for a voluntary arrangement as defined in Section 1 of the Insolvency Act 1986;
- (f) the person entering into any other arrangement with all of its creditors or any of them;
- (g) the person taking or suffering any other action in consequence of debt including giving notice to its creditors or any of them that it has suspended or is about to suspend payment; or
- (h) the person being unable to pay its debts for the purposes of Section 123 of the Insolvency Act 1986 or any distress, execution or other process being levied upon the whole or a substantial part of the person's property, assets or undertaking;

"IPR" or "Intellectual Property Rights" means all trademarks, logos, get-up, trade and business names, domain names, patents, copyright (including copyright in computer programs), database rights, design rights, registered designs, utility models, semiconductor topography rights, inventions (whether patentable or not), know-how, moral rights, commercially confidential information and all other intellectual property and rights of a similar or corresponding nature in any part of the world, whether or not registered or capable of registration, in respect of such rights which are registrable the right to apply for registration and any and all applications for registration and any renewals or extensions of any of the foregoing rights;

"IPR Claim" has the meaning given to it in Clause 55.1;

"ITN" means the Invitation to Negotiate issued to Bidders on 12 May 2014;

"Key Personnel" has the meaning given to it in Schedule 6 (*Personnel Arrangements*);

"KPIs" has the meaning given to it in Paragraph 1.4 of Part A of Schedule 3 (*Payment and Incentive Mechanism*);

"Legal Proceeding" means any suit, litigation, claim, action, proceeding, arbitration, administrative proceeding, mediation, adjudication or investigation before any Relevant Authority (save that for the purposes of Clause 5.1 (*Contractor Warranties and Representations*) it shall only include investigations of which the Contractor is aware);

"List X " means a UK Government approved commercial facility authorised to handle protectively marked information as further detailed in the Security Policy Framework;

"Loss" means, subject to Clause 65.1.4, any cost (including reasonable legal and other professional costs, fees and expenses), expense, loss, damage, compensation, fine or other liability (including any interest, penalty, applicable VAT and similar taxes or liability for deduction of PAYE tax properly incurred) whatsoever or howsoever incurred;

"Material Breach Notice" has the meaning given to it in Clause 42.2.2 (*Material Breach Notice*);

"Materiel Strategy" means the Materiel Strategy change programme described in the Contract Notice and the ITN;

"Maximum Performance Fee" or "MPF" has the meaning given to it in Part E (*Maximum Performance Fee*) of Schedule 3 (*Payment and Incentive Mechanism*);

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"Month" means a calendar month and **"Monthly"** shall be construed accordingly;

"MSPs" has the meaning given to it in the Recitals;

"Other Domain" means a Domain other than the Contract Domain;

"P2P System" means Purchasing to Payment which is the Authority's electronic purchasing system that enables electronic ordering, receipting and invoicing to take place with industry trading partners;

"Parent Guarantor" means CH2M HILL Companies, Ltd;

"Parent Company Guarantee" means the parent company guarantee in substantially the agreed form set out in Schedule 11 (*Parent Company Guarantee*) which shall be given by the Parent Guarantor;

"Parties" means the parties to this Contract and **"Party"** means either of them;

"Payment Longstop Date" has the meaning given to it in Clause 34.2 (*Purchase to Payment (P2P) System*);

"Performance Warning Notice" has the meaning given to it in Clause 42.3 (*Termination for Poor Performance Breach*);

"Personal Data" means personal data as defined in the DPA which is supplied to the Contractor by the Authority or obtained by the Contractor in the course of the Services or the Contract;

"Personal Data Aspects Letter" or **"PDAL"** means the letter substantially in the form set out in Part B (*Personal Data Aspects Letter*) of Schedule 9 (*Security Aspects Letter and PDAL*);

"Personnel" means all persons (being Key Personnel, Other Personnel, In-Year Other Personnel, Additional Personnel and Reachback Personnel, each as defined in Schedule 6 (*Personnel Arrangements*)) employed or engaged, whether part-time or full-time, by the Contractor (or, where relevant, any COI Associates or Sub-contractors) who (in the case of Key Personnel, Other Personnel, In-Year Other Personnel and Additional Personnel) are placed with the Authority in connection with the performance of the Services or who (in the case of Reachback Personnel) are otherwise engaged in the provision of the Services to the Authority;

"Placement" has the meaning given to it in Paragraph 1 (*Definitions*) of Schedule 6 (*Personnel Arrangements*);

"Prescribed Rate" means a rate of five (5) per cent per annum above the Bank of England base rate from time to time;

"Pre-Qualification Questionnaire" means the document of that name issued to Bidders on 14 April 2014;

"Privilege and Confidentiality Agreement" shall mean a privilege and confidentiality agreement between the Authority and Personnel which shall be in substantially the agreed form set out in Schedule 14 (*Privilege and Confidentiality Agreement*), with such amendments as are reasonably necessary so as to give it effect;

"Prohibited Act" means:

- (a) offering, giving or agreeing to give to any servant of the Crown, or receiving any gift or consideration or financial or other advantage of any kind as an inducement or reward, for the benefit of itself or another person, or which it would be improper to accept:
 - (i) for doing or not doing (or for having done or not having done), or attempting to do or not do any act in relation to the obtaining, execution or performance of this Contract or any other contract with the Crown either inside or outside the UK; or

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- (ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Crown;
- (b) entering into this Contract or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to and authorised in writing by the Authority;
- (c) committing any offence:
 - (i) under the Prevention of Corruption Acts 1889-1916;
 - (ii) under Applicable Laws relating to anti-bribery and anti-corruption including the Bribery Act 2010 and the Anti-Terrorism, Crime and Security Act 2001;
 - (iii) which would constitute an offence under Sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - (iv) under Applicable Laws creating offences in respect of fraudulent acts; or
 - (v) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Crown;
- (d) defrauding or attempting to defraud or conspiring to defraud the Crown; or
- (e) failing to promptly report to the Authority any request or demand for any undue financial or other advantage of any kind received by the Contractor or any Contractor Related Party in connection with the performance of this Contract of which it is or ought reasonably to have been aware;

"**Quarter**" means successive periods over the Term of the Contract calculated as follows:

- (a) the first Quarter shall commence on the Commencement Date and shall end on 31 March 2015;
- (b) thereafter, each Quarter shall (subject to (c) below) be a period of three (3) Months starting from the end of the previous Quarter; and
- (c) the final Quarter shall be shortened to end on the Expiry Date or Termination Date (as applicable),

and "**Quarterly**" shall be construed accordingly;

"**Rainbow Team**" means a team formed for a specific purpose that comprises personnel from an MSP, together with one or more personnel from DE&S (or the wider Authority) and personnel from other MSPs or other DE&S contracted support;

"**Rate Card**" means the rate card in respect of In-Year Other Personnel, Additional Personnel and Reachback Personnel attached as Annex B (*Rate Card*) to Schedule 3 (*Payment and Incentive Mechanism*) (as amended from time to time);

"**Receipting**" has the meaning given to it in Clause 34.2 (*Purchase to Payment (P2P) System*);

"**Related Entity**" shall have the meaning given to it in Schedule 6 (*Personnel Arrangements*);

"**Relevant Authority**" means any court or tribunal or other (local, national or supra-national) agency, inspectorate, minister, ministry, official, public or statutory body with jurisdiction in relation to any suit, litigation, claim, action, proceeding, arbitration, administrative proceeding, mediation, adjudication or investigation in the UK, the EU or any other jurisdiction;

"**Remediable Breach**" has the meaning given to it in Clause 42.2.4 (*Remediable Breach*);

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"**Remediation Programme**" has the meaning given to it in Clause 42.2.4 (*Remediable Breach*);

"**Request for Information**" is defined in the FOIA;

"**Requirements**" has the meaning given to it in Paragraph 1.1 of Part A of Schedule 1 (*Requirements*);

"**Resourcing Plan**" means:

- (a) in respect of Paragraph 1.1 (*Resource Variations*) of Part E (*Maximum Performance Fee*) of Schedule 3 (*Payment and Incentive Mechanism*), the Baseline Resourcing Plan; and
 - (b) otherwise:
 - (i) in respect of the First Contract Period, the Baseline Resourcing Plan and
 - (ii) thereafter, the resourcing plan agreed between the Authority and the Contractor prior to the commencement of each such Contract Period or, failing agreement by the start of the last Quarter prior to the start of such Contract Period shall mean:
 - (1) in respect of the Contract Period commencing on 1 July 2015, the Baseline Resourcing Plan; or
 - (2) in respect of each other Contract Period, the resourcing plan agreed for the preceding Contract Period;
- in either case until such resourcing plan is agreed;

"**Review Close-Out Meeting**" has the meaning given to it in Clause 27.5 (*Review Findings and Corrective Actions*);

"**Review Representatives**" has the meaning given to it in Clause 27.3 (*Authority Review*);

"**Second Domain Contract**" has the meaning given to it in the Recitals;

"**Secret Matter**" means any matter connected with this Contract or any Associated Contract or DE&S which is designated by the Authority in the Security Aspects Letter, any security aspects letter provided to the Contractor under Clause 46.4, or otherwise in writing as "**Top Secret**" or "**Secret**" and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;

"**Security Aspects Letter**" means the letter substantially in the form set out in Part A (*Security Aspects Letter*) of Schedule 9 (*Security Aspects Letter and PDAL*);

"**Security Policy Framework**" means the Security Policy Framework produced by the Government Security Secretariat within the Cabinet Office which sets out the standards, best practice guidelines and approaches that are required to protect UK Government assets, as amended from time to time;

"**Services**" means the services to be provided by the Contractor (and the Contractor Related Parties) pursuant to this Contract;

"**Sub-contract**" means any contract, agreement or other arrangement (whether in writing or otherwise) between the Contractor and a Third Party under which goods or services (including advisory services) are provided to the Contractor to assist it in performing its obligations under this Contract;

"**Sub-contractor**" means any Third Party who enters (or proposes to enter) into a Sub-contract with the Contractor;

"**Term**" has the meaning given to it in Clause 22.1 (*Term*);

"**Termination Date**" means the date of early termination of this Contract;

"**Termination Notice**" has the meaning given to it in Clause 42.2.4(B);

"**Third Party**" means any person (including any Government Body) other than the Parties;

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"**Third Party IPR**" means IPR which is:

- (a) owned by a Third Party (other than a Contractor Related Party or a COI Associate); or
- (b) licensed to a Third Party (other than a Contractor Related Party or a COI Associate) and in respect of which that Third Party has the right to grant sub-licences;

"**UK**" means the United Kingdom of Great Britain and Northern Ireland;

"**VAT**" means any value added taxes;

"**Work Package 1**" has the meaning given to it in the Recitals;

"**Work Package 2**" has the meaning given to it in the Recitals;

"**Work Package 3**" has the meaning given to it in the Recitals; and

"**Year**" means the twelve (12) month period from (but excluding) a day to (and including) the day bearing the same number in the same month of the following year (or, in the case only of a Year commencing on 29 February, to the next following 28 February).

1.2 Interpretation

In this Contract, except where the context otherwise requires:

- 1.2.1 words and expressions defined in the Companies Act 2006 shall have the same meaning in this Contract;
- 1.2.2 a reference to an enactment or statutory provision shall include a reference to any subordinate legislation made under the relevant enactment or statutory provision;
- 1.2.3 a reference to an enactment, statutory provision or subordinate legislation shall include a reference to that enactment, statutory provision or subordinate legislation as from time to time amended, consolidated, modified, re-enacted or replaced, and references to an enactment or statutory provision include a reference to any repealed statute or statutory provision which it re-enacts (with or without modification) as subsequently re-enacted;
- 1.2.4 words in the singular shall include the plural and vice versa;
- 1.2.5 references to one gender include other genders;
- 1.2.6 a reference to a person shall include a reference to a firm, a body corporate, an unincorporated association, a partnership and to an individual's executors or administrators;
- 1.2.7 a reference to a Clause, Paragraph, Schedule, Rule or Annexure shall be a reference to a Clause, Paragraph, Schedule, Rule or Annexure of or to this Contract, and a reference to a Paragraph within a Schedule shall (unless otherwise stated) be a reference to a Paragraph within that particular Schedule;
- 1.2.8 references in this Contract to any contract, agreement or other instrument (other than an enactment, statutory provision or subordinate legislation made thereunder) shall be deemed to be references to that contract, agreement or instrument as from time to time amended;
- 1.2.9 if a period of time is specified as from a given day, or from the day of an act or event, it shall be calculated exclusive of that day;
- 1.2.10 references to writing shall include any modes of reproducing words in any legible form and (subject to Clause 8.1.3 or where expressly stated otherwise) shall include email;
- 1.2.11 references to the Authority or the Contractor shall include any assignees or successors in title to those persons;

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- 1.2.12 a reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation";
- 1.2.13 the contents page and headings in this Contract are for convenience only and shall not affect its interpretation; and
- 1.2.14 a reference to a document "in the agreed terms" or any similar expression shall be to a document agreed between the Parties and initialled for identification by the Parties.

1.3 Precedence of Documentation

- 1.3.1 If there is any inconsistency between the provisions of the body of this Contract and the Schedules or between any of the Schedules, the conflict shall be resolved according to the following descending order of priority:
 - (A) Clause 1 (*Definitions and Interpretation*) to Clause 65 (*Liability*) of this Contract; and
 - (B) the Schedules.
- 1.3.2 If a Party becomes aware of any inconsistency within or between the documents referred to in Clause 1.3.1, such Party shall promptly notify the other and the Parties will seek to resolve such inconsistency, provided that if either Party considers the inconsistency to be material then the matter shall be determined in accordance with Clause 45 (*Dispute Resolution Procedure*).

2. CONDITIONS PRECEDENT

2.1 Conditions

- 2.1.1 With the exception of Clauses 1 (*Definitions and Interpretation*), 2 (*Conditions Precedent*), 5 (*Contractor Warranties and Representations*), 8 (*Notices*) to 21 (*Prohibited Acts*) (inclusive) and 42 (*Early Termination*) to 65 (*Liability*) (inclusive) and Schedules 4 (*Dispute Resolution Procedure*), 5 (*Termination Payments*), 8 (*COI Compliance Regime*), 10 (*Contract Period Liability Cap*) and 11 (*Parent Company Guarantee*) which shall come into effect on the date of this Contract, the rights and obligations of the Parties to this Contract shall come into effect on the date on which the Commencement Conditions are satisfied or waived ("**Commencement Date**").

2.2 Commencement Conditions

- 2.2.1 Prior to the Commencement Date, the Contractor shall:
 - (A) deliver to the Authority:
 - (1) the Parent Company Guarantee executed by the Parent Guarantor;
 - (2) evidence in a form reasonably satisfactory to the Authority that the signatory of the Parent Company Guarantee is authorised by the Parent Guarantor to enter into the Parent Company Guarantee;
 - (3) if this Contract is not signed by a director of the Contractor, evidence in a form reasonably satisfactory to the Authority that the signatory of this Contract is authorised by the Contractor to enter into this Contract;
 - (4) the Electronic Transaction Agreement executed by the Contractor;
 - (5) the acknowledgement in respect of the Security Aspects Letter required under Clause 46.1;

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- (6) a PDAL executed by the Contractor; and
 - (7) evidence in a form that confirms to the Authority's reasonable satisfaction that the Contractor Insurances are in full force and effect and meet in full the requirements in Schedule 7 (*Insurances*); and
 - (B) obtain the appropriate security clearance for the Commencement Personnel,
- (the "**Commencement Conditions**").
- 2.2.2 The Contractor shall use all reasonable endeavours to satisfy or procure the satisfaction of each of the Commencement Conditions not already satisfied or waived on the date of this Contract as soon as possible.
- 2.2.3 The Authority may, by written notice to the Contractor, waive any of the Commencement Conditions in whole or in part.

2.3 **Failure to Satisfy Commencement Conditions**

If one or more of the Commencement Conditions remains unsatisfied by 23:59 on the day falling immediately before the Commencement Conditions Longstop Date, and has not been waived by the Authority on or before that date, the Authority shall be entitled to terminate this Contract with immediate effect as a Contractor Event of Default.

3. **APPOINTMENT AND LIABILITY**

3.1 **Appointment**

The Contractor shall perform its obligations in accordance with the terms of this Contract.

3.2 **Liability of the Contractor**

The Contractor shall at all times remain directly and primarily liable to the Authority for the due and proper performance of its obligations under this Contract (including where the Contractor has procured the performance of its obligations by Contractor Related Parties).

4. **CHANGE OF CONTROL OF THE CONTRACTOR AND CHANGE IN COI ASSOCIATES**

4.1 The Contractor shall inform the Authority, as soon as practicable, in writing (which for this purpose does not include email) of any change in control of the Contractor or if any person holds or acquires, directly or indirectly, at least 20% of the capital or voting rights in the Contractor.

4.2 For the purposes of this Clause 4 (*Change of Control of the Contractor and change in COI Associates*), "**control**" of the Contractor means the power of a person, directly or indirectly, to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person or to exercise a dominant influence over the Contractor:

4.2.1 by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or

4.2.2 by virtue of any powers conferred by the constitutional or corporate documents, or any other contract, agreement or arrangement, regulating the Contractor;

and (subject to Clause 4.3) a change of control of the Contractor occurs if a person who controls the Contractor ceases to do so or if another person acquires control of the Contractor.

4.3 There shall be no change of control for the purpose of this Clause 4 (*Change of Control of the Contractor and change in COI Associates*) where there is a change in the group structure of the Contractor that comprises one or more group undertakings (each a "**relevant group undertaking**") acquiring control of or ceasing to control the Contractor in circumstances where (before and after the restructuring) the Contractor is also under the

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control of another group undertaking (the "**ultimate parent undertaking**") and the ultimate parent undertaking controls each relevant group undertaking.

- 4.4 The Contractor shall inform the Authority, as soon as practicable, in writing (which for this purpose does not include email) if any entity that is party to (or is competing for or proposing to enter into) any Domain Contract becomes a COI Associate.
- 4.5 All notices required to be given to the Authority pursuant to this Clause 4 shall be submitted to the Authority's Representative and to:

Mergers & Acquisitions Section
Supplier Relations Team
Poplar 1 # 2119
MOD Abbey Wood
Bristol, BS34 8JH

5. **CONTRACTOR WARRANTIES AND REPRESENTATIONS**

5.1 **Contractor Warranties and Representations**

- 5.1.1 The Contractor warrants and represents to the Authority, and the Authority relies upon such warranties and representations, that on the date of this Contract:
- (A) it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
 - (B) in the case of this Contract, and each Associated Contract (or other document required to be executed in order to satisfy the Commencement Conditions) that is executed before or on the date of this Contract, all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under this Contract, and any such Associated Contract (or other document required to be executed in order to satisfy the Commencement Conditions), has been taken;
 - (C) in the case of this Contract, and each Associated Contract (or other document) referred to in Paragraph (B) above, the obligations expressed to be assumed by the Contractor are legal, valid, binding and enforceable to the extent permitted by Applicable Law;
 - (D) the execution, delivery and performance by it of the Contract, and the Associated Contracts (and other documents required to be executed in order to satisfy the Commencement Conditions), does not contravene any provision of:
 - (1) any Applicable Laws (including any Applicable Law which has been enacted but is not yet in force);
 - (2) the memorandum and articles of association of the Contractor;
 - (3) any order or decree of any Relevant Authority which is binding on the Contractor; or
 - (4) any obligation which is binding upon the Contractor or upon any of its assets or revenues;
 - (E) no claim is presently being assessed and no Legal Proceeding is presently in progress or, to the best of the knowledge of the Contractor (having made all due enquiry), pending or threatened against it or any of its assets which may have a material adverse effect on the ability of the Contractor to perform its obligations under the Contract;
 - (F) no Legal Proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, having made all due enquiries, threatened) for its winding-up or dissolution or for the

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appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;

- (G) it has not committed any Prohibited Act in connection with this Contract or the Competition;
- (H) so far as it is aware, none of the Contractor Related Parties has committed a Prohibited Act in connection with this Contract or the Competition;
- (I) (to the best of the knowledge of the Contractor, having made all due enquiries) none of the Contractor, the Contractor Related Parties or any of the COI Associates is or has been the subject of any investigation, inquiry or enforcement proceedings by any Relevant Authority regarding any offence or alleged offence under any legislation relating to anti-bribery and anti-corruption (including the Bribery Act 2010);
- (J) (to the best of the knowledge of the Contractor, having made all due enquiries) none of the Contractor, the Contractor Related Parties or any of the COI Associates is or has been the subject of UK or foreign export control sanctions or investigations; and
- (K) the Contractor's Warranted Data is true, accurate and complete in all material respects.

5.1.2 The Contractor warrants and represents to the Authority, and the Authority relies upon such warranties and representations, that at the time of the execution of any Associated Contract (or other document required to be executed in order to satisfy the Commencement Conditions) that is executed after the date of this Contract:

- (A) all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under any such Associated Contract (or other document required to be executed in order to satisfy the Commencement Conditions) will be or has been taken; and
- (B) the obligations expressed to be assumed by the Contractor under any such Associated Contract (or other document required to be executed in order to satisfy the Commencement Conditions) shall be or are legal, valid, binding and enforceable to the extent permitted by Applicable Law.

5.1.3 The Contractor warrants and represents to the Authority, and the Authority relies upon such warranties and representations, that throughout the duration of this Contract it will have in place adequate procedures (as referred to in Section 7(2) of the Bribery Act 2010) designed to prevent persons associated with the Contractor (including Contractor Related Parties) from bribing any person with the intention of obtaining or retaining business for the Contractor, or with the intention of obtaining or retaining an advantage in the conduct of business for the Contractor.

6. **CONTRACTOR'S RELATED PARTIES**

- 6.1 Subject to the provisions of this Contract, the Contractor shall be responsible and liable for the acts and omissions of the Contractor Related Parties in relation to this Contract and the Services as if they were the acts and omissions of the Contractor.
- 6.2 Without limitation in respect of its actual knowledge, the Contractor shall for all purposes of this Contract be deemed to have such knowledge in respect of the Services and other obligations under this Contract and the Associated Contracts as is held (or ought reasonably to be held) by any Contractor Related Party.

7. **AUTHORITY RELATED PARTIES**

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Subject to the provisions of this Contract, the Authority shall be responsible and liable for the acts and omissions of the Authority Related Parties as if they were the acts and omissions of the Authority.

8. NOTICES

- 8.1 A notice (including any approval or consent) in connection with this Contract:
- 8.1.1 must be in writing in the English language;
 - 8.1.2 must be left at the address of the addressee or sent by pre-paid recorded delivery (airmail if posted to or from a place outside the UK) to the address of the addressee which is specified in this Clause 8 (*Notices*) in relation to the Party to whom the notice is addressed, and marked for the attention of the person so specified, or to such other address or marked for the attention of such other person as the relevant Party may from time to time specify by notice given in accordance with this Clause 8 (*Notices*); and
 - 8.1.3 must not be sent by electronic mail unless a provision of this Contract expressly provides otherwise.

- 8.2 The relevant details of each Party at the date of this Contract are:

The Secretary of State for Defence

Address: DE&S, MOD Abbey Wood, Maple 0c #2056, Bristol, BS34 8JH
Phone number: 0306 770 0827
Attention (Authority's Representative): Mr Ian Burton

Contractor

Address: 1 The Square, Temple Quay, Bristol, BS1 6DG
Phone number: 0203 479 8228
Attention (Contractor's Representative): Philip Trevena

- 8.3 In the absence of evidence of earlier receipt, any notice shall take effect from the time that it is deemed to be received in accordance with Clause 8.4.
- 8.4 Subject to Clause 8.5 below, a notice is deemed to be received:
- 8.4.1 in the case of a notice left at the address of the addressee, upon delivery at that address; and
 - 8.4.2 in the case of a posted letter, on the third (3rd) Business Day after posting or, if posted to or from a place outside the UK, the fifth (5th) Business Day after posting.
- 8.5 A notice received or deemed to be received in accordance with Clause 8.4 on a day which is not a Business Day, or after 17:00 on any Business Day, shall be deemed to be received on the next following Business Day.

9. REPRESENTATIVES

9.1 Contractor's Representative

The Contractor shall appoint the person whose name, address and telephone number is set out in Clause 8 (*Notices*) to act as the Contractor's Representative in connection with this Contract.

9.2 Authority of the Contractor's Representative

- 9.2.1 The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes connected with this Contract. Unless notified by the Contractor in writing before such act or instruction, the Authority shall be entitled to treat any act of the Contractor's Representative which is authorised by the

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Contract as being expressly authorised by the Contractor and the Authority shall not be required to determine whether authority has, in fact, been given.

- 9.2.2 The Contractor shall procure that the Contractor's Representative acts in accordance with the Contractor's Representative's powers and functions in this Contract.

9.3 Change in Contractor's Representative

- 9.3.1 The Contractor may propose a change in the identity of the Contractor's Representative and Clause 8 (*Notices*) shall be updated accordingly unless the Authority refuses the change under Clause 9.3.2.

- 9.3.2 The Authority may refuse any change proposed by the Contractor under Clause 9.3.1 in its sole discretion.

- 9.3.3 During any period when the Contractor's Representative is unable through illness, incapacity, holidays or any other reason to carry out or exercise their functions under this Contract, the Contractor's Representative may temporarily delegate his functions to another person by giving the Authority written notice (including, notwithstanding Clause 8 (*Notices*), by electronic mail) and seeking the Authority's approval of the identity of such person and the extent of his authority. The Authority shall not unreasonably withhold or delay approval of the delegate under this Clause 9.3.3.

9.4 Authority's Representative

The Authority shall appoint the person whose name, address and telephone number are set out in Clause 8 (*Notices*) as the Authority's Representative in connection with this Contract.

9.5 Change in Authority's Representative

- 9.5.1 The Authority may propose a change in the identity of the Authority's Representative and Clause 8 (*Notices*) shall be updated accordingly.

- 9.5.2 During any period when the Authority's Representative is unable through illness, incapacity, holidays or any other reason to carry out or exercise their functions under this Contract, the Authority's Representative may delegate such functions to another person by giving the Contractor written notice (including by electronic mail) of the identity of such person and the extent of his authority.

10. AUTHORITY'S DISCLOSED DATA

10.1 Authority Disclosed Data

Subject to Clause 10.4 (*Fraudulent Statements*):

- 10.1.1 the Authority does not make any representation or give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Authority Disclosed Data; and

- 10.1.2 neither the Authority nor any Authority Related Party shall be liable to the Contractor in contract, tort (including the tort of negligence) or for breach of any statutory duty or otherwise as a result of:

- (A) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Authority Disclosed Data; or
- (B) any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to the Contract or the Competition.

10.2 Contractor's Due Diligence

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On entering into this Contract, the Contractor agrees it has been given an opportunity to carry out a review and investigation of the documents contained in the Data Room and the Clarification Responses, and shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to make any claim against the Authority (or an Authority Related Party) as a consequence of:

- 10.2.1 any information not being provided in the Data Room or the Clarification Responses where such information is not material;
- 10.2.2 any fact or circumstance that has been fairly disclosed in the Data Room or the Clarification Responses;
- 10.2.3 any fact or circumstance which the Contractor, or its agents or advisers were, or ought reasonably to have been, aware of as a result of the contents of the Data Room or the Clarification Responses; or
- 10.2.4 any fact or circumstance which a Bidder, acting in accordance with Good Industry Practice, would have been aware of having made reasonable due diligence enquiries.

10.3 **No Relief**

Subject to Clause 10.4 (*Fraudulent Statements*), the Contractor shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to make any claim against the Authority (or an Authority Related Party) on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority), is incorrect or insufficient.

10.4 **Fraudulent Statements**

Nothing in this Clause 10 (*Authority's Disclosed Data*) shall exclude any liability which the Authority would otherwise have to the Contractor for statements made fraudulently or fraudulent omissions to make statements prior to the date of this Contract.

10.5 **Use of data**

Notwithstanding anything to the contrary, but subject to Clause 10.3 (*No Relief*), the Contractor shall have no liability to the Authority for any Losses suffered by the Authority arising out of the use by the Contractor or a Contractor Related Party of information disclosed to the Contractor or a Contractor Related Party by the Authority or an Authority Related Party, whether disclosed before or after the date of this Contract, provided that the Contractor has otherwise complied with Clause 24.2 (*Standards of Performance*).

11. **ASSIGNMENT AND NOVATION**

11.1 **Assignment or Novation by the Contractor**

Except where expressly permitted under this Contract, the Contractor shall not (whether absolutely or by way of security and whether in whole or in part) assign, transfer, declare itself a trustee for a third party of, create an Encumbrance over, novate or otherwise dispose in any manner whatsoever of the benefit or burden of this Contract (each of the above a "**Contractor dealing**") without the prior written consent of the Authority to be given or withheld in its sole discretion and any purported Contractor dealing in contravention of this Clause 11.1 (*Assignment or Novation by the Contractor*) shall be ineffective.

11.2 **Assignment or Novation by the Authority**

Except where expressly permitted under this Contract, the Authority shall not without the prior written consent of the Contractor (not to be unreasonably withheld) assign, transfer, novate or otherwise dispose of the benefit or burden of this Contract (each of the above an "**Authority dealing**"), unless such transfer takes place under statute or is to the Crown or another manifestation or agency of the Crown, or unless the obligations of the person to

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whom and in whose favour any such interest is assigned, transferred, novated or otherwise disposed of are fully and unconditionally guaranteed by the Crown, and any purported Authority dealing in contravention of this Clause 11.2 (*Assignment or Novation by the Authority*) shall be ineffective.

12. SEVERABILITY

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

12.1.1 such provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in the Contract (but without invalidating any of the remaining provisions of the Contract or any such provision to the extent that it is not invalid, illegal or unenforceable); and

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

13. VARIATION

No variation of this Contract (or any document referred to in it) shall be effective unless it is in writing (which for this purpose does not include email) signed by or on behalf of each of the Parties and is accompanied by a DEFORM 10B signed by or on behalf of each of the Parties. The expression "**variation**" includes any variation, supplement, deletion or replacement, however effected.

14. WAIVER

The rights and remedies of the Parties shall not be affected by any failure to exercise or delay in exercising any right or remedy or by the giving of any indulgence by any other Party or by anything whatsoever except a specific waiver or release in writing (which for this purpose does not include email) and any such waiver or release shall not prejudice or affect any other rights or remedies of the Parties. No single or partial exercise of any right or remedy shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

15. NO PARTNERSHIP

Nothing in this Contract or in any document referred to in it or any arrangement contemplated by it shall constitute either Party a partner of any other nor shall the execution, completion and implementation of this Contract confer on either Party any power to bind or impose any obligations to any third parties on the other Party or to pledge the credit of the other Party.

16. COUNTERPARTS

This Contract may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

17. GOVERNING LAW

The Contract shall be governed by and construed in accordance with the laws of England and Wales.

18. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

No term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party.

19. ENTIRE AGREEMENT

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- 19.1 The Parties to this Contract confirm that this Contract, together with the Associated Contracts and clauses 1.1 and 65.1 of the Second Domain Contract, represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom, usage or course of dealing.
- 19.2 The Parties confirm that:
- 19.2.1 in entering into this Contract and the Associated Contracts they have not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out in this Contract or the Associated Contracts; and
- 19.2.2 in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any representation, warranty, assurance, covenant, indemnity, undertaking or commitment given or action taken in connection with this Contract or the Associated Contracts are pursuant to this Contract or such Associated Contracts, and without limitation, neither Party has any other right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, or in, this Contract) in relation to any such representation, warranty, assurance, covenant, indemnity, undertaking or commitment.
20. **CONFLICTS OF INTEREST**
- 20.1 The Authority and the Contractor agree that it is a fundamental principle of this Contract that the Contractor and the Contractor Related Parties and COI Associates shall avoid or manage conflicts of interest in the manner set out in Schedule 8 (*COI Compliance Regime*).
- 20.2 The Contractor agrees that it and the Contractor Related Parties and COI Associates shall adopt and comply with the COI Compliance Regime and, without in any way derogating from the obligations set out elsewhere in this Contract (including Clause 59 (*Confidentiality*)), deal with all Commercially Confidential Information in accordance with the terms of such COI Compliance Regime.
- 20.3 During the Term (and for a further six (6) months after the Expiry Date or Termination Date (as applicable)) the Contractor shall promptly notify the Authority of any intention of the Contractor or any of the COI Associates to bid for or enter into a Domain Contract and Paragraph 1.7 of Schedule 8 (*COI Compliance Regime*) shall apply.
- 20.4 Without prejudice to Clause 20.2, the Contractor shall ensure that:
- 20.4.1 prior to entering into a Sub-contract, the COI Compliance Regime shall be amended to reflect any requirements of the Authority to manage conflicts of interest that may exist in relation to the Sub-contractor and its associates in a manner satisfactory to the Authority (acting reasonably);
- 20.4.2 subject to clause 20.4.3, prior to the Placement of any Personnel employed by the Sub-contractor, the Sub-contractor shall enter into a conflict of interest compliance agreement with (and in a form required by) the Authority that is drawn up in accordance with the MOD Conflicts of Interest Commercial Policy Statement (as in force from time to time) and the COI Compliance Regime and under, and in accordance with, which the Sub-contractor shall (and shall procure that its associates shall) manage actual and potential conflicts of interests; and
- 20.4.3 ACT 1 Services Limited, trading as Agile 1 (Company Number: 647126) ("**Agile**") shall not be required to enter into a conflict of interest compliance agreement in accordance with Clause 20.4.2 on the basis that any person provided by Agile

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under the terms of its Approved Sub-contract with the Contractor shall enter into a Letter of Placement, in accordance with Paragraph 5.1 of Schedule 6 (*Personnel Arrangements*), under, and in accordance with, which such person shall manage actual and potential conflicts of interests.

- 20.5 Without prejudice to Clause 43.1 (*Accrued Rights and Obligations and Survivorship*), the Contractor agrees and acknowledges that certain provisions in Schedule 8 (*COI Compliance Regime*) shall continue to have effect after the expiry or termination of this Contract, as specified in Schedule 8 (*COI Compliance Regime*).
- 20.6 The Authority may impose conditions, including if appropriate a prohibition from bidding, in relation to any bid, or proposed bid, by the Contractor or any COI Associate for a contract with the Authority other than a Domain Contract, where the Authority (acting reasonably) considers that there could be a conflict of interest which the Authority does not consider the arrangements in Schedule 8 (*COI Compliance Regime*) are sufficient to manage.

21. PROHIBITED ACTS

- 21.1 The Contractor shall not commit a Prohibited Act and shall procure that the Contractor Related Parties shall not commit a Prohibited Act.
- 21.2 If a Prohibited Act is committed by the Contractor or a Contractor Related Party (with or without the knowledge or authority of the Contractor) in relation to this Contract or any other contract with the Crown, the Authority shall be entitled (in its discretion) to do any one or more of the following:
 - 21.2.1 terminate the Contract under Clause 42 (*Early Termination*) as a Contractor Event of Default;
 - 21.2.2 recover from the Contractor the amount or value of any such gift, consideration or commission;
 - 21.2.3 recover from the Contractor:
 - (A) the amount of any Loss resulting from a termination under Clause 42 (*Early Termination*) as a Contractor Event of Default; or
 - (B) any other Loss sustained in consequence of any breach of this Clause 21 (*Prohibited Acts*), where the Contract has not been terminated; or
 - 21.2.4 (if a Prohibited Act is committed by a Contractor Related Party) to require the Contractor to either or both terminate its relationship with that Contractor Related Party (save as in respect of an employee, where any such action shall be at the discretion of the Contractor and shall be carried out in accordance with the Contractor's normal disciplinary procedures) or procure the performance of any affected part of the Contract by another person.
- 21.3 In exercising its rights or remedies under this Clause, the Authority shall:
 - 21.3.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the Prohibited Act; and
 - 21.3.2 give all due consideration, where appropriate, to action other than termination of the Contract, including requesting that the Contractor consider taking disciplinary action against an employee where the Prohibited Act is that of such employee.
- 21.4 Promptly, upon becoming aware of any Prohibited Act having been committed (or of a reasonable suspicion that a Prohibited Act has been or will be committed) by the Contractor or by a Contractor Related Party, the Contractor shall notify the Authority of such act or suspicion.

PART II – CONTRACT TERM

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22. COMMENCEMENT AND DURATION OF THE CONTRACT

22.1 Term

Subject to the earlier termination of this Contract in accordance with Clause 42 (*Early Termination*) or extension of this Contract in accordance with Clause 22.2 (*Options*), this Contract shall commence on the Commencement Date and expire on the date which is 42 months after the Commencement Date (the "**Term**").

22.2 Options

- 22.2.1 The Authority may extend the Term for a period of twelve (12) months or twenty four (24) months from the Expiry Date. If the Authority extends the Term for a period of twelve (12) months from the Expiry Date, it may further extend the Term by another period of twelve (12) months.
- 22.2.2 Any decision to extend the Term after the Expiry Date is a matter solely for the Authority and the Authority's decision in this matter will be final.
- 22.2.3 The Authority may extend the Term in accordance with this Clause 22.2 (*Options*) by notice to the Contractor in writing. The Authority shall use reasonable endeavours to provide the Contractor with five (5) months prior written notice, and shall give at least three (3) months prior written notice, prior to the date on which the Term would otherwise expire.

PART III - PARTIES' RIGHTS AND OBLIGATIONS

23. OBLIGATIONS OF THE AUTHORITY

23.1 Compliance with Law

The Authority shall comply with all Applicable Laws in the performance of its obligations under this Contract.

23.2 Obligations of the Authority in relation to Personnel

The Authority shall comply with its obligations in relation to Personnel as set out in Schedule 6 (*Personnel Arrangements*).

24. OBLIGATIONS OF THE CONTRACTOR

24.1 Obligations of the Contractor in relation to the Personnel

- 24.1.1 The Contractor shall provide Personnel to the Authority in accordance with its obligations as set out in Schedule 6 (*Personnel Arrangements*) for the purpose of supporting DE&S to transform and improve its project delivery capability as envisaged in Schedule 1 (*Requirements*).
- 24.1.2 The Contractor shall be incentivised by the Incentive Fees and Award Fees to help DE&S meet milestones and KPIs in relation to the transformation programme. The Parties recognise that a key part of this will be ensuring that appropriate knowledge and skills are transferred to DE&S to allow its performance and transformation to be sustained at the end of the Term.

24.2 Standards of Performance

The Contractor shall (and shall procure that the Contractor Related Parties) comply with all Applicable Laws in the performance of its obligations under this Contract and perform the Services:

- 24.2.1 in compliance with Good Industry Practice;

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- 24.2.2 in a manner designed to ensure that all arrangements with which the Contractor is involved under this Contract:
 - (A) meet all standards, specifications and requirements as may be set out in the Authority's current Departmental policy (as updated from time to time); and
 - (B) are fit for the purpose set out in this Contract such as to be consistent with Good Industry Practice;
- 24.2.3 in a manner that is consistent with the Authority discharging its functions and statutory duties and that would reasonably be expected not to lower the reputation of the Authority in the eyes of any Third Party, including (without limiting Clause 36.2 (*Tax Non-compliance*)) in relation to any taxation matter;
- 24.2.4 in a safe, secure, efficient and cost-effective manner such as to be consistent with Good Industry Practice;
- 24.2.5 in a professional manner acting with reasonable skill and care, integrity, impartiality, objectivity and confidentiality such as to be consistent with Good Industry Practice; and
- 24.2.6 in compliance with the COI Compliance Regime.

24.3 Exclusivity

This Contract is non-exclusive and the Contractor agrees and acknowledges that the Authority does not give any commitment to the Contractor in relation to its appointment as the sole external provider on all aspects of project delivery.

25. SUB-CONTRACTS

25.1 Approval of Sub-contracts

- 25.1.1 The Contractor shall not enter into a Sub-contract without the prior written approval of the Authority.
- 25.1.2 Any sub-contracting by the Contractor shall be without prejudice to its obligations to the Authority under this Contract.
- 25.1.3 Where the Contractor proposes to enter into a Sub-contract, it shall submit to the Authority:
 - (A) the name of the proposed Sub-contractor;
 - (B) a statement of the services to be provided;
 - (C) the material terms of the proposed Sub-contract;
 - (D) where the Contractor proposes that the Sub-contractor should provide Additional Personnel, In-Year Other Personnel or Reachback Personnel in accordance with a rate card (for use in determining the Base Costs of such Personnel in accordance with Paragraph 2.6B.1 of Schedule 3 (*Payment and Incentive Mechanism*)), that rate card; and
 - (E) any other details known to the Contractor which the Authority shall reasonably require.
- 25.1.4 The Parties agree and acknowledge that the Authority may withhold its approval in relation to any proposed Sub-contract (or make any such approval subject to any conditions it may require) in its absolute discretion.
- 25.1.5 On the date of this Contract, the Authority has approved each of the Approved Sub-contracts.

25.2 Termination or amendment of Sub-contracts

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- 25.2.1 The Contractor shall keep the Authority informed of any circumstance relating to a Sub-contract which may cause the Contractor to contravene its obligations under this Contract and the Authority may require that the relevant Sub-contract is terminated or amended in such circumstances (but the Authority shall have no liability to the Contractor or Sub-Contractor for any payment required in connection with any such termination or amendment).
- 25.2.2 The Contractor shall notify the Authority as soon as reasonably practicable after:
- (A) a Sub-contract is terminated or otherwise determined;
 - (B) the material terms of a Sub-contract are amended; or
 - (C) it becomes aware that it is reasonably likely that a Sub-contract will be terminated or otherwise determined or amended,
- and following such notification, the Contractor shall, as soon as reasonably practicable, provide details of its proposals to maintain its capability to perform its obligations under this Contract.

PART IV – FINANCIAL INSPECTION AND REVIEW

26. OPEN BOOK ACCOUNTING AND FINANCIAL MANAGEMENT INFORMATION

26.1 Open Book Accounting

The Contractor shall at all times maintain (and, subject to Clause 27.10 (*Authority Co-operation*), make available to the Authority on request) records of salary and other costs that have been taken into account in calculating the Base Fee for all Personnel at all times during the Term and the time incurred by all Personnel in connection with the provision of the Services.

26.2 Financial Management Information

The Contractor shall maintain the financial management information (which for the purposes of this Contract shall mean the value of work completed at a given point in time), and shall report it to the Authority in accordance with the provision of DEFCON 647 (as amended from time to time).

27. REGULARITY AND PROPRIETY

27.1 Inspection and Review

- 27.1.1 The Contractor shall implement systems and processes for performance reporting and for reviewing its compliance with this Contract.
- 27.1.2 The Contractor shall provide such reports as are required under this Contract, including under Clause 26 (*Open Book Accounting and Financial Management Information*) and Schedule 3 (*Payment and Incentive Mechanism*).

27.2 Retention of Records

The Contractor shall retain all information and records required for the purposes of this Contract for a period of seven (7) Years after the Expiry Date or Termination Date (as applicable), or such longer period as may be required by Applicable Laws, in such condition, format and detail as is adequate for their intended purpose, or as required by the Authority.

27.3 Authority Review

Subject to Clause 27.10 (*Authority Co-operation*), the Authority may nominate representatives including from its Cost Accounting and Assurance Service and external

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advisors ("**Review Representatives**") to undertake, at any time or frequency, financial and management reviews in relation to the Contract involving:

- 27.3.1 inspection, review, periodic monitoring or spot checks of the Contractor's activities and costs incurred in connection with this Contract or the Services and any information required to be kept by the Contractor in connection with this Contract;
- 27.3.2 reviews of the Contractor's compliance with its internal procedures, quality management systems, procedures required by Applicable Laws and any operating procedures, policies or standards ancillary to, or used in connection or accordance with the same; and
- 27.3.3 the copying and collation of any information held in electronic or paper form.

27.4 **Co-operation**

- 27.4.1 Subject to Clause 27.10 (*Authority Co-operation*), the Contractor shall (and shall procure that the Contractor Related Parties shall) promptly provide the Review Representatives with all reasonable assistance and co-operation, including:
 - (A) ensuring Review Representatives have access to the Contractor's sites and allowing the Review Representatives use of suitable office accommodation if reasonably required in relation to any inspection, review, periodic monitoring, or spot check under Clause 27.3 (*Authority Review*); and
 - (B) making any documents and records available (including those maintained under Clause 26 (*Open Book Accounting and Financial Management Information*) and this Clause 27 (*Regularity and Propriety*)) to Review Representatives for inspection, providing a reasonable number of copies of any documents or records requested to Review Representatives or granting copying facilities to Review Representatives for the purposes of making such copies.
- 27.4.2 To the extent that the Review Representatives require access to a site, document or record that does not belong to the Contractor, the Contractor shall use all reasonable endeavours to provide such access.

27.5 **Review Findings and Corrective Action**

- 27.5.1 The Contractor shall be entitled to receive a copy of the Authority's findings once completed in relation to any review carried out in accordance with Clause 27.3 (*Authority Review*), subject to any redaction considered necessary or desirable by the Authority.
- 27.5.2 Within fifteen (15) Business Days of the Contractor's receipt of the review findings, the Parties shall meet to discuss the review findings and in particular any areas identified in the review findings as requiring corrective action ("**Corrective Action**") (such meeting being the "**Review Close-Out Meeting**").
- 27.5.3 At such Review Close-Out Meeting, the Contractor shall have the opportunity to demonstrate to the reasonable satisfaction of the Authority that some or all of the relevant review findings are incorrect.
- 27.5.4 If at the Review Close-Out Meeting, the Authority considers that certain Corrective Action is required, the Contractor shall within five (5) Business Days of the Review Close-Out Meeting (or such other date as agreed between the Parties) either:
 - (A) carry out the Corrective Action; or
 - (B) propose to the Authority a plan for carrying out the Corrective Action.

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- 27.5.5 Where the Contractor proposes a plan for the Corrective Action in accordance with Clause 27.5.4(B), the Authority shall have ten (10) Business Days to notify the Contractor whether it accepts such proposed plan for the Corrective Action (such acceptance not to be unreasonably withheld).
- 27.5.6 Failure of the Authority to provide such notification in accordance with Clause 27.5.5 shall constitute deemed acceptance by the Authority.
- 27.5.7 Where the Authority notifies the Contractor in accordance with Clause 27.5.5 that it does not accept the plan for Corrective Action, the Parties shall endeavour within the following ten (10) Business Days to agree any necessary amendments to the plan for the Corrective Action.
- 27.5.8 In the absence of agreement within such ten (10) Business Days period, the question of whether or not the Authority's withholding of acceptance is reasonable may be referred by either Party to be resolved in accordance with Clause 45 (*Dispute Resolution Procedure*).

27.6 Security Systems

The Contractor shall ensure that appropriate security systems are in place to prevent unauthorised access to, extraction of or alteration to, or destruction of, data during any review undertaken pursuant to Clause 27.3 (*Authority Review*).

27.7 Records of Review Findings

The Contractor shall maintain records containing the findings of any reviews made under this Part IV (*Financial Inspection and Review*) in accordance with Clause 27.2 (*Retention of Records*).

27.8 Contractor's Obligations Persist

The Contractor shall not be excused from performance of any aspect of its obligations under the Contract for any period of time during which the Authority is exercising its rights under this Clause 27 (*Regularity and Propriety*).

27.9 Confidentiality

The Parties obligations under this Clause 27 (*Regularity and Propriety*) shall be subject to the obligations set out in Part XII (*Security*), Clause 58 (*Data Protection*) and Clause 59 (*Confidentiality*).

27.10 Authority Co-operation

In exercising any of its rights under Clause 26.1 (*Open Book Accounting*), Clause 27.3 (*Authority Review*), Clause 27.4 (*Co-operation*) or Paragraph 5.4 of Schedule 8 (*COI Compliance Regime*), the Authority shall comply, and shall ensure that the Review Representatives and Authority Related Parties comply:

- 27.10.1 with the Contractor's reasonable security and confidentiality requirements then in force; and
- 27.10.2 with, and not cause the Contractor to breach, any Applicable Laws relating to the protection of personal data (as defined in the DPA).

PART V – CONTRACT MANAGEMENT

28. MONTHLY CONTRACT REVIEWS

- 28.1 The Authority's Representative and the Contractor's Representative shall hold a meeting on a monthly basis ("**Contract Management Meetings**"). If requested by the Authority's Representative from time to time, the Contractor's Representative shall ensure that the following Personnel are also in attendance at Contract Management Meetings:

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- 28.1.1 Key Personnel deployed in the Contract Domain;
- 28.1.2 Key Personnel working in Rainbow Teams; and
- 28.1.3 other Personnel responsible for specific aspects of the Services.
- 28.2 The Authority's Representative shall have the right, in its sole discretion, to demand more frequent Contract Management Meetings, provided only that it gives the Contractor's Representative reasonable notice.
- 28.3 All Contract Management Meetings will be held at a location to be agreed between the Authority's Representative and the Contractor's Representative, acting reasonably.
- 28.4 The Contractor's Representative and the Authority's Representative intend that discussion of Governance and Tasking in relation to the Services at the Contract Management Meeting is based on the principles set out in Part F (*Governance and Tasking*) to Schedule 1 (*Requirements*) (as varied from time to time in accordance with that Part F (*Governance and Tasking*) of Schedule 1 (*Requirements*)).
- 28.4A The Contractor's Representative shall, five (5) Business Days prior to each Contract Management Meeting, provide to the Authority's Representative a report summarising its performance over the previous month in the format set out in Tables 1 and 2 in the Attachment to the Annex (*Form of Reporting*) to Schedule 2 (*Managed Service Providers Ways of Working*), which format may be amended from time to time by agreement between the Contractor's Representative and the Authority's Representative. The Contractor's Representative and the Authority's Representative shall discuss that performance report and each update the other on any issues in relation to which they may reasonably wish to be informed, including:
 - 28.4A.1 progress in meeting relevant milestones;
 - 28.4A.2 progress in meeting relevant KPIs; and
 - 28.4A.3 the working relationship between the Contractor, DE&S, and other MSPs involved with Work Package 1, Work Package 2, Work Package 3 and other DE&S contracted support.
- 28.5 The Contract Management Meetings shall be chaired by the Authority's Representative (or any other person nominated by the Authority) and secretarial support shall be provided by the Authority.
- 28.6 Unless otherwise stated the Authority shall be responsible for taking the minutes of the meeting. These minutes will be forwarded in draft form to the Contractor's Representative for his review and comments prior to the final version being issued.
- 28.7 In addition to any reports provided for the Contract Management Meetings, the Contractor shall provide the Monthly Base Fees Report and the Quarterly Incentive Fees Report when required in accordance with Part C (*Monthly and Quarterly Reporting*) of Schedule 3 (*Payment and Incentive Mechanism*).
- 29. **MANAGED SERVICE PROVIDERS WAYS OF WORKING**
The Parties shall comply with the provisions of Schedule 2 (*Managed Service Providers Ways of Working*).

PART VI – ASSET MANAGEMENT

- 30. **GOVERNMENT FURNISHED ASSETS**
 - 30.1 **Government Furnished Assets**
 - 30.1.1 As from the Commencement Date the Authority:

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- (A) may make available to the Contractor on loan and free of charge Government Furnished Assets; and, if so
 - (B) shall ensure that the Government Furnished Assets, when made available:
 - (1) are in a serviceable condition;
 - (2) have been maintained in accordance with the relevant maintenance schedules;
 - (3) are accompanied by such information and instructions as may be necessary for their installation, testing and operation; and
 - (4) if classified, are provided with information on the need to be safeguarded in accordance with security regulations.
- 30.1.2 The Contractor shall be entitled to use the Government Furnished Assets provided to it under this Clause 30 (*Government Furnished Assets*) on the terms herein.
- 30.1.3 Neither the Contractor, nor any other person, shall have a lien on any Government Furnished Assets for any sum due to the Contractor, or other person, and the Contractor shall take all such steps as may be necessary to ensure that the title of the Authority, and the exclusion of any such lien, are brought to the notice of all other persons dealing with any Government Furnished Assets.
- 30.1.4 The Contractor shall:
- (A) observe the terms and conditions required by the Authority from time to time regarding any Government Furnished Assets made available to the Contractor;
 - (B) be responsible for the safe custody and due return of the Government Furnished Assets and shall be responsible for all loss or damage thereto until re-delivered to the Authority or disposed of in accordance with the Authority's instructions;
 - (C) open and maintain a Public Store Account in accordance with DEFSTAN 05-99 (and otherwise comply with DEFSTAN 05-99) and ensure that all of the Government Furnished Assets are available for inspection by the Authority at any time; and
 - (D) on being given two (2) months' notice, permit and co-operate with the Authority to conduct audits of the Government Furnished Assets recorded in the Public Store Account in a manner to be determined by the Authority provided that if the Authority has reasonable grounds to believe that the Government Furnished Assets have not been used in accordance with this Contract these audits may be conducted without notice.
- 30.1.5 The Contractor shall not be liable for:
- (A) (save as provided in Clause 30.2 (*Defects in Government Furnished Assets*)) defects in Government Furnished Assets;
 - (B) fair wear and tear in any Government Furnished Assets;
 - (C) Government Furnished Assets rendered unserviceable as a result of the Contractor's ordinary performance of the Services in accordance with this Contract; or
 - (D) any loss or damage to Government Furnished Assets resulting from a Force Majeure Event.

30.2 Defects in Government Furnished Assets

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- 30.2.1 The Contractor shall be entitled, within thirty (30) Business Days from receipt of the Government Furnished Assets, to give written notice to the Authority that such Government Furnished Assets have not been provided by the Authority in accordance with Clause 30.1 (*Government Furnished Assets*).
- 30.2.2 If, on receipt of the Contractor's notice given pursuant to this Clause 30.2 (*Defects in Government Furnished Assets*), in the Authority's reasonable opinion the Government Furnished Assets have not been provided in accordance with Clause 30.1.1(B), then the Authority shall promptly rectify any Defects in the Government Furnished Assets.
- 30.2.3 If:
- (A) on receipt of a Contractor's notice given pursuant to this Clause 30.2 (*Defects in Government Furnished Assets*), in the Authority's reasonable opinion the Government Furnished Assets have been provided by the Authority in accordance with Clause 30.1.1(B); or
 - (B) the Contractor does not serve a notice pursuant to Clause 30.2.1 within thirty (30) Business Days from receipt of the Government Furnished Assets,
- then the Contractor shall rectify or repair such Government Furnished Assets so that such Government Furnished Assets comply with Clause 30.1.1(B).

PART VII – PERSONNEL MATTERS

31. NON-DISCRIMINATION AND EQUALITY

- 31.1 In connection with the Contract and the Services, the Contractor shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including re-assignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.
- 31.2 Without prejudice to the generality of the obligation in Clause 31.1, in connection with the Contract and the Services, the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or any other relevant or equivalent legislation in any country where the Contract or Services are performed.

32. PERSONNEL

The Contractor shall comply with its obligations in relation to Personnel in Schedule 6 (*Personnel Arrangements*).

33. CONTRACTORS ON DEPLOYED OPERATIONS

If any of the Contractor's Personnel are required to Deploy, the terms of DEFCON 697 shall apply.

PART VIII – PAYMENT AND INCENTIVE MECHANISM

34. INVOICING AND PAYMENT

34.1 Claims for Payment

Where the Contractor is entitled to seek payment from the Authority in accordance with Schedule 3 (*Payment and Incentive Mechanism*) or is otherwise due to be paid a sum by the Authority pursuant to this Contract, the Contractor shall claim payment of the relevant amount in accordance with this Clause 34 (*Invoicing and Payment*).

34.2 Purchase To Payment (P2P) System

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- 34.2.1 The Parties acknowledge and agree that as at the Commencement Date:
 - (A) the Contractor has executed the Electronic Transaction Agreement with the Authority and put in place the necessary arrangements to be able to use the Authority's P2P System (including providing the Authority with a completed DEFFORM-57); and
 - (B) the Authority has provided the Contractor with the information required for the Contractor to be able to produce a delivery label.
- 34.2.2 Where the Contractor is entitled to seek payment of a sum from the Authority in accordance with Schedule 3 (*Payment and Incentive Mechanism*) or is otherwise due to be paid a sum by the Authority pursuant to this Contract, the Contractor shall submit a delivery label no later than sixty (60) Business Days after the date on which such right to seek payment of or to be paid such sum arises ("**Payment Longstop Date**"). The Contractor shall be deemed to have waived its right to seek or receive payment for the relevant sum if it fails to submit a delivery label before the Payment Longstop Date.
- 34.2.3 The Contractor shall complete and dispatch the delivery label in accordance with DEFFORM-129J. The delivery label shall be accompanied by a statement certified by the Contractor's Representative that the amount specified on the delivery label is due to the Contractor pursuant to this Contract together with the Approved Monthly Report (in the case of the Base Fee), the Approved Quarterly Report (in the case of the Incentive Fee) or the Authority Award Fees Report (in the case of Award Fees).
- 34.2.4 Upon receipt of the delivery label the Authority shall without delay (and in any event within thirty (30) Business Days of such receipt) either:
 - (A) enter the relevant details in the Authority's P2P System, indicating confirmation of the relevant amount ("**Receipting**"); or
 - (B) notify the Contractor that:
 - (1) the Authority is withholding Receipting of all or any part of the amount claimed by the Contractor pursuant to Clause 35 (*Disputed Amounts*), giving reasons for withholding such Disputed Amounts; and
 - (2) any undisputed amounts shall constitute a valid, properly completed return for payment (and the Authority shall carry out Receipting in respect of such undisputed amount).
- 34.2.5 The Contractor shall submit claims for payment to the Authority using a properly prepared message structure and format for an invoice in accordance with the arrangement set out or referenced in the Electronic Transaction Agreement.
- 34.2.6 Subject to Clause 35 (*Disputed Amounts*), the Authority shall no later than thirty (30) days after undertaking Receipting of a claim for payment, pay the Contractor the relevant amount stated in such claim for payment.
- 34.2.7 Notwithstanding any statement to the contrary on the delivery label, Receipting shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies either under this Contract or otherwise.

35. **DISPUTED AMOUNTS**

- 35.1 The Authority may withhold any part of any payment to which it believes the Contractor is not entitled pursuant to this Contract (such amount being a "**Disputed Amount**") pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount, but shall pay any undisputed amounts on or before the due date for payment.

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- 35.2 Within five (5) Business Days following receipt by the Contractor of any notice served by the Authority pursuant to Clause 34.2.4(B), the Contractor shall respond by notifying the Authority as to whether or not it agrees with the reasons stated in that notice and the grounds for such agreement or disagreement. If the Contractor indicates:
- 35.2.1 that it does not agree, or if the Contractor fails to make such a response within that time limit, the Authority shall be entitled to retain on a temporary basis, pending resolution of the Dispute regarding the Disputed Amount or agreement by the Contractor, any amounts withheld pursuant to Clause 34.2.4(B); or
 - 35.2.2 that it does agree, the Authority shall be entitled:
 - (A) to retain on a permanent basis any amounts withheld pursuant to Clause 34.2.4(B); or
 - (B) to reclaim from the Contractor the amount of any over-payment which may have been made to the Contractor together with interest on any such amount calculated in accordance with Clause 37 (*Interest on Late Payment*).
- 35.3 If the Contractor responds pursuant to Clause 35.2 that it does not agree with all or any of the reasons stated in any notice served by the Authority pursuant to Clause 34.2.4(B), the matter or matters in question shall be determined pursuant to Clause 45 (*Dispute Resolution Procedure*).
- 35.4 If it is agreed or otherwise determined pursuant to Clause 45 (*Dispute Resolution Procedure*) that:
- 35.4.1 the Authority has withheld any amount which the Contractor was entitled to be paid; or
 - 35.4.2 the Contractor has been paid any amount which the Contractor was not entitled to be paid;
- the Authority shall:
- 35.4.3 where Clause 35.4.1 applies, promptly carry out Receipting of such amount so that it is paid to the Contractor as soon as reasonably practicable; or
 - 35.4.4 where Clause 35.4.2 applies, be entitled to deduct such amount from the next payment due to the Contractor or, if no further amounts are due under the Contract, the Authority shall be entitled to recover such amount from the Contractor as a debt due;
- in each case with interest on the relevant amount calculated in accordance with Clause 37 (*Interest on Late Payment*).

36. TAXATION MATTERS

36.1 VAT on Payments

- 36.1.1 The amounts due under this Contract exclude any UK VAT and any similar EU (or non-EU) taxes chargeable on the Services.
- 36.1.2 If the Contractor is required by Applicable Law to be registered for UK VAT (or has registered voluntarily) in respect of its business activities at the time of any supply of Services, and the circumstances of any such supply are such that the Contractor is liable to pay the VAT due to HMRC, the Authority shall pay to the Contractor in addition to any other sum due to the Contractor under this Contract a sum equal to the output VAT chargeable on the tax value of the supplies on provision of a valid VAT invoice. If there is any doubt about the applicability of UK VAT in such cases, the Authority may require the Contractor to obtain and pass to the Authority a formal ruling from HMRC.

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- 36.1.3 Where the Services are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) output, turnover or similar tax. In that event, the Authority shall pay to the Contractor, in addition to any other sum due to the Contractor under this Contract a sum equal to the output, turnover or similar tax chargeable on the tax value of the relevant output, turnover or similar which is payable by the Contractor to the tax authorities of the country in question, on provision of a valid output, turnover or similar tax invoice.
- 36.1.4 For the avoidance of doubt, the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (or any similar EU and non-EU input taxes).

36.2 Tax Non-compliance

36.2.1 The Contractor represents and warrants that as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.

36.2.2 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Contractor shall:

- (A) notify the Authority in writing of such fact within five (5) Business Days of its occurrence; and
- (B) promptly provide to the Authority:
 - (1) details of the steps which the Contractor is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (2) such information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

36.2.3 In the event that:

- (A) the warranty given by the Contractor pursuant to Clause 36.2.1 is materially untrue;
- (B) the Contractor commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 36.2.2(A); or
- (C) the Contractor fails to provide details of proposed mitigating factors which, in the reasonable opinion of the Authority, are acceptable;

the Authority shall be entitled to terminate this Contract in accordance with Clause 42 (*Early Termination*) as a Contractor Event of Default.

36.2.4 In this Clause 36.2 (*Tax Non-Compliance*) the following words and expressions shall have the following meanings:

"DOTAS" means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 made under section 132A of the Social Security Administration Act 1992;

"General Anti-Abuse Rule" means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

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"Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others;

"Occasions of Tax Non-compliance" means:

- (A) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
 - (1) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - (2) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (B) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 give rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion; and

"Relevant Tax Authority" means HMRC, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.

37. **INTEREST ON LATE PAYMENT**

Except if otherwise specifically provided, where any payment or sum of money due from the Contractor to the Authority or from the Authority to the Contractor under any provision of this Contract is not paid within thirty (30) Business Days of the due date, it shall bear interest thereon at the Prescribed Rate from the due date (whether before or after any judgment) until actual payment and it is agreed between the Parties that the Prescribed Rate provide the Contractor with a substantial remedy pursuant to sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

38. **PROMPT PAYMENT**

Where the Contractor enters into a Sub-contract, it shall cause a term to be included in such Sub-contract which requires payment to be made to the Sub-contractor within a specified period not exceeding thirty (30) days from receipt of a valid invoice as defined by the Sub-contract requirements.

39. **RECOVERY OF SUMS DUE**

Subject to Clause 65.1 (*Liability of the Contractor*), if at any time during the Term any sum of money is recoverable from or payable by the Contractor to the Authority under this Contract or otherwise, the Authority, without notice to the Contractor, may deduct (or procure the deduction of) the same from any sum due to the Contractor (or which at any time thereafter may become due to the Contractor) under this Contract or any other contract with the Authority or any other Government Body; or, if no further amounts are due under the Contract, the Authority shall be entitled to recover such amount from the Contractor as a debt due. Any exercise by the Authority of its rights under this Clause 39 (*Recovery of Sums Due*) shall not limit or affect any other rights or remedies available to it under this Contract or otherwise.

40. **EXCLUSION OF CONTRACTOR SET OFF**

Every payment payable by the Contractor to the Authority in connection with this Contract shall be made in full without any set-off or counterclaim howsoever arising and shall be free

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and clear of, and without deduction of, or withholding for or on account of, any amount (other than any deduction or withholding of tax as required by Applicable Law).

PART IX – SUPERVENING EVENTS

41. FORCE MAJEURE

41.1 Force Majeure Event

41.1.1 On the occurrence of a Force Majeure Event, the Party affected by the Force Majeure Event ("**Affected Party**") shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of the adverse effect on the performance of the obligations of the Affected Party under this Contract and any action it has taken or proposes to take to mitigate this effect.

41.1.2 Subject to having complied with Clauses 41.2.1 to 41.2.3 (as applicable), the obligations of the Affected Party under this Contract shall be suspended (to the extent affected) for a period equal to the duration of the Force Majeure Event.

41.1.3 As soon as practicable following such notification, the Parties shall consult with each other and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.

41.1.4 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer has an adverse effect on the performance of the obligations of the Affected Party under this Contract and, in such circumstances, the Affected Party shall resume the performance in full of its obligations under this Contract.

41.2 Effect of a Force Majeure Event

41.2.1 The Parties shall at all times during and following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any such Force Majeure Event.

41.2.2 The Contractor shall at all times during which a Force Majeure Event is subsisting, and following the occurrence of a Force Majeure Event, take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of any such Force Majeure Event.

41.2.3 If the Contractor is the Affected Party, the Contractor shall:

- (A) provide updates in writing to the Authority on the effect of the Force Majeure Event and actions being taken (or proposed to be taken) to mitigate its effect (such updates to be provided as often as reasonably required by the Authority); and
- (B) provide any further information required by the Authority in respect of the Force Majeure Event.

41.2.4 Provided that Clauses 41.2.1 to 41.2.3 (as applicable) have been complied with, no Party shall be entitled to bring a claim for a breach of obligations under this Contract by an Affected Party (and an Affected Party shall not incur any liability to the other Party for any Losses incurred by that other Party) to the extent that a Force Majeure Event occurs and the Affected Party is prevented from carrying out such obligations by that Force Majeure Event.

41.2.5 Subject to Clause 42.7 (*Termination for Long-Term Force Majeure*), the Authority shall not be entitled to terminate this Contract for a Contractor Event of Default to

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the extent that such Contractor Event of Default arises from a Force Majeure Event.

41.2.6 Either Party may terminate this Contract pursuant to the provisions of Clause 42.7 (*Termination for Long-Term Force Majeure*).

41.3 Failure to agree

If the Parties cannot agree that a Force Majeure Event has occurred, the Parties shall resolve the matter in accordance with Clause 45 (*Dispute Resolution Procedure*).

PART X – TERMINATION

42. EARLY TERMINATION

42.1 Termination Events

Where there is a Contractor Event of Default, this Contract may be terminated in accordance with this Clause 42 (*Early Termination*).

42.2 Termination for Contractor Event of Default

42.2.1 Contractor Events of Default

Each of the following constitutes a "**Contractor Event of Default**".

(A) Contractor Breach of its Obligations

A breach by the Contractor of its obligations under this Contract which, in the reasonable opinion of the Authority, materially and adversely affects the performance of the Services.

(B) Failure to Remedy

A failure by the Contractor to remedy a breach specified in a Final Performance Warning Notice issued in accordance with Clause 42.3.2.

(C) Insolvency

The occurrence of an Insolvency Event in respect of:

- (1) the Contractor; or
- (2) the Parent Guarantor.

(D) Liability Cap Excess

At any time the provisions of Clause 65.5 (*Limit on the Authority's Right to Claim*) apply so as to reduce the amount for which the Contractor would otherwise have been liable. If this Contractor Event of Default occurs, or is likely to occur, the Parties may discuss what course of action other than termination to take (if any), but any agreement shall be in the absolute discretion of the Parties (and a failure to agree may not be referred to be resolved in accordance with Clause 45 (*Dispute Resolution*)).

(E) Parent Company Guarantee

Any of the following events occur in relation to the Parent Guarantor or Parent Company Guarantee.

- (1) The Parent Company Guarantee is or becomes unenforceable, invalid or illegal or is withdrawn (in whole or in part).

- (2) The Parent Guarantor breaches any of the terms of the Parent Company Guarantee.
 - (3) The Authority reasonably believes that there has been a material deterioration in the corporate financial stability of the Parent Guarantor such that, in the Authority's reasonable opinion, the Parent Guarantor would not be able to meet its obligations under the Parent Company Guarantee if called upon, and the Parent Guarantor has not been able to demonstrate otherwise.
 - (4) The Authority is entitled to and makes a claim for any payment by the Parent Guarantor in accordance with the provisions of the Parent Company Guarantee (a "**Claim**") which: (i) remains outstanding five (5) Business Days following the date on which such Claim is made; or (ii) where any such Claim relates to a matter that is subject to a Dispute when the Claim is made, remains outstanding five (5) Business Days following settlement or determination of such Dispute in accordance with the Dispute Resolution Procedure.
- (F) **Prohibited Act**
The Contractor is in breach of Clause 21 (*Prohibited Acts*).
- (G) **COI Compliance Regime**
The Contractor is in breach of Clause 4 (*Change of Control of the Contractor and Change in COI Associates*) or Clause 20 (*Conflicts of Interest*) or there is a material breach of the COI Compliance Regime which the Authority determines:
- (1) is not capable of remedy in accordance with the terms of the COI Compliance Regime; or
 - (2) the Contractor has failed to remedy to the Authority's satisfaction in accordance with the terms of the COI Compliance Regime.
- (H) **Breach of Part XII (Security)**
The Contractor is in breach of Part XII (*Security*).
- (I) **Breach of certain IPR**
- (1) Any breach or infringement by the Contractor of any Third Party IPR which will or may damage or be detrimental to the reputation of the Authority.
 - (2) Any breach or infringement by the Contractor of any Third Party IPR which will or may prevent or deter the government of any other country from entering into any future agreement or arrangement with the Authority relating to research, development, production, supply or operations.
- (J) **Non-payment**
The failure by the Contractor to pay to the Authority any amount which is due and payable under this Contract where the Authority has given forty (40) Business Days' notice requiring such amount to be paid, unless such amount is the subject of a bona fide Dispute.
- (K) **Breach of Assignment**
A breach by the Contractor of Clause 11.1 (*Assignment or Novation by the Contractor*).

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- (L) **Breach of Warranties or Representations**
Any warranty or representation given to the Authority in or pursuant to this Contract is, or proves to have been in any material respect, untrue, incorrect or misleading when made.
- (M) **Breach of Sub-contracts**
A breach by the Contractor of Clause 25 (*Sub-Contracts*).
- (N) **Breach of Non-Solicitation**
A breach by the Contractor of the non-solicitation provisions in Paragraph 9 of Schedule 6 (*Personnel Arrangements*).
- (O) **Breach of Data Protection and Confidentiality**
A breach by the Contractor of Clause 58 (*Data Protection*) or Clause 59 (*Confidentiality*).
- (P) **Failure to satisfy Commencement Conditions**
A failure to satisfy the Commencement Conditions in circumstances that constitute a Contractor Event of Default in accordance with Clause 2.3 (*Failure to Satisfy Commencement Conditions*).
- (Q) **Tax Non-compliance**
For tax non-compliances, in the circumstances set out in Clause 36.2.3 (*Tax Non-compliance*).

42.2.2 **Material Breach Notice**

Subject to Clause 42.2.4 (*Remediable Breach*), if a Contractor Event of Default has occurred, the Authority may terminate this Contract by serving notice on the Contractor (a "**Material Breach Notice**") stating:

- (A) that the Authority is terminating this Contract for Contractor Event of Default;
- (B) the type and nature of Contractor Event of Default that has occurred, giving reasonable details; and
- (C) that this Contract shall terminate on the date specified in the Material Breach Notice, provided such date shall be a maximum of six (6) months from the date of receipt by the Contractor of the Material Breach Notice.

42.2.3 **Irremediable Breach**

If there has been a Material Breach Notice in relation to a Contractor Event of Default that is not a Remediable Breach (provided that the Authority must act reasonably if it decides that a Contractor Event of Default under limb (A), (F), (I), (J), (L), (M), (N), (O) or (P) of Clause 42.2.1 (*Contractor Events of Default*) is not a Remediable Breach), this Contract shall terminate on the date determined in accordance with Clause 42.2.2(C).

42.2.4 **Remediable Breach**

- (A) If there has been a Contractor Event of Default under limb (A), (F), (I), (J), (L), (M), (N), (O) or (P) of Clause 42.2.1 and the Authority decides (acting reasonably) that such breach is capable of remedy (a "**Remediable Breach**"), the Material Breach Notice shall require the Contractor (at the Authority's discretion) either to:

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- (1) remedy the breach within twenty (20) Business Days of the date of the Material Breach Notice (or such longer period as may be agreed by the Authority in its absolute discretion); or
 - (2) propose within twenty (20) Business Days of the date of the Material Breach Notice a programme to remedy the breach (the "**Remediation Programme**"), such programme to be agreed in accordance with Clause 42.2.5 (*Remediation Programme*).
- (B) If:
- (1) a Remediable Breach is not remedied within the period specified in the Material Breach Notice; or
 - (2) the Contractor fails to achieve any element of the Remediation Programme in respect of a Remediable Breach (including any milestones not being met by dates specified therein) or fails to remedy the Remediable Breach within the date specified in the Remediation Programme, or the Remediation Programme is rejected by the Authority as not being reasonable pursuant to Clause 42.2.5 (*Remediation Programme*) and the Dispute Resolution Procedure does not find against that rejection;
- then the Authority may serve a further notice on the Contractor (a "**Termination Notice**") terminating this Contract on the date specified in the Termination Notice, provided such date shall be a maximum of six (6) months from the date of receipt by the Contractor of the Termination Notice.

42.2.5 Remediation Programme

- (A) The Remediation Programme shall specify in detail how the Contractor proposes to remedy a Remediable Breach, the steps required to remedy the Remediable Breach (including milestones to be met by specific dates), the anticipated costs and other consequences associated with the remediation and the latest date by which the Contractor anticipates that the Remediable Breach will be remedied.
- (B) Where the Contractor proposes a Remediation Programme in accordance with Clause 42.2.4(A)(2) the Authority shall within twenty (20) Business Days from the date of receipt of the proposed Remediation Programme notify the Contractor whether the Authority accepts the proposed Remediation Programme (such acceptance not to be unreasonably withheld).
- (C) Where the Authority notifies the Contractor that it does not accept the Remediation Programme, the Authority and the Contractor shall endeavour within the following twenty (20) Business Days to agree any necessary amendments to the Remediation Programme. In the absence of agreement within such twenty (20) Business Day period, the question of whether or not the Authority's withholding of acceptance is reasonable may be referred by either Party to be resolved in accordance with Clause 45 (*Dispute Resolution Procedure*).

42.3 Termination for Poor Performance Breach

- 42.3.1 Where there is a breach of this Contract by the Contractor which does not otherwise give rise to a Contractor Event of Default, then the Authority may serve a notice on the Contractor (the "**Performance Warning Notice**):
- (A) specifying that it is a formal warning notice;

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- (B) giving reasonable details of the breach and specifying the Authority's concerns;
- (C) stating that such breach may become a Contractor Event of Default pursuant to limb (B) of Clause 42.2.1 (*Contractor Events of Default*) if it recurs and may result in a termination of this Contract; and
- (D) specifying what steps, if any, the Authority requires the Contractor to take to remedy the breach including any specific deadline(s) (not being less than twenty (20) Business Days after the date of receipt by the Contractor of the Performance Warning Notice).

42.3.2 Following service of a Performance Warning Notice, if the breach specified or a substantially similar breach has continued beyond any specific deadline set out in the Performance Warning Notice or has recurred one (1) or more times within six (6) months after the date of receipt by the Contractor of the Performance Warning Notice, then the Authority may serve another notice on the Contractor (the "**Final Performance Warning Notice**"):

- (A) specifying that it is the final warning notice;
- (B) stating that the breach specified or a substantially similar breach has been the subject of a Performance Warning Notice; and
- (C) stating that if such breach continues beyond any specific deadline (not being less than twenty (20) Business Days after the date of receipt by the Contractor of the Final Warning Notice) or recurs one (1) or more times within three (3) months after the date of receipt by the Contractor of the Final Performance Warning Notice, the same shall constitute a Contractor Event of Default under limb (B) of Clause 42.2.1 (*Contractor Events of Default*).

42.4 Requirement to Notify

The Contractor shall notify the Authority in writing (which for this purpose does not include email) promptly on becoming aware of the occurrence of any event or circumstance which may give the Authority the right to terminate this Contract under this Clause 42 (*Early Termination*) and shall provide to the Authority all information about the relevant event or circumstance which the Authority (acting reasonably) requires.

42.5 Authority Events of Default

42.5.1 Each of the following constitutes an "**Authority Event of Default**" and shall entitle the Contractor to terminate this Contract:

- (A) the failure by the Authority to pay to the Contractor any amount which is due and payable under this Contract where the Contractor has given forty (40) Business Days' notice requiring such amount to be paid, unless such amount is the subject of a bona fide Dispute; and
- (B) a breach by the Authority of its obligations under this Contract which substantially frustrates or renders it impossible for the Contractor to perform a material part of its obligations under this Contract ("**Authority Frustration Event**") provided that:
 - (1) the Contractor has first given written notice to the Authority setting out the conduct of the Authority which it considers (acting reasonably) constitutes an Authority Frustration Event and requiring the Authority to remedy the Authority Frustration Event within forty (40) Business Days); and
 - (2) the Authority does not comply with the notice to remedy the Authority Frustration Event in accordance with Clause

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42.5.1(B)(1) and the Authority Frustration Event has continued for the whole of the forty (40) Business Days.

42.5.2 Where an Authority Event of Default has occurred, the Contractor shall be entitled to terminate this Contract on twenty (20) Business Days' written notice to the Authority (such notice to take effect on the date of receipt by the Authority).

42.6 Voluntary Termination by the Authority

The Authority shall be entitled to terminate this Contract in its entirety at any time and for any reason on giving reasonable notice to the Contractor, such notice being not less than sixty (60) Business Days (and such notice to take effect on the date of receipt by the Contractor).

42.7 Termination for Long-Term Force Majeure

If the performance by the Authority or the Contractor of substantially or all of its obligations under this Contract is materially prevented, hindered or delayed by reason of a Force Majeure Event:

42.7.1 for a period of more than one hundred and twenty (120) consecutive days, the Authority may terminate this Contract on not less than twenty (20) Business Days written notice to the Contractor (such notice to take effect on the date of receipt by the Contractor); and

42.7.2 other than in relation to a Force Majeure Event which arises wholly or in part as a result of war, for a period of more than one hundred and twenty (120) consecutive days, the Contractor may terminate this Contract on not less than twenty (20) Business Days' written notice to the Authority (such notice to take effect on the date of receipt by the Authority).

42.8 Termination for Change of Control of Contractor

The Authority may terminate this Contract with immediate effect by written notice to the Contractor (such notice to take effect on the date of receipt by such other Party) if there is a change of control of the Contractor that is required to be notified to the Authority pursuant to Clause 4 (*Change of Control of the Contractor and Change in COI Associates*).

43. CONSEQUENCES OF TERMINATION OR EXPIRY

43.1 Accrued Rights and Obligations and Survivorship

The termination or expiry of this Contract for any reason:

43.1.1 shall be without prejudice to any rights or obligations which shall have accrued or become due prior to the Expiry Date or Termination Date (as applicable);

43.1.2 shall not prejudice the rights or remedies which either Party may have in respect of any breach of the terms of this Contract prior to the Expiry Date or Termination Date (as applicable);

43.1.3 shall not affect:

- (A) Clause 1 (*Definitions and Interpretations*);
- (B) Clause 12 (*Severability*);
- (C) Clause 13 (*Variation*);
- (D) Clause 15 (*No Partnership*);
- (E) Clause 16 (*Counterparts*);
- (F) Clause 17 (*Governing Law*);
- (G) Clause 18 (*Contracts (Rights of Third Parties) Act 1999*);
- (H) Clause 19 (*Entire Agreement*);

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- (I) Clause 20.3;
- (J) Clause 20.4;
- (K) Clause 27.2 (*Retention of Records*);
- (L) Clause 34 (*Invoicing and Payment*);
- (M) Clause 35 (*Disputed Amounts*);
- (N) Clause 36 (*Taxation Matters*);
- (O) Clause 37 (*Interest on Late Payment*);
- (P) Clause 39 (*Recovery of Sums Due*);
- (Q) Clause 40 (*Exclusion of Contractor Set-Off*);
- (R) Clause 43 (*Consequences of Termination or Expiry*);
- (S) Clause 44 (*Post Termination or Expiry Obligations to Assist*);
- (T) Clause 45 (*Dispute Resolution Procedure*);
- (U) Clause 50 (*Ownership of Intellectual Property*);
- (V) Clause 51.2;
- (W) Clause 52 (*Licence of Contractor Background IPR*);
- (X) Clause 53 (*Licence and sub-licence of Third Party IPR provided by the Contractor*);
- (Y) Clause 59 (*Confidentiality*);
- (Z) Clause 59A (*Controlled Information*);
- (AA) [Clause 59B (*Legal Advice*);]
- (BB) Clause 60 (*Disclosure*);
- (CC) Clause 61 (*Contractor Right to Request Confidentiality*);
- (DD) Clause 62 (*Publication*);
- (EE) Clause 63 (*Freedom of Information Act*);
- (FF) Clause 64 (*Insurance*);
- (GG) Clause 65 (*Liability*);
- (HH) Schedule 3 (*Payment and Incentive Mechanism*);
- (II) Schedule 4 (*Dispute Resolution Procedure*);
- (JJ) Schedule 5 (*Termination Payments*);
- (KK) Schedule 7 (*Insurances*);
- (LL) Schedule 10 (*Contract Period Liability Cap*); and
- (MM) Schedule 12 (*Commercially Sensitive Information*);

43.1.4 shall not affect any indemnity given under the terms of this Contract; and

43.1.5 shall not affect any provision of this Contract (including any provision in Schedule 6 (*Personnel Arrangements*) and Schedule 8 (*COI Compliance Regime*)) that expressly states that it will continue to have effect after the expiry or termination of this Contract.

43.2 Termination Payment

43.2.1 In the event of termination of this Contract the Authority shall pay the Contractor such sum (if any) as is due in accordance with Schedule 5 (*Termination Payments*) after the receipt by the Authority of a duly issued invoice in respect of the relevant payment.

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43.2.2 Any payment required by the Authority, in accordance with this Clause 43.2 (*Termination Payment*), to the Contractor under Schedule 5 (*Termination Payments*) shall be in full and final satisfaction of any claim by the Contractor for Losses arising as a result of termination of the Contract and the Contractor shall have no right (whether in contract, tort (including negligence), statute, for deliberate repudiatory breach or otherwise) to make any further claim against the Authority as a result of such termination.

44. **POST TERMINATION OR EXPIRY OBLIGATIONS TO ASSIST**

44.1 **Exit Plan**

The Contractor shall, on and from the Commencement Date, prepare and maintain a current exit plan ("**Exit Plan**") in a form acceptable to the Authority (acting reasonably) to ensure that the Contractor could at all times satisfy its obligations under Clause 44.2 (*Obligation to Assist*) following the termination or expiry of the Contract.

44.2 **Obligation to Assist**

Following termination or expiry of this Contract, the Contractor shall implement the Exit Plan to ensure the orderly and efficient transition of all activities undertaken or to be undertaken by the Contractor and Contractor Related Parties under this Contract to the Authority and Authority Related Parties and, for a period of one (1) month following the Expiry Date or Termination Date (as applicable), the Contractor and Contractor Related Parties shall co-operate with all reasonable instructions of the Authority in connection with this transition. The Contractor shall be entitled to charge a fee for its costs in complying with this Clause 44.2 (*Obligation to Assist*), on a time incurred basis, in accordance with the principles for establishing the Base Fee.

PART XI DISPUTE RESOLUTION

45. **DISPUTE RESOLUTION PROCEDURE**

- 45.1 Disputes arising out of or in connection with this Contract, whether or not expressly stated to be subject to this Clause 45 (*Dispute Resolution Procedure*), shall be resolved in accordance with the Dispute Resolution Procedure.
- 45.2 Neither Party shall commence any Legal Proceedings until it has followed the Dispute Resolution Procedure, provided that nothing in the Dispute Resolution Procedure shall prevent a Party from seeking interim or interlocutory relief in any court.

PART XII – SECURITY

46. **SECURITY ASPECTS LETTER**

- 46.1 On or before the Commencement Date, the Authority shall provide the Contractor with a signed copy of the Security Aspects Letter. Upon receipt of the signed copy of the Security Aspects Letter, the Contractor shall acknowledge in writing that it understands and will comply with the provisions of the Security Aspects Letter.
- 46.2 The Contractor shall, and shall procure that the Contractor Related Parties shall, protect all information recorded, disclosed or created in any form in connection with the provision of the Services and relating to the aspects designated as Reportable OFFICIAL and OFFICIAL-SENSITIVE as identified in the Security Aspects Letter, in accordance with the official security conditions attached at Annex 2 to the Security Aspects Letter.

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- 46.3 The Authority may amend the Security Aspects Letter at any time during the Term and the Contractor shall acknowledge in writing that it understands and will comply with such amended Security Aspects Letter whenever it is required to do so by the Authority.
- 46.4 The Authority may provide the Contractor with (and the Contractor shall be required to acknowledge and comply with) a security aspects letter relating to specific projects within DE&S in relation to the Services. Such security aspects letter shall be in the Authority's standard template form attached to JSP 440, adapted as required for the scope of the specific project, including where appropriate to identify the specific security classifications of the aspects of individual projects.

47. SECURITY REQUIREMENTS AND SECURITY PROPOSAL

47.1 Security Requirements

- 47.1.1 The Contractor shall comply with:
 - (A) JSP 440, the Security Policy Framework and other security-related DEFCONs as notified to the Contractor from time to time (as applicable) in respect of all sites owned by the Authority that are to be accessed by the Contractor; and
 - (B) the Security Policy Framework in respect of all other sites owned, accessed, operated or managed by the Contractor in connection with the Contract or the Services.
- 47.1.2 The Authority shall sponsor the Contractor if it is required by the Authority to obtain List X clearance. The Contractor shall take all such action as is reasonably required to obtain such List X clearance.

48. PERSONNEL SECURITY

48.1 Security Clearance

- 48.1.1 The Contractor acknowledges that to have access to classified information and material at the level of SECRET or above or to work within certain delivery areas of DE&S, its Personnel will require certain security clearances.
- 48.1.2 In respect of Personnel proposed to be allocated to work within such a delivery area, and before any such person begins to perform its duties, the Contractor shall be responsible for submitting applications for the required security clearance to the Defence Business Services National Security Vetting (or other issuing body as notified by the Authority from time to time), having regard to the likely timeframes applicable to the particular application from time to time.
- 48.1.3 If the application for security clearance of any Personnel pursuant to Clause 48.1.2 can only be made (or sponsored) by the Authority, the Contractor shall provide a completed security clearance application form for such Personnel to the Authority in a timely manner, having regard to the likely timeframes applicable to the particular application and the Authority shall promptly submit the completed security clearance application form to the Defence Business Services National Security Vetting.
- 48.1.4 Where Clause 48.1.3 applies and the Contractor has requested expedited processing of the application for security clearance, the Authority shall, where the Authority considers that it is reasonable to do so (having regard to the requirements of other MSPs and the Authority's business needs in general), request the expedited processing of any such application and make reasonable follow up enquiries in relation to such expedited processing.

48.2 Admission to Authority Sites

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The Contractor shall ensure that the Personnel comply with such site security policies as the Authority notifies from time to time (and with any direction of the Authority) in respect of any site owned, managed or operated by the Authority.

48.3 Official Secrets Act

The Contractor shall:

- 48.3.1 take all reasonable steps to ensure that all Personnel have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the expiry or termination of the Contract and their employment; and
- 48.3.2 if directed by the Authority, ensure that all Personnel shall sign a statement in the form directed by the Authority acknowledging that, both during the Term and after its expiry or termination or the termination of his employment, he or she is bound by the Official Secrets Acts 1911-1989.

48.4 Security Measures

48.4.1 Unless it has the written authorisation of the Authority to do otherwise, the Contractor shall not, and shall procure that the Contractor Related Parties shall not, either during the Term or after the Expiry Date or Termination Date (as applicable), do or permit to be done anything which it knows or ought reasonably to know may result in a Secret Matter being disclosed to or acquired by a person in any of the following categories:

- (A) who is not a citizen of the appropriate country, where there are named nationality restrictions with respect to that Secret Matter;
- (B) who does not hold the appropriate authority for access to the classified matter;
- (C) in respect of whom the Authority has notified the Contractor in writing that the Secret Matter shall not be disclosed to or acquired by that person;
- (D) who is not an employee of the Contractor, its COI Associates or a Contractor Related Party; or
- (E) who is an employee of the Contractor, its COI Associates or a Contractor Related Party but who does not need to know the information for the proper performance of the Contract or the Services.

48.5 Unless it has the written permission of the Authority to do otherwise, the Contractor shall, and shall procure that the Contractor Related Parties shall, both during the Term and after the Expiry Date or Termination Date (as applicable), use all reasonable endeavours to ensure that:

- 48.5.1 no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of the Contract; and
- 48.5.2 any Secret Matter is at all times strictly safeguarded in accordance with JSP 440, the Security Policy Framework or other security-related DEFCONs as notified to the Contractor from time to time (as applicable) and upon request, is delivered up to the Authority who shall be entitled to retain it.

48.6 A decision of the Authority on the question of whether the Contractor has taken or is taking reasonable steps as required by Clause 48.5 shall be final and conclusive and shall be in the Authority's sole discretion.

48.7 The Contractor shall:

- 48.7.1 provide to the Authority:

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- (A) upon request, records giving particulars of all Contractor Related Parties who have had, at any time, access to any Secret Matter;
 - (B) upon request, such information as the Authority may from time to time require so as to be satisfied that the Contractor and the Contractor Related Parties are complying with the obligations under this Clause 48 (*Personnel Security*), including the measures taken or proposed by the Contractor so as to comply with its obligations and to prevent any breach of them; and
 - (C) full particulars of any failure by the Contractor to comply (or procure compliance) with any obligations relating to a Secret Matter arising under this Clause 48 (*Personnel Security*) immediately upon such failure becoming apparent; and
- 48.7.2 ensure that, for the purpose of checking the Contractor's compliance with the obligation under this Clause 48 (*Personnel Security*), the Authority shall be entitled at any time to enter and inspect any sites used by the Contractor which are in any way connected with the Contract or the Services and inspect any document or thing (whether in any such sites or elsewhere) which is being used or made for the purposes of the Contract or the Services and the Contractor shall provide all reasonable co-operation to the Authority for this purpose.
- 48.8 If at any time either during the Term or after the Expiry Date or Termination Date (as applicable), the Contractor or a Contractor Related Party discovers or suspects that an unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the Contractor shall immediately inform, or procure that the Contractor Related Party informs, the Authority of the matter with full particulars thereof.
- 48.9 Sub-contracts**
- 48.9.1 If the Contractor proposes to enter into a Sub-contract which will involve the disclosure of a Secret Matter to a Sub-contractor, the Contractor shall submit, for the approval of the Authority, the name of the proposed Sub-contractor, a statement of the work to be carried out and any other details known to the Contractor which the Authority reasonably requires.
- 48.9.2 The Contractor shall ensure that the terms of any Sub-contract will contain security obligations which are no less onerous than those set out in this Clause 48 (*Personnel Security*).
- 49. CO-OPERATION FOR SECURITY INVESTIGATIONS**
- 49.1 On breach of the provisions of this Part XII (*Security*) by the Contractor (whether directly or by failing to procure compliance by any other person):
- 49.1.1 the Contractor shall procure that the Authority and the Authority Related Parties shall have the right to enter any sites used by the Contractor which are in any way connected with the Contract or the Services (and shall use all reasonable endeavours to procure that any Sub-contractor complies with the Authority's requests for access to their sites) in order for the Authority to investigate such breach;
 - 49.1.2 the Contractor shall use all reasonable endeavours to make the Contractor Related Parties available to be interviewed by the Authority for the purposes of the investigation;
 - 49.1.3 the Contractor shall, subject to Applicable Laws on their disclosure, provide all copies of documents, records or other material of any kind which may reasonably be required by the Authority for the purposes of the investigation (and shall use all reasonable endeavours to procure that any Sub-contractor does the same). The Authority shall have the right to retain copies of any such material for use in connection with the investigation; and

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49.1.4 without limiting Clause 27.3 (*Authority Review*) the Authority shall have the right to audit the Contractor's and Contractor Related Parties' compliance with the provisions of this Part XII (*Security*).

49.2 The Contractor shall give all reasonable assistance and co-operation to the Authority for the purposes of Clause 49.1.

49.3 Results of Authority's Security Audit

If any inspection and review carried out pursuant to Clause 27.3 (*Authority Review*) or this Part XII (*Security*) or otherwise shows that the Contractor is not complying with the provisions of this Part XII (*Security*), then the Authority shall be entitled to terminate the Contract in accordance with Clause 42 (*Early Termination*) as a Contractor Event of Default.

PART XIII – INTELLECTUAL PROPERTY, INFORMATION AND DISCLOSURE

50. OWNERSHIP OF INTELLECTUAL PROPERTY

50.1 The Contractor shall not by virtue of this Contract acquire any right, title or interest in any IPR owned by or licensed to the Authority (including Authority IPR) other than under the licences expressly set out in this Contract.

50.2 The Authority shall not by virtue of this Contract acquire any right, title or interest in any Contractor Background IPR or any Third Party IPR other than under the licences expressly set out in this Contract.

50.3 All IPR created or developed by or on behalf of the Contractor (including by any Contractor Related Party or any COI Associate) under or for the purposes of this Contract or the Services, and any modifications, updates and developments of Authority IPR or of Third Party IPR supplied by the Authority to the Contractor or any Contractor Related Party for the purpose of this Contract that (in either case) are created by or on behalf of the Contractor (including by any Contractor Related Party or any COI Associate) shall be owned by and vest in the Authority (the "**Authority Foreground IPR**").

50.4 All IPR in or relating to any Deliverables but excluding any Contractor Background IPR or Third Party IPR shall be owned by and vest in the Authority (the "**Deliverables IPR**").

50.5 The Contractor hereby assigns (or shall procure the assignment of) all right, title and interest in any present and future Authority Foreground IPR and Deliverables IPR to the Authority with full title guarantee. The Contractor shall (and shall procure that any Contractor Related Party or any COI Associate shall) execute all documents and do all such acts and things as the Authority may reasonably require to give full effect to the terms of Clauses 50.3 and 50.4 and this Clause 50.5 and to perfect the Authority's title to Authority Foreground IPR and Deliverables IPR. The Contractor shall mark any copyright work bearing or embodying any Authority Foreground IPR or Deliverables IPR or on which Authority Foreground IPR or Deliverables IPR is recorded with the legend "© Crown-owned copyright [*insert the year of generation of the work*]". The Contractor shall procure the waiver by any Contractor Related Party or any COI Associate of any moral rights that they may have in the Authority Foreground IPR or Deliverables IPR.

51. LICENCE OF AUTHORITY IPR AND DELIVERABLES IPR

51.1 The Authority hereby grants to the Contractor, and to each Contractor Related Party, for the Term only, a non-exclusive, royalty-free, non-transferable, (with the Authority's prior written consent) sub-licensable licence to use all such Authority IPR (including Deliverables IPR) that is, and to the extent, necessary for the purpose of the Contractor's performance of this Contract and the Services. The Authority may at its discretion and by written notice to the Contractor impose restrictions on the Contractor's or any Contractor Related Party's use of that IPR to specific purposes within the scope of this Contract and the Services.

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- 51.2 The Authority hereby grants to the Contractor a non-exclusive, perpetual, non-transferable, (with the Authority's prior written consent) sub-licensable licence to use Authority Foreground IPR and Deliverables IPR for the purposes of the Contractor's ongoing business activities provided that, at all times, there shall be no use or disclosure of any Commercially Confidential Information or Commercially Sensitive Information of the Authority or of any Third Party and provided that the Contractor shall agree a reasonable royalty fee to be paid to the Authority (such agreement not to be unreasonably withheld or delayed by either Party) and in the event that the Parties cannot agree a reasonable royalty fee, the Parties shall refer the matter to the Dispute Resolution Procedure.
- 51.3 The Authority gives no warranty as to the suitability of any Authority IPR for: (i) the purpose of the Contractor or any Contractor Related Party performing the obligations of the Contractor under this Contract and the Services; or (ii) the purposes of the Contractor or any of its sub-licensees under the provisions of Clause 51.2. The Contractor shall not (and shall procure that any Contractor Related Party shall not) do anything which will prejudice the rights of ownership by the Crown or the Authority of any of the Authority IPR (including Deliverables IPR).
- 51.4 The Contractor and the Contractor Related Parties shall have no other rights to use the Authority IPR other than as set out in this Contract.
- 52. LICENCE OF CONTRACTOR BACKGROUND IPR**
- 52.1 The Contractor hereby grants (and shall procure that any Contractor Related Party or any COI Associate grants) to the Authority a perpetual, irrevocable, non-exclusive, royalty-free, worldwide, transferable licence or sub-licence to grant (with the right to grant sub-licences) to use, copy, modify and disclose the Contractor Background IPR to:
- 52.1.1 receive, use and otherwise have the full benefit of this Contract and the Services and any replacement, substitute or follow-on services;
- 52.1.2 operate, perform, maintain, modify, update and develop the Services or any part of them, and to provide or receive replacement, substitute or follow-on services (including where provided by a replacement contractor);
- 52.1.3 enable the Authority to receive, use and obtain the full benefit of the Deliverables IPR;
- 52.1.4 operate, perform, maintain, modify, update and develop the services, duties, obligations and functions of DE&S (including the procurement of defence equipment, providing support and logistics and management of equipment, (including support and logistics) through its life), including in relation to any Other Domain;
- 52.1.5 perform the Authority's duties and obligations;
- 52.1.6 perform any review, audit, or legal duty (statutory or otherwise);
- 52.1.7 integrate the Services with the Authority's procurement, operation and support of Authority assets with which the Services are reasonably associated at any time during or after the Term;
- 52.1.8 conduct any UK governmental purpose which may be connected with the use of the Services; and
- 52.1.9 (in addition to the provisions of Clause 52.1.2) run a competition in relation to the provision of replacement, substitute or follow-on services.
- 52.2 The Contractor shall not (and shall procure that any Contractor Related Party and any COI Associate shall not) assign or otherwise transfer or dispose of any Contractor Background IPR to any Third Party during or after the Term unless it preserves for the Authority the rights granted to it under this Contract.

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- 52.3 The Authority shall be entitled to sub-license the rights to use, copy, modify and disclose the Contractor Background IPR set out in Clause 52.1 to any Authority Related Party (including any MSP) for any of the purposes referred to in Clauses 52.1.1 to 52.1.9.
- 52.4 The licences and rights referred to in this Clause 52 (*Licence of Contractor background IPR*) shall survive any expiry or termination, for whatever reason, of this Contract.

53. LICENCE AND SUB-LICENCE OF THIRD PARTY IPR PROVIDED BY THE CONTRACTOR

- 53.1 The Contractor shall promptly notify the Authority's Representative whenever the Contractor or any Contractor Related Party requires use of Third Party IPR for the purpose of providing the Services.
- 53.2 The Contractor shall ensure that all licences entered into with Third Parties for the right to use Third Party IPR, notified in accordance with Clause 53.1, shall be held either in its own name or that of the relevant Contractor Related Party as licensee.
- 53.3 In respect of all licences referred to in Clause 53.2 (excluding any licences of COTS Software), the Contractor shall ensure that each licence either:
 - 53.3.1 grants the Contractor or Contractor Related Party the right to grant a perpetual, irrevocable and transferable sub-licence (with the right to grant sub-sub-licences) of the Third Party IPR to the Authority (or to any other person nominated by the Authority); or
 - 53.3.2 grants to the Authority a non-exclusive, perpetual and irrevocable right (with the right to grant sub-licences) to the Third Party IPR;in each case, that will allow the Authority to use, copy, modify and disclose the Third Party IPR to a substantially similar extent to that licensed to the Contractor or Contractor Related Party and for the purposes set out in Clause 52.1.1 to 52.1.9.
- 53.4 Where the Contractor is unable to obtain the terms set out in Clause 53.3 from any Third Party it shall obtain the Authority's consent before entering into a licence with such Third Party for use of the Third Party IPR (such consent shall be entirely at the Authority's discretion) or, alternatively, the Authority may enter into a direct licence with such Third Party with a right for the Contractor or any Contractor Related Party to use such Third Party IPR on the Authority's behalf.
- 53.5 Any royalties or other fees payable in obtaining or exercising any licence or sub-licence of Third Party IPR, or any fees which are incurred using any right granted under them in accordance with the terms and conditions of this Contract, shall be for the account of the Contractor.
- 53.6 On the Termination Date or the Expiry Date (as applicable) the Contractor shall procure the novation, at its own expense, of all licences of Third Party IPR obtained by the Contractor in accordance with Clause 53.2 (excluding any licences of COTS Software) to the Authority (or, at the Authority's request, to an Authority Related Party).
- 53.7 Prior to the Termination Date or the Expiry Date (as applicable), at the Authority's request the Contractor shall procure a transferable, perpetual, irrevocable, non-exclusive, licence for the Authority to use, disclose and sub-licence the Third Party IPR (excluding IPR in COTS Software) for the purposes set out in Clauses 52.1.1 to 52.1.9 and the provisions in Clause 53.5 shall apply to any such licence.

54. PROTECTION OF INFORMATION

- In respect of all information, documents and other materials in any form and any other articles used for the purposes of this Contract, that relate to or bear or embody any Authority IPR, Third Party IPR or Contractor Background IPR, or on which any such IPR is recorded, the Contractor shall:
- 54.1.1 mark such information with a notice regarding confidentiality or ownership (which notice, in relation to Authority IPR (including Deliverables), shall be in such form

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as the Authority may notify from time to time) and shall not delete or modify any copyright notices contained within the information, documents, other materials or articles;

54.1.2 ensure:

- (A) the back-up and storage in safe custody of all such data, materials and documents where held by the Contractor or any Contractor Related Party (including on their electronic workspaces); and
- (B) that the Contractor and any Contractor Related Party follows Authority procedures for the back-up and storage in safe custody of all such data, materials and documents to be held by the Authority (including on the Authority's electronic workspaces),

in accordance with JSP 440 or other security-related DEFCONS as notified to the Contractor from time to time, those back-ups of such data, materials and documents held by the Contractor or any Contractor Related Party to be available to the Authority on reasonable request; and

54.1.3 promptly restore the items referred to in Clause 54.1.2(A) if they are lost or corrupted,

provided that any non-material failure by the Contractor to mark such information as set out in Clause 54.1.1 shall not constitute a breach of the terms of this Agreement that would entitle the Authority to terminate this Agreement.

55. IPR INDEMNITIES

55.1 The Contractor shall indemnify the Authority (and the Authority Related Parties) in full against all Loss arising out of or in connection with any actual or alleged infringement of Third Party IPR arising from the performance of this Contract or the Services by the Contractor or by any Contractor Related Party or from the Authority's receipt and use of the Services or the exercise of its rights granted under this Contract (an "**IPR Claim**").

55.2 If, in respect of an IPR Claim, any part of the Services, the Contractor Background IPR, the Deliverables IPR, the Authority Foreground IPR or anything else provided by the Contractor (or Contractor Related Parties or any COI Associate) under this Contract is alleged to or is held to constitute an infringement of Third Party IPR (an "**Infringing Part**"), the Authority may require the Contractor to:

- 55.2.1 procure for the Authority the right to continue using the Infringing Part;
- 55.2.2 modify the Infringing Part so that it is non-infringing, without materially detracting from its overall functionality, performance or compatibility or from the overall performance of the Contractor's obligations under this Contract; or
- 55.2.3 replace the Infringing Part with other non-infringing items or services that have an equivalent functionality, performance and compatibility.

55.3 The indemnity in Clause 55.1 shall not apply in respect of an IPR Claim to the extent that it arises from:

- 55.3.1 the use of Contractor Background IPR or Third Party IPR by the Authority otherwise than in accordance with the terms of this Contract and any applicable licence or sub-licence conditions provided that these have been notified to the Authority's Representative in writing;
- 55.3.2 any modification or development carried out by or for the Authority to any item supplied by the Contractor (or Contractor Related Parties) under this Contract, where such modification or development is not authorised or approved by the Contractor; or

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- 55.3.3 the use of Third Party IPR by the Contractor (or Contractor Related Parties) which has been provided or licensed to the Contractor or a Contractor Related Party by the Authority or an Authority Related Party for the purposes of this Contract and where the Contractor has not been made aware of the terms of or restrictions relating to the use of such Third Party IPR by written notice to the Contractor's Representative (or such delegate as he nominates in writing to the Authority from time-to-time).
- 55.4 Where the Contractor provides Third Party IPR to another MSP it shall identify any terms or restrictions relating to the use of such Third Party IPR in writing to that MSP's representative (whose identity shall be notified to the Contractor by the Authority) and the Contractor shall indemnify the Authority in full against all Loss arising out of or in connection with any failure of the Contractor to comply with this Clause 55.4.
- 55.5 Subject to Clause 55.6, in relation to any IPR Claim under the provisions of Clauses 55.1 or 55.4:
 - 55.5.1 the Contractor shall have control of and be allowed to conduct all negotiations and proceedings; and
 - 55.5.2 the Authority shall provide the Contractor with such reasonable assistance as is required by the Contractor regarding the IPR Claim, and shall not without the prior written consent of the Contractor (such consent not to be unreasonably withheld or delayed), make any admission relating to the claim or attempt to settle it.
- 55.6 In relation to the settlement or agreement of any terms or any payment relating to any IPR Claim in respect of which the Authority exercises its rights of Crown Use, the Authority shall be entitled to take such steps as may be required to comply with Applicable Law (including seeking Treasury approval in relation to such IPR Claim), and the Contractor:
 - 55.6.1 shall provide the Authority with such reasonable assistance as is required by the Authority, regarding such steps and the IPR Claim; and
 - 55.6.2 shall not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), agree any terms or payment relating to such IPR Claim or attempt to settle it.
- 55.7 The Authority shall indemnify the Contractor (and the Contractor Related Parties) in full against all Losses arising out of or in connection with any actual or alleged infringement of Third Party IPR which results from the use by the Contractor (or the Contractor Related Parties) of any Authority IPR (excluding any Authority Foreground IPR and Deliverables IPR) or Third Party IPR provided by the Authority to the Contractor or a Contractor Related Party for the purposes of this Contract (a "**Contractor IPR Claim**").
- 55.8 The indemnity in Clause 55.7 shall not apply in respect of any Contractor IPR Claim to the extent that it arises from:
 - 55.8.1 the use of such Authority IPR or Third Party IPR by the Contractor or a Contractor Related Party otherwise than in accordance with the terms of this Contract and any applicable licence or sub-licence conditions provided that these have been notified to the Contractor's Representative in writing; or
 - 55.8.2 any modification or development carried out by or for the Contractor to any item supplied by the Authority under this Contract, where such modification or development is not authorised or approved in writing by the Authority.
- 55.9 In relation to any Contractor IPR Claim under the provisions of Clause 55.7:
 - 55.9.1 the Authority shall have control of and be allowed to conduct all negotiations and proceedings; and
 - 55.9.2 the Contractor shall provide the Authority with such reasonable assistance as is required by the Authority regarding the Contractor IPR Claim and shall not

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without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed) make any admission relating to the Contractor IPR Claim or attempt to settle it.

- 55.10 Subject to Clauses 55.5, 55.6 or 55.9 (as applicable), each Party shall consult with the other Party in relation to any negotiations and proceedings relating to any IPR Claim or Contractor IPR Claim (as applicable) and the Party having control and conduct of such IPR Claim or Contractor IPR Claim, acting reasonably, shall have regard to the reasonable views and comments of the other Party in relation to the conduct of such negotiations and proceedings.

56. FURTHER ASSURANCES

- 56.1 The Contractor undertakes to execute all documents and do all acts which may be necessary for the Authority to obtain the benefit of Clauses 50 (*Ownership of Intellectual Property*) to 57 (*Use and Sharing of Know How*), including consenting to the registration of any licence against any IPR which is registered.
- 56.2 The Contractor shall register all licences granted to it to use any registered Third Party IPR.
- 56.3 The Contractor shall, on request by the Authority, enter into negotiations to grant the Authority a licence of Contractor Background IPR or a sub-licence of Third Party IPR on fair and reasonable terms for use for any purpose not permitted by this Contract.
- 56.4 The Contractor shall immediately notify the Authority in writing (which for this purpose does not include email) if it becomes aware of any actual, suspected or threatened infringement of, or other claim in relation to, the Authority IPR. The Authority shall decide what action, if any, to take in relation to the control and conduct of such infringement or claim and any award of costs or damages or other compensation payment recovered shall be for the account of the Authority. The Contractor shall (and shall procure that any Contractor Related Party shall) (at the Authority's cost) provide any assistance which the Authority requires in connection with any of these matters.

57. USE AND SHARING OF KNOW HOW

Subject to Clause 59 (*Confidentiality*), the Contractor shall (and shall procure that any Contractor Related Party shall), save to the extent prohibited by Applicable Law and any rights of or obligations to Third Parties (other than Contractor Related Parties and COI Associates), share information and know-how relating to the Contract and the Services with the Authority and, as directed by the Authority, with Authority Related Parties (including other MSPs).

58. DATA PROTECTION

- 58.1 The Contractor shall comply, and shall procure that the Contractor Related Parties shall comply, with the Authority's data protection policies (including DEFCON 532B), having regard to the Personal Data Particulars set out in Part C (*Personal Data Particulars*) of Schedule 9 (*Security Aspects Letter and PDAL*), and relevant obligations under the DPA and associated codes of practice when processing Personal Data relating to any employee, worker, customer, client, supplier or agent of the Authority.
- 58.2 The Contractor shall procure that each of the Personnel consents to the Authority holding and processing data relating to him or her for legal, personnel, administrative and management purposes and in particular to the processing of any "sensitive personal data" (as defined in the DPA) relating to the individual including, as appropriate:
- 58.2.1 information about any of the Personnel's physical or mental health or condition in order to monitor sickness absence;
- 58.2.2 any of the Personnel's racial or ethnic origin or religious or similar beliefs in order to monitor compliance with equal opportunities legislation; and

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58.2.3 information relating to any criminal proceedings in which any of the Personnel have been involved for insurance purposes and in order to comply with legal requirements and obligations to third parties.

58.3 The Contractor consents (and shall procure that the Contractor Related Parties consent) to the Authority making the information obtained pursuant to Clause 58.2 available to Government Bodies and regulatory authorities.

58.4 In respect of personal data (as defined in the DPA) of or relating to any Personnel, the Authority shall comply with the Authority's data protection policies including DEFCON 532B and shall not act in such a way as to cause the Contractor, any Contractor Related Party or any COI Associate to breach any of its obligations under the DPA.

58.5 On or before the Commencement Date, the Contractor shall provide the Authority with a signed copy of a Personal Data Aspects Letter.

59. CONFIDENTIALITY

59.1 The Parties agree that provisions of this Contract and each of the Associated Contracts shall, subject to Clause 59.2, not be treated as Commercially Confidential Information and may be disclosed without restriction.

59.2 Clause 59.1 shall not apply to any of those provisions of this Contract or to any information contained within an Associated Contract which is designated as Commercially Sensitive Information. Any such provision of information shall, subject to Clause 60.1 be kept confidential.

59.3 Notwithstanding the provisions of Clause 59.1, and without prejudice to Clause 59A (*Controlled Information*), each Party shall:

59.3.1 treat all information it receives from the other Party under this Contract or Associated Contracts or in connection with the provision of the Services as Commercially Confidential Information;

59.3.2 only disclose such information to those of its Contractor Related Parties having a need to know for the purposes of this Contract and the Services and the Associated Contracts; and

59.3.3 shall not disclose any such information to Third Parties except as permitted under, and subject to the provisions of, Clause 20 (*Conflicts of Interest*) and Clause 60 (*Disclosure*).

59.4 Upon expiry or termination of this Contract for any reason, save to the extent permitted to be retained under this Contract or required to be retained by Applicable Laws, the Contractor shall (and shall procure that each Contractor Related Party shall) destroy or return to the Authority all Authority Commercially Confidential Information of the Authority or any Authority Related Party in its possession or control.

59.5 The provisions of this Clause 59 (*Confidentiality*) and Clause 60 (*Disclosure*) shall supersede and replace any other confidentiality undertakings agreed in writing between the Parties with respect of the subject matter of this Contract prior to the date of this Contract.

59A CONTROLLED INFORMATION

59A.1 The Contractor shall, and shall procure that the Contractor Related Parties shall:

59A.1.1 not use Controlled Information other than in connection with the provision of the Services;

59A.1.2 not copy the Controlled Information except as strictly necessary for the purpose of provision of the Services;

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59A.1.3 not disclose the Controlled Information to any Third Party (other than any Personnel) without the prior written notice of the Authority;

59A.1.4 take all reasonable measures to protect the Controlled Information against unauthorised access and against loss; and

59A.1.5 take all reasonable measures to ensure that:

(A) Controlled Information is disclosed to Personnel only to the extent necessary for provision of the Services;

(B) Personnel to whom Controlled Information is disclosed are made aware of and required to comply with the terms of this Clause 59A (*Controlled Information*).

59A.2 Where Controlled Information is provided to the Contractor or to any Personnel, the Contractor shall:

59A.2.1 maintain a register of that Controlled Information, which shall include a 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;

59A.2.2 maintain this register for the duration of the Contract and for two years following the Expiry Date or Termination Date (as applicable);

59A.2.3 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 59A.2; and

59A.2.4 upon expiry or termination of this Contract for any reason, the Contractor shall (and shall procure that each Contractor Related Party shall):

(A) return to the Authority all original and duplicate copies of the Controlled Information; or

(B) at the Authority's request, destroy these copies and provide a certificate of destruction to the Authority.

59A.3 The restrictions on the copying, use or disclosure in Clauses 59A.1.1 to 59A.1.3 above shall not apply to Controlled Information to the extent that the Contractor can demonstrate that the information in question:

59A.3.1 is already in, or comes into, the public domain otherwise than as a result of a breach of this Clause 59A (*Controlled Information*);

59A.3.2 was already known to the Contractor (or where applicable, the Contractor Related Party), without restrictions on disclosure or use, prior to the Contractor (or where applicable, the Contractor Related Party) receiving it under or in connection with the Contract; or

59A.3.3 that the information concerned was lawfully provided by a Third Party without restriction on use or further disclosure.

59B LEGAL ADVICE

59B Legal Advice

59B.1 This Clause 59B (*Legal Advice*) is without prejudice to any duties of confidentiality or restrictions on disclosure pursuant to the Contract, including under Clause 59 (*Confidentiality*), Part XII (*Security*) and Schedule 8 (*Conflicts of Interest*).

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- 59B.2 The Contractor shall ensure that the Privilege and Confidentiality Agreement is executed by all Personnel upon the commencement of their Placement, and a copy of each document shall be provided to the Authority.
- 59B.3 The Contractor acknowledges and agrees that under the terms of the Privilege and Confidentiality Agreement the Personnel may not disclose to the Contractor any Legal Advice (as defined in that Privilege and Confidentiality Agreement), and the Contractor shall not request that any Personnel do so. The Contractor shall immediately return to the Authority (and delete from its computer systems and any electronic information retrieval system) any such Legal Advice that it receives, or in any way whatsoever obtains access to, which has not been made available to it directly by, or with the authorisation of, the Authority or any Authority Related Party (other than Personnel).
- 59B.4 The Parties acknowledge and agree that as a consequence of this Clause 59B (*Legal Advice*), a member of Personnel may be prohibited from disclosing certain information to the Contractor and the Contractor would, in those circumstances, not therefore be aware of that information (including for the purposes of Schedule 8 (*COI Compliance Regime*)).

60. DISCLOSURE

- 60.1 The obligations set out under Clauses 59.2 and 59.3 not to release information to Third Parties shall not apply to:
- 60.1.1 any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under the Contract to the extent required for the performance of those obligations;
- 60.1.2 any disclosure of information which a Party can demonstrate is already in, or comes into, the public domain otherwise than as a result of a breach of Clause 59 (*Confidentiality*);
- 60.1.3 any disclosure to enable a determination to be made under Clause 45 (*Dispute Resolution Procedure*);
- 60.1.4 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the Party making the disclosure or the rules of any stock exchange or governmental or regulatory authority (whether having the force of law or if not having the force of law) compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
- 60.1.5 any disclosure of information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;
- 60.1.6 any disclosure of information to the Parties' own professional advisers, insurance advisers or lenders;
- 60.1.7 any disclosure by the Authority of information as may be reasonably required:
- (A) for the purpose of conducting a due diligence exercise, to any proposed contractor, its advisers and lenders, should the Authority decide to retender all or part of the Contract or a replacement or continuation thereof or any part thereof; or
- (B) for any other purpose in the exercise of the Authority's rights of disclosure and use set out under Clauses 50 (*Ownership of Intellectual Property*) to 57 (*Use and Sharing of Know How*);
- 60.1.8 any disclosure of information by the Authority to any Government Body or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to the Contract;
- 60.1.9 any disclosure of information for the purpose of:

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- (A) the examination and certification of the Authority's or the Contractor's accounts;
- (B) any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
- (C) (without prejudice to the generality of Clause 60.1.4) compliance with the FOIA or the Environmental Information Regulations;

provided that neither Clause 60.1.4 nor Clause 60.1.9(C) shall permit disclosure of Commercially Confidential Information that would not be disclosed in accordance with Clause 59.3 where that information is exempt from disclosure under section 41 of the FOIA or regulation 12 of the Environmental Information Regulations; or

60.1.10 any disclosure of information by the Contractor to a Sub-contractor where the Sub-contractor has a need to know such information for the purpose of the relevant Sub-contract (but provided such Sub-contractor is under no less onerous obligations of confidence as are contained in this Contract).

60.2 Where disclosure is permitted under the provisions of this Clause 60 (*Disclosure*) the Party disclosing the information shall procure that the recipient of the information shall be subject to obligations of confidentiality no less onerous than those contained in this Contract. This obligation shall not however apply to disclosures of information made under the provisions of Clauses 60.1.2, 60.1.4, 60.1.5, 60.1.7(B), 60.1.9(B) or 60.1.9(C).

60.3 The Contractor shall not (and shall procure that the Contractor Related Parties shall not) make use of the Contract or any Commercially Confidential Information issued or provided by or on behalf of the Authority in connection with the Contract otherwise than for the purpose of the Contract and the Services, except with the written consent of the Authority (or information that could be disclosed by the Contractor to Third Parties under the provisions of Clauses 60.1.2 or 60.1.5).

60.4 Where the Contractor, in carrying out its obligations under the Contract, is provided with information by or on behalf of the Authority relating to any person, the Contractor shall not disclose or make use of any such information, otherwise than for the purpose for which it was provided, unless the Contractor has obtained the prior written consent of the Authority.

60.5 Where the Contractor, in carrying out its obligations under the Contract, is provided with information by or on behalf of a Third Party relating to any person, the Contractor shall not disclose or make use of any such information, otherwise than for the purpose for which it was provided, unless the Contractor has obtained the prior written consent of the Third Party.

60.6 The provisions of this Clause 60 (*Disclosure*), Clause 61 (*Contractor Right to Request Confidentiality*) and Clause 62 (*Publication*) are without prejudice to the application of the Official Secrets Acts 1911 to 1989, Clause 20 (*Conflicts of Interest*), Part XII (*Security*) and Clause 58 (*Data Protection*).

61. CONTRACTOR RIGHT TO REQUEST CONFIDENTIALITY

The Contractor may at any time request in writing, stating reasons, that the Authority keeps particular information confidential and does not disclose it to Third Parties. The Contractor may further request in writing at any time that, where the Authority discloses information pursuant to Clause 63 (*Freedom of Information Act*), the Authority make representations to the recipient of such information as to the desirability of keeping such information confidential. Any such request by the Contractor shall be accompanied by a document setting out in writing the requested representations. The Authority shall act reasonably when considering whether to make such representations.

62. PUBLICATION

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- 62.1 Subject to Clauses 59.2 (*Confidentiality*) and 62.2, the Contractor gives its consent to the Authority to publish to the general public (including on a website) the content of the Contract (including any amendments agreed from time to time). The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Contract.
- 62.2 Where an amendment to the Contract occurs, the Authority shall consult with the Contractor over whether any of those changes should be treated as Commercially Sensitive Information and so be redacted for public availability.
- 62.3 The Contractor acknowledges and accepts that its representations on redactions during consultation under Clause 62.2 may not be determinative and that the decision as to whether to redact information is a matter in which the Authority shall exercise its own discretion, using as its guiding principles the exemptions from disclosure available under the provisions of the FOIA and the Environmental Information Regulations.

63. FREEDOM OF INFORMATION ACT

- 63.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Authority's compliance with its information disclosure requirements pursuant to the same in the manner provided for in this Clause 63 (*Freedom of Information Act*).
- 63.2 Where the Authority receives a Request for Information (as defined in the FOIA) in relation to information that the Contractor is holding on its behalf and which the Authority does not hold itself, the Authority shall refer to the Contractor such Request for Information as soon as reasonably practicable and in any event within five (5) Business Days of receiving a Request for Information and the Contractor shall:
 - 63.2.1 provide the Authority with a copy of all such information in the form that the Authority requires as soon as reasonably practicable and in any event within ten (10) Business Days (or such other period as the Authority acting reasonably may specify) of the Authority's request; and
 - 63.2.2 provide all necessary assistance as reasonably requested by the Authority in connection with any such information, to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations (as applicable).
- 63.3 Following notification under Clause 63.2, and up until such time as the Contractor has provided the Authority with all the information specified in Clause 63.2.1, the Contractor may make representations to the Authority as to whether or not or on what basis information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Authority shall be responsible for determining at its absolute discretion:
 - 63.3.1 whether information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
 - 63.3.2 whether information is to be disclosed in response to a Request for Information; and in no event shall the Contractor respond directly, or allow any Sub-contractor to respond directly, to a Request for Information unless expressly authorised to do so by the Authority.
- 63.4 The Contractor acknowledges that (notwithstanding the provisions of Clauses 59 (*Confidentiality*) to Clause 62 (*Publication*) and this Clause 63 (*Freedom of Information Act*)) the Authority shall act in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA (the "**Code**").
- 63.5 When acting in accordance with the Code the Authority may be obliged in certain circumstances under the FOIA or the Environmental Information Regulations to disclose information concerning the Contractor, DE&S or the Contract Domain:

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- 63.5.1 without consulting the Contractor; or
- 63.5.2 following consultation with the Contractor (having taken its views into account).

PART XIV INSURANCE AND LIABILITIES

64. INSURANCE

- 64.1 Without prejudice to any liability it may have to the Authority under this Contract or otherwise, the Contractor shall for the periods specified in Schedule 7 (*Insurances*) take out and maintain or procure the taking out and maintenance of the Contractor insurances as set out in Schedule 7 (*Insurances*) and any other insurances as may be required by Applicable Laws (together the "**Contractor Insurances**"). The Contractor shall ensure that each of these Contractor Insurances is effective not later than the date on which the relevant risk commences.
- 64.2 The Contractor Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 64.3 The Contractor shall ensure in respect of the public and products liability and employer's liability insurances that the policies of insurance shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims, made against the Authority arising from death or bodily injury or property damage.
- 64.4 Without limiting the other provisions of this Contract, the Contractor shall:
 - 64.4.1 take or procure the taking of all reasonable risk management and risk control measures in relation to the performance of this Contract and the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice including the investigation and reports of relevant claims to insurers; and
 - 64.4.2 hold all policies in respect of the Contractor Insurances and cause any insurance broker effecting the Contractor Insurances to hold any insurance slips and other evidence of placing cover representing any of the Contractor Insurances to which it is a part and for which it is responsible under this Contract.
- 64.5 The Contractor 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 Contractor Insurances.
- 64.6 The Contractor shall upon the Commencement Date, and within thirty (30) Business Days of the renewal of each of the Contractor Insurances, provide evidence, in a form reasonably satisfactory to the Authority, that the Contractor Insurances are in full force and effect and meet in full the requirements in Schedule 7 (*Insurances*). Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Contractor of its liabilities and obligations under this Contract.
- 64.7 The Authority may elect (but shall not be obliged), where notice has been provided to the Contractor, to purchase any insurance which the Contractor is required to maintain 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 Contractor.
- 64.8 Where the minimum limit of indemnity required in relation to any of the Contractor Insurances is specified as being "in the aggregate":
 - 64.8.1 if a claim or claims which do not relate to this Contract are notified to the insurers which, given the nature of the allegations 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 Contractor shall immediately submit to the Authority details of the policy concerned and shall

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- submit forthwith its proposed solution for maintaining the minimum limit of indemnity specified;
- 64.8.2 to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Contract are paid by insurers, the Contractor 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; and
- 64.8.3 if the Contractor is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified it shall submit to the Authority immediately full details of the policy concerned and shall submit forthwith its proposed solution for maintaining the minimum limit of indemnity specified.
- 64.9 The Contractor shall notify the Authority at least five (5) Business Days before the cancellation, suspension, termination or non-renewal of any of the Contractor Insurances.
- 64.10 The Contractor 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 Contractor Insurances. In the event that the Authority receives a claim relating to this Contract, the Contractor shall cooperate with the Authority and assist it in dealing with such claims including providing information and documentation in a timely manner.
- 64.11 Except where the Authority is the claimant party, the Contractor shall give the Authority notice within fifteen (15) Business Days after any insurance claim in excess of one hundred thousand pounds (£100,000) relating to this Contract or any of the Contractor Insurances or which, but for the application of the applicable policy excess, would be made on any of the Contractor Insurances and (if required by the Authority) full details of the incident giving rise to the claim.
- 64.12 Where any Contractor Insurances requires payment of a premium, the Contractor shall be liable for such premium.
- 64.13 Where any Contractor Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under such Contractor Insurance.
- 65. LIABILITY**
- 65.1 Liability of the Contractor**
- 65.1.1 Subject to Clauses 65.1.2, 65.1.4 and 65.6.1, the Contractor shall be liable to the Authority for:
- (A) any Loss suffered by the Authority flowing directly from the Contractor's breach of this Contract (including, for the avoidance of doubt, Losses which arise from the Contractor's or a Contractor Related Party's negligence or a deliberate repudiatory breach); and
- (B) any other liabilities arising under an indemnity granted by the Contractor under this Contract.
- 65.1.2 Notwithstanding any other provision of this Contract (other than Clauses 65.2 (*Exclusions from Caps*) and 65.4 (*Liability for Fraud, Death and Personal Injury Not Excluded*) and clause 65.2 (*Exclusions from Caps*) of the Second Domain Contract), the maximum aggregate liability of the Contractor to the Authority under both this Contract and the Second Domain Contract, in any single Contract Period, shall not exceed, and shall be limited to, the Contract Period Liability Cap for that Contract Period.
- 65.1.3 If the Second Domain Contract is terminated during the Term of this Contract, no amendment shall be made to the Contract Period Liability Cap and Clause 65.1.2

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shall continue to apply as if there were no reference to the Second Domain Contract.

65.1.4 Notwithstanding any other provision of this Contract (other than Clause 65.4 (*Liability for Fraud, Death and Personal Injury Not Excluded*)), the Contractor shall have no liability to the Authority under this Contract for any indirect or consequential losses or damages.

65.2 Exclusions from Caps

In respect of any liability under Clause 65.1 (*Liability of the Contractor*), the following matters shall not be subject to (and shall not count towards) the Contract Period Liability Cap:

- 65.2.1 liabilities arising out of the Contractor's Gross Negligence or wilful misconduct;
- 65.2.2 liabilities arising out of a Contractor Related Party's Gross Negligence or wilful misconduct;
- 65.2.3 liabilities resulting from the Contractor committing a Prohibited Act;
- 65.2.4 costs of enforcement by the Authority of any Parent Company Guarantee; and
- 65.2.5 liabilities arising out of any indemnity given by the Contractor under Clause 55 (*IPR Indemnities*).

65.3 Calculating Liability

In calculating the relevant amounts under Clause 65.1 (*Liability of the Contractor*) there shall be no double accounting of liabilities.

65.4 Liability for Fraud, Death and Personal Injury Not Excluded

Nothing in this Clause 65 (*Liability*) shall purport to limit or exclude the liability of the Contractor for death or personal injury caused by its negligence or otherwise or for fraud, to the extent that the same is not permissible under Applicable Law.

65.5 Limit on the Authority's Right to Claim

65.5.1 Limit of Aggregate Liability

Subject to Clause 65.5.2 (*Uncapped Liability*) and Clause 65.4 (*Liability for Fraud, Death and Personal Injury Not Excluded*), in respect of each Contract Period, the Authority shall not claim against the Contractor any amounts where the Contractor would as a result incur aggregate liabilities to the Authority (as set out in Clause 65.1 (*Liability of the Contractor*)) in excess of the Contract Period Liability Cap for that Contract Period.

65.5.2 Uncapped Liability

In respect of any liability under Clause 65.1 (*Liability of the Contractor*), the Authority shall not be restricted from making claims against the Contractor in respect of the following:

- (A) liabilities arising out of the Contractor's Gross Negligence or wilful misconduct;
- (B) liabilities arising out of a Contractor Related Party's Gross Negligence or wilful misconduct;
- (C) liabilities resulting from the Contractor committing a Prohibited Act;
- (D) the costs of enforcement by the Authority of any Parent Company Guarantee; or

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- (E) liabilities arising out of any indemnity given by the Contractor under Clause 55 (*IPR Indemnities*).

65.6 Limit on Claims Brought

- 65.6.1 Neither Party shall be liable to the other Party for any liability arising out of or in connection with this Contract (including for negligence or a deliberate repudiatory breach) unless that other Party gives notice of a claim, summarising the nature of the claim as far as it is known to that other Party and the amount claimed, within one (1) Year of the Termination Date or Expiry Date (as applicable).

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IN WITNESS whereof this Agreement has been entered into the day and year first hereinbefore mentioned.

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

Name of signatory: **Ian Burton**
Title of signatory: **Head of Commercial – Materiel Strategy**

In the presence of:
Signature of witness:
Name of witness:
Address of witness:
.....

SIGNED)
for and on behalf of)
CH2M HILL INTERNATIONAL NUCLEAR SERVICES LTD

Name of signatory: **John Baker**
Title of signatory: **Managing Director**

In the presence of:
Signature of witness:
Name of witness:
Address of witness:
.....