

TERMS & CONDITIONS

relating to

PART 2 OF THIS CONTRACT

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR DEFENCE** (the “**Authority**”); and
- (2) [**CONTRACTOR [LIMITED]**], [registered in England (number [•]), whose registered office is at [•]]/[of [•]] (the “**Contractor**”)¹.

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¹ To be considered in the context of the legal personality of the appointed Contractor.

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PART 1 - DEFINITIONS AND INTERPRETATION

1 Definitions and Interpretation

1.1 In this Part 2 of this Contract (unless the context otherwise requires):

- 1.1.1 the terms and phrases defined in Schedule 1 (*Definitions and Acronyms*) shall have the meanings given to them in that Schedule;
- 1.1.2 the acronyms set out in Schedule 1 (*Definitions and Acronyms*) shall have the meanings given to them in that Schedule;
- 1.1.3 the masculine includes the feminine and vice versa, and words importing the neuter include the masculine and the feminine and vice versa;
- 1.1.4 the singular includes the plural and vice versa;
- 1.1.5 the words "include", "includes", "including" and "included" shall be construed as if they were immediately followed by the words "without limitation" except where explicitly stated otherwise;
- 1.1.6 the expression "person" means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture and includes their successors and permitted assignees or transferees;
- 1.1.7 unless stated to the contrary, any reference to this Contract or to any other document shall include any variation, amendment or supplement to such document;
- 1.1.8 references to any enactment, order, regulation, or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, supplemented, replaced or consolidated by any subsequent enactment, order, regulation or instrument;
- 1.1.9 the heading to any provision in this Contract shall not affect the interpretation of that provision;
- 1.1.10 any decision, act, or thing which the Authority is required or authorised to take or do under this Contract may be taken or done only by any person authorised, either generally or specifically, by the Authority to take or do that decision, act, or thing on behalf of the Authority as set out in the table contained in Part 2 of Schedule 8 (*Governance and Management*);
- 1.1.11 unless excluded within the terms of this Contract or where otherwise required by Law:
 - (i) references to submission of documents in writing shall include electronic submission; and

- (ii) any requirement for a document to be signed or references to signatures shall be construed to include electronic signature, provided that a formal method of authentication as previously agreed between the Parties is employed and such agreed method is recorded in this Contract; and
 - (iii) a reference in this Contract to any Clause, part, paragraph, Schedule, Appendix or Annex is, except where expressly stated to the contrary, a reference to such Clause, part, paragraph or Schedule of or Appendix or Annex to this Contract;
 - (iv) a reference in this Contract to any Clause or paragraph is a reference to the whole of that Clause or paragraph unless stated otherwise;
- 1.1.12 a reference to a "day" or "days" are references to calendar day(s) unless specified as being Business Day(s);
- 1.1.13 references to a "month" or "months" are references to calendar month(s);
- 1.1.14 "loss" includes damage or destruction; and
- 1.1.15 [references to a "holding company" "or "parent undertaking" shall have the meanings and be construed in accordance with section 1159 and section 1162 of the Companies Act 2006 and for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), a company shall be treated as a member of another company even if its shares in that other company are registered in the name of:
- (i) another person (or its nominee), by way of security or in connection with the taking of security; or
 - (ii) its nominee.]²

2 Precedence

- 2.1 If there is any inconsistency between the provisions of the main body of this Contract and the Schedules, the Appendices and/or the Annexes, or between any of the Schedules, the Appendices and/or the Annexes, the conflict shall be resolved according to the following descending order of priority:
- 2.1.1 the main body of this Contract, Schedule 1 (*Definitions and Acronyms*), Schedule 9 (*Pricing and Payment*), Schedule 10 (*Task Order Approval Process*), Schedule 11 (*Change Procedure*) and Schedule 14 (*IPR*);
 - 2.1.2 Schedule 2 (*Scope*), Schedule 4 (*Assurance and Acceptance Process*) and their respective Appendices and Annexes; and
 - 2.1.3 the remaining Schedules and their respective Appendices and Annexes.³

² Inclusion of this provision will depend on the corporate structure of the Contractor.

- 2.2 If there is any conflict or inconsistency between the provisions of this Contract and the provisions of any document referred to in this Contract (including any other document referred to in that or any subsequent document), then the provisions of this Contract shall prevail.
- 2.3 If a Party becomes aware of any conflict or inconsistency within or between the documents referred to in Clauses 2.1 and/or 2.2 (*Precedence*), such Party's Representative shall notify the other Party's Representative immediately. If the Authority decides a Change is required to resolve the conflict or inconsistency it shall issue an Authority Change Notice in accordance with Schedule 11 (*Change Procedure*) and the provisions of Schedule 11 (*Change Procedure*) shall apply save that such Change shall not result in an increase to the Contract Price.

PART 2 - CORE OBLIGATIONS

3 The Contractor's Obligations

3.1 The Contractor shall:

- 3.1.1 provide the Contractor Deliverables and/or shall ensure that the Contractor Deliverables are provided in accordance with and, in each case, having due regard to:
- (i) Good Industry Practice;
 - (ii) all Necessary Consents;
 - (iii) Law;
 - (iv) British Standards which are appropriate and relevant to the provision of the Contractor Deliverables;
 - (v) the Contractor's approved quality assurance systems in accordance with Clause 77 (*Quality Assurance*); and
 - (vi) the documents referred to in Schedule 15 (*Ancillary Documents*) and the Scope;
- 3.1.2 deliver the Contractor Deliverables using efficient business processes and ways of Business having regard to the Authority's obligation to ensure value for money; and
- 3.1.3 continue to perform all of its obligations under this Contract and shall not suspend the performance of the Contractor Deliverables, notwithstanding:
- (i) any withholding by the Authority in accordance with this Contract and/or the application of any Deductions pursuant to Schedule 6 (*Performance Management Regime*) and paragraph 2 (*Deductions*) of Part 1 of Schedule 9 (*Pricing and Payment*);

³ To be reviewed alongside development of the Schedules.

- (ii) the existence of an unresolved Dispute; and/or
- (iii) any failure by the Authority to pay any sums due.

3.2 The Contractor shall perform the Contractor Deliverables:

- 3.2.1 so as to procure satisfaction of the Scope;
- 3.2.2 in accordance with the Contractor's Proposals; and
- 3.2.3 in accordance with this Contract.

To avoid doubt, the obligations in Clauses 3.2.1, 3.2.2 and 3.2.3 are independent obligations. In particular:

- (i) the fact that the Contractor has complied with the Contractor's Proposals shall not be a defence to an allegation that the Contractor has not satisfied the Scope; and
- (ii) the fact that the Contractor has satisfied the Scope shall not be a defence to an allegation that the Contractor has failed to comply with the Contractor's Proposals.

3.3 Without prejudice to Clause 3.2.1 (*The Contractor's Obligations*), if it shall be found that the Contractor's Proposals as at the Effective Date do not fulfil the Scope, the Contractor shall (at its own expense) amend the Contractor's Proposals and rectify the Contractor Deliverables to ensure that they meet the Scope.

3.4 Notwithstanding any other provisions of this Contract, nothing in Schedule 3 (*Contractor's Proposals*) shall in any way limit or reduce any of the Contractor's obligations under this Contract nor shall the provisions of Schedule 3 (*Contractor's Proposals*):

- 3.4.1 impose upon the Authority any obligation or any other requirement which is greater than the obligations and/or requirements contained in the remaining provisions of this Contract;
- 3.4.2 limit or reduce the Authority's rights and remedies contained in the remaining provisions of this Contract; and/or
- 3.4.3 otherwise have an adverse impact on the Authority.

4 Pricing and Payment and Task Orders

Core Contractor Deliverables and Pricing and Payment

4.1 During the Firm Price Period, the Core Contractor Deliverables are to be performed in accordance with this Contract for the Firm Price (which has been calculated in accordance with the Unit Rates and the Price List as more particularly referred to in paragraph 4 of Part 2 of Schedule 9 (*Pricing and Payment*)).

- 4.2 The Firm Price is more particularly described in paragraph 1 of Part 2 of Schedule 9 (*Pricing and Payment*) and may only be amended in accordance with the procedures in Schedule 11 (*Change Procedure*).
- 4.3 During the Fixed Price Period, the Core Contractor Deliverables are to be performed in accordance with this Contract for the Fixed Price (which has been calculated in accordance with the Unit Rates and the Price List as more particularly referred to in paragraph 5 of Part 2 of Schedule 9 (*Pricing and Payment*)).
- 4.4 The Fixed Price is more particularly described in paragraph 2 of Part 2 of Schedule 9 (*Pricing and Payment*) and may be amended in accordance with paragraph 3 (*Variation of Fixed Price*) of Part 2 of Schedule 9 (*Pricing and Payment*) and/or the procedures in Schedule 11 (*Change Procedure*).

Approval of Task Order Proposals

- 4.5 The provisions of Schedule 10 (*Task Order Approval Process*) shall apply in relation to the proposal, review and, where applicable, approval of Task Order Proposals in relation to adjustments to the Core Contractor Deliverables and/or any Exercised Option.
- 4.6 All Task Order Proposals shall be prepared and delivered by the Contractor in accordance with the provisions of Schedule 10 (*Task Order Approval Process*).
- 4.7 Where a Task Order Proposal has been approved by the Authority pursuant to Schedule 10 (*Task Order Approval Process*), then the Proposed Additional Contractor Deliverables to be carried out and performed by the Contractor as set out in the approved Task Order shall be deemed to become part of the Contractor Deliverables.
- 4.8 The Task Order Proposal shall be performed by the Contractor for the Task Order Price.
- 4.9 The Contractor shall update the relevant parts of this Contract to reflect the agreed changes to this Contract as permitted in accordance with Schedule 10 (*Task Order Approval Process*) and the Contractor and the Authority shall each sign a copy of the updated Contract and exchange the signed copies as evidence of agreement to the proposed changes.
- 4.10 The Authority makes no representations regarding the level of Additional Contractor Deliverables it will require from the Contractor and, for the avoidance of doubt the Authority shall not be obliged:
- 4.10.1 to place any Task Orders with the Contractor for any Additional Contractor Deliverables; or
 - 4.10.2 to accept or approve any Task Order Proposal.
- 4.11 The Parties shall, on an annual basis during the Contract Period, create a conformed copy of this Contract incorporating all changes agreed under Clause 4.7 in the previous twelve (12) months (and/or take such further steps) to record such

changes (“**Conformed Copy**”), except where the Parties have created a conformed copy to amend this Contract in accordance with paragraph 2.1 of Schedule 11 (*Change Procedure*) in the period since the last Conformed Copy was produced, in which case, that conformed copy shall:

- 4.11.1 record all changes arising under Clause 4.7 since creation of the last Conformed Copy; and
- 4.11.2 the next Conformed Copy shall be created at the end of the twelve (12) month period during which such conformed copy was entered into in accordance with Schedule 11 (*Change Procedure*) and recording only the changes agreed under Clause 4.7 since the date on which such conformed copy was entered into.

Third Party/Authority to provide the Contractor Deliverables

- 4.12 The Authority may appoint a Third Party and/or the Authority to:
 - 4.12.1 provide the whole or any part of the Contractor Deliverables where the Contractor is in breach of any of its obligations under this Contract; and/or
 - 4.12.2 provide the whole or any part of the proposed Contractor Deliverables which are the subject of a Task Order Request where the Contractor confirms that it does not intend to submit a Task Order Proposal relating to such Task Order Request or where the Contractor fails to submit a Task Order Proposal following receipt of such Task Order Request within the time period specified in and in accordance with the provisions of Schedule 10 (*Task Order Approval Process*).
- 4.13 Without prejudice to the provisions of Schedule 10 (*Task Order Approval Process*), the Contractor shall not be entitled to any payment, compensation, damages, costs, losses and/or expenses arising out of or in connection with the circumstances set out in Clause 4.12 (*Third Party/Authority to provide the Contractor Deliverables*).

Consequences of appointing a Third Party

- 4.14 Where the Authority exercises its rights pursuant to Clause 4.12 (*Third Party/Authority to provide the Contractor Deliverables*), then:
 - 4.14.1 the Contractor shall, at its own cost, comply with the provisions of Clause 4.16 (*Consequences of appointing a Third Party*) (insofar as such Clause is relevant); and
 - 4.14.2 the Contractor shall indemnify the Authority against all of the Authority's Losses arising out of or in connection with the exercise of such rights (including all internal costs and all additional costs, liabilities, losses and/or expenses over and above those which the Authority would reasonably have incurred under this Contract (in respect of the delivery of the whole or the relevant part (as the case may be) of the Contractor Deliverables) had the Contractor complied with its obligations under this Contract).

- 4.15 Where the Authority exercises its rights pursuant to Clause 4.12 (*Third Party/Authority to provide the Contractor Deliverables*), then the Authority shall notify the Contractor in writing of the following:
- 4.15.1 the action it wishes to take;
 - 4.15.2 the reason for such action;
 - 4.15.3 the date it wishes to commence such action; and
 - 4.15.4 to the extent practicable, the effect on the Contractor and its obligation to provide the whole or part of the Contractor Deliverables.
- 4.16 Following service of notice pursuant to Clause 4.15 (*Consequences of appointing a Third Party*), the Authority shall, either by itself or by engaging others, take such action as notified under Clause 4.15 (*Consequences of appointing a Third Party*), and any consequential additional action as it reasonably believes is necessary and the Contractor shall give all reasonable assistance to the Authority or such others identified by the Authority (as the case may be) and the Contractor shall not be entitled to claim a GFA Failure and/or shall not be entitled to any increase in the Firm Price, the Fixed Price and/or any additional payment and/or compensation of whatever nature and whosever arising in connection with the giving of such assistance.

5 Contract Period and Options

Contract Period

- 5.1 Subject to Clauses 5.2 to 5.9 (inclusive) (*Exercise of Options*), this Part 2 of the Contract and the rights and obligations of the Parties shall take effect on the Effective Date and, except as set out in Clause 82 (*Continuing Obligations*), shall terminate on the earlier of:
- 5.1.1 the Expiry Date, as the same may be extended following the exercise by the Authority of any of the Options; and
 - 5.1.2 the Termination Date.

Exercise of Options

- 5.2 In consideration of the Authority agreeing to enter into this Contract, the Contractor hereby grants to the Authority the right to exercise the Options.
- 5.3 If the Authority elects to exercise one or more of the Options, the following provisions of this Clause 5 shall apply.
- 5.4 The Authority shall issue a notice to the Contractor (such notice confirming that the Authority is considering exercising the relevant identified Option, subject to the Authority and the Contractor confirming the Option Fixed Price and other matters

relating to such Option) (an “**Option Notice**”) and such Option Notice may be issued by the Authority:⁴

- 5.4.1 in the case of the Option 1, not less than six (6) months prior to the Original Expiry Date; and
- 5.4.2 in the case of Option 2, not more than six (6) months prior to the end of Year 6.
- 5.5 The terms (including the scope of the Contractor Deliverables, Articles and/or services) which the Parties intend shall govern each Option are those set out in Schedule 2 (*Scope*) and the Parties agree that where an Option is exercised by the Authority in accordance with this Clause 5 (*Contract Period and Options*), the following provisions in Clauses 5.6 to 5.9 (inclusive) (*Exercise of Options*) shall apply.
- 5.6 The prices for Option 1 and Option 2 are Fixed Prices as set out in the first column of the table at Appendix 1 to Schedule 9 (*Pricing and Payment*). Such Fixed Prices can only be increased or decreased in accordance with the provisions of paragraph 2.3 of Part 2 of Schedule 9 (*Pricing and Payment*).
- 5.7 In the event of any Dispute in relation to any Option which is the subject of an Option Notice, either Party shall be entitled to refer the matter for resolution in accordance with the Dispute Resolution Procedure, provided that where the Dispute relates to the Contractor’s approach to sub-contracting, the Contractor shall not be entitled to refer such matter in accordance with Clause 97 (*Dispute Resolution (English Law)*) and the Authority shall have the absolute right to refuse to approve any proposed sub-contracting approach and the provisions of Clause 12 (*Sub-Contracting*) and Clause 16 (*Competition in Sub-Contracts*) shall apply.
- 5.8 Following the agreement (including agreement to the terms of any Option as set out in Schedule 2 (*Scope*) at the Effective Date, without amendment) or determination of the Fixed Price for the relevant Option and/or other proposed changes:
 - 5.8.1 the Parties shall proceed as if the agreed (or determined) terms of the relevant Option were an Estimate confirmed by the Authority in accordance with paragraph 8.1.1 of Schedule 11 (*Change Procedure*) and the Parties shall enter into any documents required to give effect to the relevant Option and commence the implementation of the relevant Option as set out in paragraph 2.1 of Schedule 11 (*Change Procedure*); and
 - 5.8.2 the rights and obligations of the Parties in respect of the relevant Option, shall take effect from the date specified in the documents referred to in Clause 5.8.1 (when such documents have been duly executed by the Parties and consequently the Option then becomes an Exercised Option) and shall form rights and obligations under this Contract.

⁴ Tenderers must assume that there is no guarantee that any Options will be exercised. All dates dependent upon [●] Contract Close.

- 5.9 Following the exercise of any of the Options pursuant to this Clause 5 (*Contract Period and Options*), any rights and obligations of the Parties existing under this Contract prior to the exercise of such Option shall continue to apply.

6 Contractor Warranties and Undertakings

Contractor warranties

- 6.1 The Contractor warrants and represents to the Authority that:

- 6.1.1 it has the [corporate⁵] power to enter into and to exercise its rights and perform its obligations under this Contract and any Sub-Contracts and all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under this Contract has been taken;
- 6.1.2 [it is validly incorporated, organised and subsisting in accordance with the law of its place of incorporation⁶];
- 6.1.3 this Contract is executed by its duly authorised representative⁷;
- 6.1.4 it has all necessary consents and regulatory approvals to enter into this Contract;
- 6.1.5 [at the date of the Contract the entire share capital in the Contractor is legally and beneficially owned by [•], a company incorporated in [England and Wales] (with Registered Number [•]) whose registered office is situated at [•] and that no arrangements are in place or are contemplated that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the Contractor;]⁸
- 6.1.6 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunals pending or to its knowledge, threatened against it or any of its Contractor Related Parties that might affect its ability to perform its obligations under this Contract;
- 6.1.7 its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Law, other law (in any jurisdiction), or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- 6.1.8 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject

⁵ To be considered in the context of the legal personality and constitution of the Contractor.

⁶ To be considered in the context of the legal personality and constitution of the Contractor.

⁷ Phrasing to be considered dependent on formalities required for execution by Contractor.

⁸ To be considered in the context of the legal personality and constitution of the Contractor.

to applicable bankruptcy, reorganisation, insolvency, moratorium or similar law affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);

- 6.1.9 all written statements and representations in any written submissions made by the Contractor as part of the procurement process, including without limitation its response to the Contract Notice and Tender Documentation (if applicable), its tender and any other documents submitted, remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Contractor has otherwise disclosed to the Authority in writing prior to the date of this Contract;
- 6.1.10 it is not subject to any contractual or other obligation, compliance with which shall or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
- 6.1.11 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue and as at Contract Award no Insolvency Event has occurred;
- 6.1.12 it shall not commit, and in entering into this Contract it has not committed, any Prohibited Act and for this purpose only the words "or without" in the introduction of the definition of Prohibited Act shall be deleted;
- 6.1.13 it, nor to the best of its knowledge any Contractor Related Party nor any of the Contractor's employees, consultants, contractors, sub-contractors or agents, have at any time prior to the Effective Date:
 - (i) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - (ii) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act;
- 6.1.14 it shall:
 - (i) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and

- (ii) keep appropriate records of its compliance with its obligations under Clause 6.1.14(i) and make such records available to the Authority on request;
- 6.1.15 it shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 6.1.13, or has reason to believe that it has or any of the Contractor Related Party or any of the Contractor's employees, consultants, contractors, sub-contractors or agents have:
 - (i) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - (ii) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - (iii) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act;
- 6.1.16 so far as it is aware, there is not, nor has there been, any infringement or alleged infringement of any Third Party's Intellectual Property Rights in connection with this Contract;
- 6.1.17 it has all necessary rights in and to the Contractor Background IPR, the Contractor Foreground IPR and any other materials (including the Third Party IPR) made available by the Contractor (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Contractor's obligations under this Contract and/or the receipt of the Contractor Deliverables by the Authority;
- 6.1.18 it has used and will continue to use the degree of skill, care, diligence, best up-to-date practice and foresight in the performance of each of the Contractor Deliverables that would reasonably be expected of a fully qualified and competent professional contractor experienced in carrying out activities of a similar nature, scope, size, timescale and complexity to those comprised in the Contractor Deliverables;
- 6.1.19 without prejudice to Clauses 27.7 to 27.13 (inclusive) (*Discretionary GFA*), it has identified and listed in Schedule 7 (*Authority Obligations*) all GFA that it requires the Authority to provide and/or make available (including any and all information, data, documents and/or physical items that it requires the Authority to procure from any Other Contractor) to ensure the full and proper performance by the Contractor of the Contractor Deliverables;

6.1.20 in relation to any defects and/or other faults in the Contractor Deliverables which arise at any time during the Contract Period or within two (2) years after the end of the Contract Period due to any failure of the Contractor to comply with its obligations under this Contract, it shall:

- (i) remedy any such defects and/or other faults in the Contractor Deliverables as soon as reasonably practicable; and/or
- (ii) indemnify the Authority for all costs incurred in carrying out any remedial work necessary to remedy such defects and/or other faults in the Contractor Deliverables; and

6.1.21 where the Contractor and/or any Contractor Related Party receives any benefit or other advantage (whether financial or otherwise) of any kind (for example receiving a discount in price or other benefit or advance), directly or indirectly, from any supplier of goods and/or equipment and/or in relation to any other deliverable provided by the Contractor Deliverables, the Contractor shall ensure that the benefit or other advantage is passed to the Authority in full and any consequential changes to the Contract Price shall be made as soon as practicable following receipt by the Contractor of the relevant benefit or advantage,

and the Authority relies upon each of the individual warranties and individual representations in Clause 6 (*Contractor Warranties and Undertakings*).

Contractor undertakings

6.2 The Contractor undertakes that for so long as this Contract remains in full force the Contractor shall:

6.2.1 give the Authority:

- (i) notice of any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator, administrator or adjudicator or mediator or Relevant Authority ("**Dispute Forum**") against itself or a Sub-Contractor which would adversely affect, to an extent which is material in the context of this Contract, the Contractor's ability to perform its obligations under this Contract, unless such notice is precluded by the rules of the Dispute Forum, provided that notice shall be given within twenty (20) Business Days of the Contractor becoming aware such proceedings may be threatened or pending, and immediately after the commencement thereof;
- (ii) immediate notice if an Insolvency Event occurs or is threatened;

- 6.2.2 not undertake the performance of its obligations under this Contract otherwise than through itself or a Sub-Contractor [or Authority Manpower];⁹
- 6.2.3 at all times allocate sufficient resources with the appropriate technical expertise to supply the Contractor Deliverables in accordance with this Contract;
- 6.2.4 save to the extent that obtaining and maintaining the same are Authority responsibilities and subject to Clause 84 (*Change*), obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Contract Deliverables;
- 6.2.5 ensure that:
- (i) it shall continue to have all necessary rights in and to the Contractor Background IPR, the Contractor Foreground IPR and any other materials (including the Third Party IPR) made available by the Contractor (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Contractor's obligations under this Contract and/or the receipt of the Contractor Deliverables by the Authority;
 - (ii) any products or services recommended or otherwise specified by the Contractor for use by the Authority in conjunction with the Contractor Deliverables shall enable the Contractor Deliverables to meet the requirements of the Authority; and
 - (iii) without prejudice to Clause 3.1.1(i) (*The Contractor's Obligations*), any documentation and training provided by the Contractor to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- 6.2.6 co-operate with the Authority or any Third Party (including any Other Contractor) designated by the Authority and provide such Information, licences, data, documents and/or physical items and any advice and/or assistance in connection with the Contractor Deliverables, in each case, as may be reasonably required by the Authority and/or such Third Party (including any Other Contractor) including but not limited to, enabling the Authority and/or any such Third Party (including any Other Contractor) to create and maintain technical or organisational interfaces with any of the Contractor Deliverables and, on the expiry or termination of this Contract for any reason, to enable the timely transition of the Contractor Deliverables to the Authority and/or to any Follow-On Contractor, provided

⁹ Provision of Authority Manpower (ie. MOD personnel under the direction of the Contractor) and the extent of Contractor responsibility for Authority Manpower to be considered in the context of Tenderers' solutions for certain equipment maintenance activities being undertaken by RAF CAM. This will then determine whether "Authority Manpower" should be included within the definition of "Contractor Related Party".

always that the Contractor shall not, without the previous approval of the Authority, whether directly or indirectly, contact any such Other Contractor or any Third Party notified to the Contractor from time to time;

- 6.2.7 to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by Third Parties (including any Other Contractors) or any Sub-Contractor in respect of any Contractor Deliverables and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Contractor;
- 6.2.8 unless it is unable to do so, assign to the Authority on the Authority Representative's written request and at the cost of the Contractor any such warranties and/or indemnities as are referred to in Clause 6.2.7;
- 6.2.9 provide the Authority with such assistance as the Authority may reasonably require during the Contract Period in respect of the supply of the Contractor Deliverables;
- 6.2.10 gather, collate and provide such information and co-operation as the Authority's Representative may reasonably request for the purposes of ascertaining the Contractor's compliance with its obligations under this Contract; and
- 6.2.11 ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Contractor's obligations under this Contract.

Status of Contractor warranties and undertakings

- 6.3 All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Contractor in this Contract are cumulative and none shall be given a limited construction by reference to any other.

7 Co-operation and Partnering

- 7.1 Each Party agrees to co-operate with the other Party in the fulfilment of the purposes and intent of this Contract. Neither Party shall be under any obligation to perform any of the other's obligations under this Contract.
- 7.2 The Parties shall work together in an open and honest environment with the aim of achieving successful partnering and continuous improvement in:
 - 7.2.1 value for money for the Authority; and
 - 7.2.2 the quality and standard of service to the Authority,in relation to this Contract.

Value for money

- 7.3 The Contractor shall support the Authority in demonstrating that any proposed Changes in accordance with Clause 84 (*Change*) will provide value for money and shall, in demonstrating to the Authority value for money in relation to any proposed Change, provide evidence including:
- 7.3.1 competition;
 - 7.3.2 aggregation of any proposed Change with any other Contractor Deliverable;
 - 7.3.3 reduction of costs;
 - 7.3.4 reduction of risks;
 - 7.3.5 improvement in performance; and/or
 - 7.3.6 any other reasonable information in support of demonstrating value for money as requested by the Authority in relation to any Change.

8 Contract Management and Meetings

- 8.1 The Parties shall give effect to the provisions of Schedule 2 (*Scope*), Schedule 6 (*Performance Management Regime*) and Schedule 8 (*Governance and Management*) throughout the Contract Period.

Compliance with the Contract programme

- 8.2 The Contractor shall ensure that:
- 8.2.1 each Programmed Contractor Deliverable achieves Acceptance by the corresponding Review Date specified for that Contractor Deliverable in Schedule 5 (*Contract Data Deliverables*); and
 - 8.2.2 each Unprogrammed Contractor Deliverable achieves Acceptance by the relevant Review Date as notified by the Authority to the Contractor in accordance with the provisions of paragraph 1.4.2 of Part 1 of Schedule 4 (*Assurance and Acceptance Process*).
- 8.3 Any Contract programme submitted in accordance with the provisions set out below shall be prepared in accordance with Good Industry Practice and shall be in sufficient detail so as to enable the Authority's Representative to monitor (as a minimum), the Contractor's progress against the delivery of the Programmed Contractor Deliverables (including the proposed timing for and carrying out and completion of Acceptance) in respect of the relevant Programmed Contractor Deliverable, as contemplated in Schedule 4 (*Assurance and Acceptance Process*), the relevant Task Order or relevant Option.
- 8.4 The initial Contract programme is set out Schedule 5 (*Contract Data Deliverables*). Any variation to the Contract programme shall only be made where expressly

permitted in accordance with this Contract (including this Clause 8 (*Compliance with the Contract programme*)).

- 8.5 The Contractor shall promptly submit to the Authority's Representative a copy of any version of the Contract programme varied in accordance with this Clause 8 (*Compliance with the Contract programme*).
- 8.6 If it appears to the Authority's Representative at any time that the actual progress of the delivery of the whole or any part of the Programmed Contractor Deliverables has fallen behind the Contract programme or the Contract programme is otherwise delayed, then the Authority's Representative shall be entitled to require the Contractor to submit to the Authority's Representative a report identifying the reasons for the delay and, unless the event causing the delay is still subsisting and it is not possible to predict with any certainty when the delay might come to an end, require the Contractor (at the Authority's option):
- 8.6.1 to produce and submit to the Authority's Representative for approval a revised Contract programme showing the manner and the periods in which the Programmed Contractor Deliverables and all other relevant matters concerning other Contractor Deliverables will be carried out to ensure Acceptance of each such Programmed Contractor Deliverable by the corresponding Review Date for that Contractor Deliverable in the Contract programme and the due and timely performance of all other Contractor Deliverables; and/or
- 8.6.2 to produce and submit to the Authority's Representative for approval a revised Contract programme showing the steps which are to be taken to eliminate or reduce the delay.

9 Necessary Consents

- 9.1 The Contractor shall, without prejudice to its obligations under Clause 17 (*Import and Export Licences*):
- 9.1.1 obtain, maintain, renew and amend (in each case, as required) all Necessary Consents which may be required for the provision of the Contractor Deliverables under this Contract, including the entering into of any legally binding agreements necessary for the grant of the Necessary Consents;
- 9.1.2 use all reasonable endeavours to assist the Authority to obtain all Necessary Consents:
- (i) that as a matter of law, only the Authority is eligible to obtain; and
- (ii) in connection with:
- (A) an Authority obligation to provide GFA to the Contractor and where such obligation is expressly set out in Schedule 7 (*Authority Obligations*); and

- (B) an item of Discretionary GFA which the Authority has agreed to provide to the Contractor subject to and in accordance with Clauses 27.7 to 27.13 (inclusive) (*Discretionary GFA*);]
- 9.1.3 be responsible for implementing each Necessary Consent (save to the extent that only the Authority is, as a matter of law, able to implement the whole or the relevant part of such Necessary Consent) within the period of its validity in accordance with its terms and relevant law;
- 9.1.4 provide to the Authority, when required, a copy of:
 - (i) any application for a Necessary Consent or any variation, relaxation or waiver (with a copy of all accompanying drawings and other documents);
 - (ii) any Necessary Consent; and
 - (iii) any legally binding agreement entered in to for the purposes of obtaining a Necessary Consent,
 where such agreement permits such disclosure;
- 9.1.5 comply with the conditions attached to any Necessary Consents and the terms of any associated legally binding agreement and procure that no such Necessary Consent or associated legally binding agreement is breached by it or any Contractor Related Party; and
- 9.1.6 use all reasonable endeavours to preserve the Necessary Consents, and procure, where it is able to do so, that such Necessary Consents are not revoked or quashed and that all Necessary Consents continue in full force and effect for such time as is necessary for the Contractor to provide the Contractor Deliverables to the Authority.
- 9.2 References in this Contract to Necessary Consents shall be construed as referring to the Necessary Consents as from time to time varied, relaxed or waived.
- 9.3 The Authority shall, subject to the Contractor's compliance with Clause 9.1.2 (*Necessary Consents*), use all reasonable endeavours to obtain all Necessary Consents:
 - 9.3.1 that as a matter of law, only the Authority is eligible to obtain; and
 - 9.3.2 in connection with:
 - (i) an Authority obligation to provide GFA to the Contractor and where such obligation is expressly set out in Schedule 7 (*Authority Obligations*); and

- (ii) an item of Discretionary GFA which the Authority has agreed to provide to the Contractor subject to and in accordance with Clauses 27.7 to 27.13 (inclusive) (*Discretionary GFA*).

- 9.4 The Contractor shall indemnify and keep indemnified the Authority against all Losses, claims, damages, liabilities, costs and expenses (including reasonable legal costs) incurred by the Authority in respect of any breach of Clause 9.1 (*Necessary Consents*) by the Contractor and/or any act or omission of any Sub-Contractor that results in such breach.

10 Contractor Related Parties

Responsibility for Contractor Related Parties

- 10.1 Subject to Clauses 27 (*Authority Performance Failures*) and 49 (*The Contractor's Property and Personnel at Government Establishments*), the Contractor shall be responsible and liable for the acts and omissions of the Contractor Related Parties as if they were the acts and omissions of the Contractor.
- 10.2 The Contractor shall ensure and/or procure that all Contractor Related Parties employed and/or engaged in connection with this Contract are appropriately qualified, trained and experienced.

Key Personnel

- 10.3 The Contractor shall ensure that the Key Personnel fulfil the Key Roles during the Contract Period.
- 10.4 Schedule 18 (*Key Personnel*) lists the Key Roles and the names of the persons who the Contractor shall appoint to undertake those Key Roles as at the Effective Date.¹⁰
- 10.5 The Authority may identify any further roles as being Key Roles and the relevant person selected to undertake those Key Roles shall be included on the list of Key Personnel in Schedule 18 (*Key Personnel*), the relevant Task Order or the relevant Option.
- 10.6 The Contractor shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- 10.6.1 requested to do so by the Authority's Representative; or
 - 10.6.2 the person concerned resigns, retires or dies or is on parental or long-term sick leave; or
 - 10.6.3 the person's employment or contractual arrangement with the Contractor or a Sub-Contractor is terminated for material breach of contract by the employee; and

¹⁰ To be reviewed for cross-over with the Scope requirements in relation to listing and maintaining up-dates of Key Personnel.

10.6.4 (in any case) the Contractor has obtained the prior written consent of the Authority's Representative (which he shall be entitled to withhold in his absolute discretion) in respect of any proposed replacement,

and where the Contractor fails to comply with the provisions of this Clause 10.6 then, without prejudice to the provisions of Clause 46.10 (*Personnel Security*), the Authority's Representative shall be entitled:

- (i) to refuse any proposed replacement Key Personnel admission to any Authority Site and/or any Other Contractor's Premises (as applicable) and the provisions of Clauses 46.11 and 46.12.1 (*Personnel Security*) shall be deemed to apply; and/or
- (ii) to issue a notice to the Contractor requiring compliance with the provisions of Clauses 10.3 to 10.7 (inclusive) (including, in particular, Clause 10.6.4) in respect of the removal and/or any proposed replacement of such Key Personnel and where the Contractor fails to comply with the provisions of Clauses 10.3 to 10.7 (inclusive) following receipt of such notice from the Authority's Representative, such continued non-compliance shall be deemed to be a Persistent Breach in respect of which (and notwithstanding limb (c) of the definition of Persistent Breach) the Authority's Representative shall be entitled to issue further and additional Warning Notices in respect of each subsequent twenty (20) Business Day period (commencing on the date of the issue of the initial notice) during which such continued non-compliance persists.

10.7 The Contractor shall:

- 10.7.1 notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Contractor shall ensure appropriate temporary cover for that Key Role);
- 10.7.2 ensure that any Key Role is not vacant for any longer than ten (10) Business Days;
- 10.7.3 without prejudice to Clauses 10.6 and 10.7.5, give as much notice as is reasonably practicable of:
 - (i) the need to replace any member of Key Personnel; and
 - (ii) the identity of the proposed replacement of such member of Key Personnel, together with details of the qualifications and experience of the proposed replacement of such member of Key Personnel,

and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least sixty (60) Business Days' notice;

- 10.7.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Contractor Deliverables; and
- 10.7.5 ensure that any proposed replacement Key Personnel for a Key Role:
- (i) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

11 Approval by the Authority

- 11.1 Except for a confirmation of a Change pursuant to Clause 84 (*Change*) which expressly changes the Contractor's obligations or liabilities or the Authority's rights under this Contract and/or save as expressly stated in this Contract, no review, comment or approval by the Authority (whether orally or in writing) shall operate to exclude, diminish or limit the Contractor's obligations or liabilities or the Authority's rights under this Contract.

PART 3 - SUB-CONTRACTING

12 Sub-Contracting

- 12.1 Sub-Contracting any part of this Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under this Contract. If the Contractor enters into any Sub-Contract in connection with this Contract it shall remain responsible for the performance of its obligations under this Contract notwithstanding the appointment of any Sub-Contractor and shall be responsible for the acts and omissions of its Sub-Contractors and the Authority shall have the right to refuse to approve any changes to the Sub-Contractor Management Plan proposed by the Contractor in its sole discretion (whether the changes are initiated by the Contractor or as the result of the proposed exercise by the Authority of any Option).
- 12.2 The Contractor shall exercise due skill and care in the selection and appointment of any Sub-Contractors to ensure that the Contractor is able to:
- 12.2.1 manage any Sub-Contractors in accordance with Good Industry Practice;
 - 12.2.2 comply with its obligations under this Contract in the delivery of the Contractor Deliverables; and
 - 12.2.3 assign, novate or otherwise transfer to the Authority or any Follow-On Contractor any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Contract.

Termination of Sub-Contracts

12.3 The Contractor shall inform the Authority immediately it becomes aware of any breach by any Sub-Contractor of any of the requirements set out or referred to in Clause 42 (*Cyber*), Clause 45.7 (*Security – Secret Matters*), Clause 58.9 (*Supply of Hazard Data*), Clause 78 (*Termination for Contractor Default*) (as it applies to Prohibited Acts (including any breach of (and/or the occurrence of the circumstances contemplated in) Clauses 6.1.13, 6.1.14 and/or 6.1.15 (*Contractor Warranties*)), Clause 88 (*Change of Ownership*) and/or Clause 94 (*Tax Compliance*)¹¹ and (without prejudice to any other rights of the Authority under this Contract) if requested to do so by the Authority, shall terminate the relevant Sub-Contract.

12.4 The Authority may, at its sole discretion, require the Contractor to terminate the provision by a Sub-Contractor of the whole or part (as the case may be) of the Contractor Deliverables:

12.4.1 where:

- (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 78 (*Termination for Contractor Default*) or Clause 79 (*Termination for Convenience*);
- (ii) the relevant Sub-Contractor and/or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Contractor Deliverables or otherwise;
- (iii) the relevant Sub-Contractor fails to comply in the performance of its Sub-Contract with legal obligations in the fields of environmental, social or labour law; and/or
- (iv) the Authority has found grounds for exclusion of the Sub-Contractor in accordance with Clause 12.5 (*Exclusion of Sub-Contractors*); and

12.4.2 where there is a Change of Ownership of the relevant Sub-Contractor, unless:

- (i) the Authority has given its prior written consent to the particular Change of Ownership, which subsequently takes place as proposed; or
- (ii) the Authority has not served its notice of objection within six (6) months of the later of the date the Change of Ownership took place or the date on which the Authority was given notice of the Change of Ownership.

¹¹ Clause to be kept under review for any additional clauses that, if breached by the Sub-Contractor, the Authority would require the Contractor to terminate the Sub-Contract.

Exclusion of Sub-Contractors

- 12.5 Where the Authority considers there are grounds for the exclusion of a Sub-Contractor under Regulation 23 of the Defence and Security Public Contracts Regulations 2011, then:
- 12.5.1 if the Authority finds there are compulsory grounds for exclusion, the Contractor shall replace or shall not appoint the Sub-Contractor; or
 - 12.5.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Contractor to replace or not to appoint the Sub-Contractor and the Contractor shall comply with such a requirement. Sub-Contracting any part of this Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under this Contract.

13 Advertising Sub-Contracts

- 13.1 In this Clause 13, the following words and expressions shall have the following meaning given to them:
- 13.1.1 “**Defence Sourcing Portal**” means the Defence Sourcing Portal accessible at <https://www.contracts.mod.uk/> or any replacement thereof for the government procurement opportunities in the defence sector;
 - 13.1.2 “**Regulations**” means the Defence and Security Public Contracts Regulations (SI 2011/1848) as amended, extended, re-enacted or replaced from time to time and “**Regulation**” means any one of them or (as the case may be) any specified provision of the Regulations; and
 - 13.1.3 “**Sub-Contract**” means any sub-contract entered into or to be entered into by the Contractor or any purchase order placed or to be placed by the Contractor in connection with this Contract where the aggregate price and/or any other consideration (in each case excluding VAT and before the application of any deduction, set-off or other remedy) payable by the Contractor under that sub-contract or purchase order is or is reasonably estimated to be greater than the sum of £200,000 (two hundred thousand pounds sterling) and “Sub-Contractor” shall be construed accordingly.
- 13.2 This Clause 13 shall not apply:
- 13.2.1 where pursuant to Regulation 37(3) the Authority obliges the Contractor to apply the provisions set out in Part 7 of the Regulations to all sub-contracts which the Contractor intends to award to third parties in connection with this Contract after the Effective Date; or
 - 13.2.2 in relation to any Sub-Contract or Sub-Contracts which the Contractor intends to award to any third party or third parties after the Effective Date, where pursuant to Regulation 37(3) the Authority obliges the Contractor to apply the provisions set out in Part 7 of the Regulations to the award of that or those Sub-Contract(s).

- 13.3 Subject to Clause 13.2, where the Contractor, after the Effective Date, elects to advertise the subject matter of any Sub-Contract with the view to appointing one or more Sub-Contractors, it shall (unless the Authority otherwise agrees in writing):
- 13.3.1 promptly notify the Authority if the Contractor intends to award a Sub-Contract;
 - 13.3.2 publish an advertisement on (and provide all information required by) the Defence Sourcing Portal in respect of each and any Sub-Contract opportunity;
 - 13.3.3 within thirty (30) days after the date on which such Sub-Contract shall have been awarded, update the relevant advertisement on the Defence Sourcing Portal in respect of such Sub-Contract, identifying the name and registered office address details of the Sub-Contractor so appointed under such Sub-Contract and providing a description of the subject matter and the value (excluding VAT) of such Sub-Contract;
 - 13.3.4 provide reports to the Authority's Representative if so requested, on the number, type and value of Sub-Contract opportunities placed on the Defence Sourcing Portal and awarded in its supply chain during the Contract Period; and
 - 13.3.5 promote the Defence Sourcing Portal to all Sub-Contractors and encourage those operators to register on it.
- 13.4 The Authority may issue guidance to the Contractor on how to advertise sub-contract opportunities on the Defence Sourcing Portal from time to time and (where the Contractor elects to advertise the subject matter of any Sub-Contract after the Effective Date with the view to appointing one or more Sub-Contractors after that date) the Contractor shall comply with such guidance so issued in relation to the advertisement of any Sub-Contract pursuant to this Clause 13.

14 Matters to be included in Sub-Contracts

- 14.1 Without prejudice to the provisions of Clause 16 (*Competition in Sub-Contracts*), the Contractor shall ensure that all Sub-Contracts which it enters into after the Effective Date shall at all times include:
- 14.1.1 provisions that the Authority's rights referred to in this Clause 14 (*Matters to be included in Sub-Contracts*), which are otherwise enforceable under the Contracts (Rights of Third Parties) Act 1999, are not rendered unenforceable;
 - 14.1.2 a provision requiring the Sub-Contractor to include a clause to the same effect as this Clause 14.1 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract;
 - 14.1.3 provisions which will enable the Contractor to discharge its obligations under this Contract;

- 14.1.4 a requirement that either party to the Sub-Contract may release to the Authority any of those parts of the Sub-Contract as are necessary to be sufficient to demonstrate compliance with the provisions of this Clause 14 (*Matters to be included in Sub-Contracts*) and that any such release shall not amount to a breach of any provision of confidentiality contained within the Sub-Contract;
- 14.1.5 a provision restricting the ability of the Sub-Contractor to sub-contract all or any part of the Contractor Deliverables provided to the Contractor under the Sub-Contract without first seeking the written consent of the Authority;
- 14.1.6 a provision enabling the Contractor, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 32 (*Authority Step-in*);
- 14.1.7 a provision that where any Sub-Contractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion and that where there is an undue delay in considering and/or verifying that invoice, that such invoice shall be regarded as valid and undisputed for the purposes of Clause 14.1.8 (*Matters to be included in Sub-Contracts*);
- 14.1.8 a provision which requires payment to be made to the Sub-Contractor by the Contractor within a specified period not exceeding thirty (30) days from receipt of a valid, undisputed invoice as defined by the Sub-Contract requirements;
- 14.1.9 a provision giving the Authority a right to publish the Contractor's compliance with its obligation to pay undisputed invoices within the specified payment period;
- 14.1.10 a provision enabling the Authority or any other person on behalf of the Authority and the Contractor to exercise the same rights in relation to the Sub-Contractors and their Employees as the Authority is entitled to exercise pursuant to Clause 46 (*Personnel Security*);
- 14.1.11 a provision enabling the Contractor to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-Contract to the Authority or any Follow-On Contractor without restriction (including any need to obtain any consent or approval) or payment by the Authority;
- 14.1.12 the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute as set out in Clause 6.2.11 (*Contractor Warranties and Undertakings*);
- 14.1.13 a provision giving the Contractor a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law;

- 14.1.14 a provision giving the Contractor a right to exclude the Sub-Contract or where the circumstances in Clause 12.5 (*Exclusion of Sub-Contractors*) exist; and
- 14.1.15 ¹²where relevant to the deliverables under the particular Sub-Contract (and where all such provisions shall be presumed to be relevant unless the Contractor can satisfy the Authority that such provisions are not relevant and the Authority's Representative has notified the Contractor in writing that any such provisions shall not be required to be included in any identified Sub-Contract), the provisions of:
- (i) Clause 12.3 (*Sub-Contracting*);
 - (ii) Clause 15 (*Sub-Contracting to Supported Businesses and SMEs*);
 - (iii) Clause 17 (*Import and Export Licences*);
 - (iv) Clause 33 (*Authority Data*);
 - (v) Clause 34 (*Authority Disclosed Data*);
 - (vi) Clause 35 (*The Contractor's Records*);
 - (vii) Clause 37 (*Disclosure of Information*);
 - (viii) Clause 38 (*Transparency*);
 - (ix) Clause 40 (*Protection of Personal Data*) (to the extent that Personal Data is processed pursuant to Clause 40);
 - (x) Clause 41 (*Official-Sensitive Security Requirements*);
 - (xi) Clause 42 (*Cyber*);
 - (xii) Clause 43 (*Intellectual Property Rights*);
 - (xiii) Clause 45 (*Security – Secret Matters*);
 - (xiv) Clause 46 (*Personnel Security*);
 - (xv) Clause 47 (*Co-operation for Security Investigation*);
 - (xvi) Clause 48 (*The Contractor's Conduct on Authority Sites and/or Other Contractor's Premises*);
 - (xvii) Clause 49 (*The Contractor's Property and Personnel at Government Establishments*);

¹² To review and consider the obligations and provisions that are to be passed down into the Sub-Contracts. This shall be dependent on the final form Contract and discussions with Tenderers.

- (xviii) Clause 53 (*Child Labour and Employment Law*);
- (xix) Clause 54 (*Equality*);
- (xx) Clause 56 (*Supply of Information for NATO Codification and Defence Inventory Introduction*);
- (xxi) Clause 57 (*Codification Requirements for Item Identification*);
- (xxii) Clause 58 (*Supply of Hazard Data*);
- (xxiii) Clause 59 (*Use of Asbestos*);]
- (xxiv) Clause 63 (*Issued Property*);
- (xxv) Clause 64 (*Accounting for property of the Authority*);
- (xxvi) Clause 65 (*Loss of or Damage to the Articles*);
- (xxvii) Clause 69 (*Special Jigs, Tooling and Test Equipment*);
- (xxviii) Clause 77 (*Quality Assurance*);
- (xxix) Clause 78 (*Termination for Contractor Default*);
- (xxx) Clause 79 (*Termination for Convenience*);
- (xxxi) Clause 80 (*Financial Consequences of Termination*);
- (xxxii) Clause 88 (*Change of Ownership*);
- (xxxiii) Clause 89 (*Disruption*);
- (xxxiv) Clause 94 (*Tax Compliance*); and
- (xxxv) such provisions as are required to enable the Contractor to perform its obligations under Schedule 2 (*Scope*) and Schedule 16 (*Transfer Regulations*) and to acquire the rights, benefits and obligations set out in paragraphs 7.16 (*Sub-Contracts*), 8.2 and 8.4 of Schedule 14 (*IPR*).

14.2 The Contractor shall:

- 14.2.1 ensure that all Sub-Contracts include the power to determine the Sub-Contract in accordance with the terms which apply to any termination of this Contract, pursuant to Clause 79 (*Termination for Convenience*), provided that:
 - (i) references in the provisions of Clause 79 (*Termination for Convenience*) to “Authority”, “Contractor” and “Contract” shall be construed (as appropriate) as references to “Contractor”, “Sub-

Contractor” and “Sub-Contract” (respectively) for the purposes of the corresponding Sub-Contract provisions;

- (ii) the period of notice to determine such Sub-Contract shall be such period as is specified in this Contract as the appropriate period of notice to determine a Sub-Contract, or, if no period is specified, twenty (20) Business Days; and
- (iii) the Contractor shall not exercise the power taken in those Sub-Contracts until the Authority has exercised its power under Clause 79 (*Termination for Convenience*) and each such Sub-Contract shall restrict the Contractor’s right to exercise that power in the manner described in this Clause 14.2.1(iii) (*Matters to be included in Sub-Contracts*) by including in such provision the words “Provided that this power shall not be exercised unless the main contract shall have been determined by the Secretary of Defence pursuant to the provisions of clause 79 of that contract”; and

14.2.2 enforce the Sub-Contract provisions referred to in Clauses 14.1 and 14.2.1.

14.3 If any Sub-Contractor refuses to accept the requirements of Clauses 14.1 and/or 14.2 (*Matters to be included in Sub-Contracts*) then the Contractor shall forthwith report the matter to the Authority and, without prejudice to the Contractor’s obligations to deliver the Contract Deliverables, the Contractor shall not enter into the relevant Sub-Contract until the Authority confirms in writing to the Contractor that the matter has been resolved.

14.4 Notwithstanding any other provisions of this Contract, if the Contractor notifies the Authority that the Contractor has failed to pay a Sub-Contractor’s undisputed invoice within the period specified in accordance with Clause 14.1.8 (*Matters to be included in Sub-Contracts*), or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

15 Sub-contracting to SMEs

15.1 The Contractor shall maximise the use of SMEs in the performance of the Contractor Deliverables, where doing so will not adversely affect cost, technical performance or programme timescales.

15.2 The Contractor shall aim to make open to competition by SMEs at least [•] percent ([•]%)¹³ of Sub-Contract spend.

15.3 If the Contractor reasonably believes that the use of an SME would adversely affect cost, technical performance or programme timescales, the Contractor shall seek advice from the Authority and shall take such steps as may be required by the Authority.

¹³ The Authority shall aim to achieve a [25%] target for SME participation. Tenderers to propose how this can be achieved/exceeded and any impact on price/risk associated with the proposed level of SME participation.

- 15.4 The Contractor shall undertake activities which encourage SME involvement (either individually or collectively), including SME supplier days and advertising of possible requirements in the appropriate publications (e.g. MoD Contracts Bulletin).
- 15.5 The Contractor shall provide to the Authority details of spend with SMEs on an annual basis, the first such spend details to be provided on or before the last day of the thirteenth (13th) month following the Effective Date and then in each subsequent year during the Contract Period on or before the anniversary of such date.

16 Competition in Sub-Contracts

- 16.1 The Parties acknowledge that:

16.1.1 the Contractor has selected Sub-Contractors for the provision of the Contractor Deliverables in accordance with a sub-contracting plan as required contemplated in Schedule 2 (*Scope*), DID-013, (the “**Sub-Contractor Management Plan**”); and

16.1.2 the provisions contained in the Sub-Contractor Management Plan do not limit or otherwise effect the Contractor’s other obligations contained in this Contract (including Clause 14 (*Matters to be included in Sub-Contracts*) and this Clause 16 (*Competition in Sub-Contracts*)).

- 16.2 Where the Contractor (and/or any Sub-Contractor) proposes to change a Sub-Contractor, engage an additional Sub-Contractor, change, modify, vary and/or extend a current Sub-Contract and/or let an additional Sub-Contract, the Contractor shall, without prejudice to and in addition to its obligations under Clauses 16.4 and 16.5 (*Competition in Sub-Contracts*), submit to the Authority’s Representative its proposed plan for the work to be performed or for the supplies to be provided under that Sub-Contract (or proposed Sub-Contract (as the case may be)), including, in the case of an additional Sub-Contract, information about the proposed Sub-Contractor equivalent to the information the Contractor is required to provide under the Sub-Contractor Management Plan. Where the Sub-Contract is intended to be placed on a fixed or firm price basis agreed at the outset following single tender action the plan shall be that information submitted in support of the Contractor’s price proposals and referenced in a contract pricing statement.

- 16.3 Where the Sub-Contractor Management Plan identified a requirement to compete, the Sub-Contractor Management Plan should identify each sub-system, package of work, service and/or purchase of components and/or raw materials etc. for which the Contractor intends to seek (or require the relevant Sub-Contractor to seek) competitive tenders which are expected to lead to an order, or orders, in excess of two hundred thousand pounds (£200,000) under that Sub-Contract (or proposed Sub-Contract (as the case may be)) (each a “**Tender Requirement**”). The Contractor shall provide to the Authority’s Representative (in each case to provide the Authority with a reasonable period of time to enable it to assess the relevant information and to also enable the Authority to enter into dialogue with the Contractor to obtain any required additional information, should the Authority elect to do so) details of the approximate value of each Tender Requirement, together with the proposed list of tenderers involved in each case and information about each of the proposed tenderers equivalent to the information the Contractor is required to provide

under the Sub-Contractor Management Plan, for approval before any Sub-Contract is entered into by the Contractor and/or any Sub-Contractor (as the case may be) and/or any order or orders are issued by the Contractor and/or any Sub-Contractor (as the case may be). Within ten (10) Business Days of receipt of this element of the plan, or as otherwise agreed, the Authority's Representative will notify the Contractor whether there are any special circumstances which might require, for example, the employment of a wider or narrower field of tenderers or for the Authority to oversee the conduct of the competitive tender and to approve the selection of the Sub-Contractor concerned.

- 16.4 The Contractor shall notify the Authority in writing if it wishes to replace a Sub-Contractor or contract with additional Sub-Contractors after the Effective Date by submitting an updated version of the Sub-Contractor Management Plan (as contemplated by Clause 16.2 (*Competition in Sub-Contracts*)) showing the proposed changes in relation to the proposed replacement Sub-Contractor or additional Sub-Contractors to the Authority for approval, and the Contractor shall not replace such Sub-Contractor and/or contract with additional Sub-Contractors without the prior written approval of the Authority.
- 16.5 If requested by the Authority within ten (10) Business Days of receipt of the Contractor's notice issued pursuant to Clause 16.4 (*Competition in Sub-Contracts*), the Contractor shall also provide any further information reasonably requested by the Authority.

17 Import and Export Licences

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

Obtaining a licence or authorisation from a foreign government – Contractor obligations

- 17.2 When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of this Contract, the Contractor shall as soon as reasonably practicable consult with the Authority on the licence requirements and, where the Contractor or any Contractor Related Party is the applicant for the licence or authorisation the Contractor shall:

17.2.1 ensure that when end use or end user restrictions, or both, apply to all or part of any Contractor Deliverable (which for the purposes of this Clause 17 (*Import and Export Licences*) shall also include information, technical data and software), unless otherwise agreed with the Authority, identify in the application:

- (i) the end user as: Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "**HM Government**"); and

- (ii) the end use as: For the Purposes of HM Government; and
- 17.2.2 include in the submission for the licence or authorisation a statement that "information on the status of processing this application may be shared with the Ministry of Defence of the United Kingdom".
- 17.3 If the Contractor or any Sub-Contractor in the performance of this Contract needs to export materiel not previously supplied by or on behalf of the Authority for which an export licence or import licence or authorisation from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that Sub-Contractor, provided always that for the purposes of this Clause 17 (*Import and Export Licences*) "materiel" shall mean information, technical data and items, including Articles, components of Articles and software.
- 17.4 Where this Contract performance requires the export of materiel for which a foreign export licence or import licence or authorisation is required, the Contractor shall include the dependencies for the export licence or import licence or authorisation application, grant and maintenance in the risk register for this Contract and in the risk management plan for this Contract, with appropriate review points. Where there is no requirement under this Contract for a risk management plan the Contractor shall submit this information to the Authority's Representative.
- 17.5 During the Contract Period and for a period of up to five (5) years from the end of the Contract Period, however extended in accordance with the terms of this Contract, the Authority may make a written request to the Contractor to seek a variation to the conditions to a foreign export licence or import licence or authorisation to enable the Authority to re-export or re-transfer a licensed or authorised item or licensed or authorised information from the UK to a non-licensed or unauthorised Third Party. If the Authority makes such a request, it will consult with the Contractor before making a determination of whether the Authority or the Contractor is best placed in all the circumstances to make the request. Where subsequent to such consultation the Authority notifies the Contractor that the Contractor is best placed to make such request:
- 17.5.1 the Contractor shall, or procure that the Sub-Contractors shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence or import licence or authorisation in accordance with the procedures of the licensing authority. Where the Contractor has an objection, the Parties shall meet within five (5) Business Days to resolve the issue and, should they fail to resolve the issue, the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export licensing, import licensing or authorisation (as the case may be) subject matter experts; and
- 17.5.2 the Authority shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.

- 17.6 Where the Authority determines that it is best placed to make such request, the Contractor shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the Authority to make the application for the requested variation.
- 17.7 Where the Authority invokes Clauses 17.5 and 17.6 (*Obtaining a licence or authorisation from a foreign government – Contractor obligations*), the Authority will pay the Contractor's fair and reasonable costs for such service based on the cost of providing it calculated by reference to the Unit Rates, such costs to form part of the Contract Price.
- 17.8 Where the Contractor subcontracts work under this Contract, which is likely to be subject to foreign export control, import control or both, the Contractor shall use reasonable endeavours to incorporate in each Sub-Contract equivalent obligations to those set out in this Clause 17 (*Import and Export Licences*). Where it is not possible to include equivalent obligations to those set out in this Clause 17 (*Import and Export Licences*), the Contractor shall report that fact and the circumstances to the Authority.

Obtaining a licence or authorisation from a foreign government – Authority obligations

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

Contractor obligation to provide information

- 17.11 The Contractor shall use reasonable endeavours to identify whether any Contractor Deliverable is subject to:
- 17.11.1 a non-UK export licence, authorisation or exemption; or
- 17.11.2 any other related transfer or export control,
- that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality. For the avoidance of doubt, this does not include the Intellectual Property specific restrictions of the type referred to in paragraph 7 of Schedule 14 (*IPR*).
- 17.12 If at any time during the Contract Period the Contractor becomes aware that all or any part of the Contractor Deliverables are subject to Clause 17.11.1 or 17.11.2 (*Contractor obligation to provide information*), it shall notify the Authority of this as soon as reasonably practicable by providing details in the DEFFORM 528 or other mutually agreed alternative format. Such notification shall be no later than thirty (30)

days of knowledge of any affected Contractor Deliverable and in any event such notification shall be not less than thirty (30) days prior to delivery of the Contractor Deliverables.

- 17.13 If the information to be provided under Clause 17.12 (*Contractor obligation to provide information*) has been provided previously to the Authority by the Contractor under this Contract, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Clause 17.12 (*Contractor obligation to provide information*).
- 17.14 During the Contract Period, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clause 17.12 or 17.13 (*Contractor obligation to provide information*) of which it becomes or is aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.
- 17.15 For a period of up to five (5) years from the end of the Contract Period, however extended in accordance with the terms of this Contract, and in response to a specific request by the Authority's Representative, the Contractor shall notify the Authority as soon as reasonably practicable of any changes in the information notified previously under Clause 17.12 or 17.13 (*Contractor obligation to provide information*) of which it becomes aware that would affect the Authority's ability to use, disclose, re-transfer or re-export an item or part of it as is referred to in those Clauses by issuing an updated DEFFORM 528 to the Authority.
- 17.16 Where following receipt of materiel from a Sub-Contractor or any of its other suppliers, restrictions are notified to the Contractor by that Sub-Contractor, supplier or other Third Party or are identified by the Contractor, the Contractor shall immediately inform the Authority by issuing an updated DEFFORM 528. Within twenty (20) days of such notification, the Contractor shall propose to the Authority actions to mitigate the impact of such restrictions. Such proposals may include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. The Authority shall notify the Contractor within twenty (20) days of receipt of a proposal whether it is acceptable and where appropriate this Contract shall be modified in accordance with its terms to implement the proposal.
- 17.17 If the restrictions prevent the Contractor from performing its obligations under this Contract and have not been removed, modified or otherwise satisfactorily managed within a reasonable time, the Authority may at its absolute discretion elect to amend this Contract in accordance with Clause 84 (*Change*) and/or 85 (*Amendments to Contract*) or as otherwise may be provided by this Contract or to terminate this Contract. Except as set out in Clause 17.18 (*Contractor obligation to provide information*), in the event of termination in these circumstances termination shall be on fair and reasonable terms having regard to all the circumstances including payments already made and payments that would otherwise be due under this Contract for work successfully carried out prior to such termination, costs incurred by the Contractor and benefits received by the Authority. The Parties, acting in good faith, will use all reasonable endeavours to agree such fair and reasonable terms failing which either Party may refer the matter to Dispute Resolution Procedure.

- 17.18 In the event that the restrictions notified to the Authority pursuant to Clause 17.12 (*Contractor obligation to provide information*) were known or ought reasonably have been known by the Contractor (but were not disclosed) at Contract Award or if restrictions notified to the Authority pursuant to Clause 17.14 or 17.16 (*Contractor obligation to provide information*) were known or ought reasonably to have been known by the Contractor at the date of submission of the most recent DEFFORM 528 submitted to the Authority in accordance with Clause 17.12 (*Contractor obligation to provide information*), termination under Clause 17.17 (*Contractor obligation to provide information*) will be in accordance with Clause 78 (*Termination for Contractor Default*) and the provisions of Clause 17.22 (*Interim Position*) will not apply.

Authority obligation to provide information

- 17.19 The Authority shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the Contractor as GFA. Where the Authority is to provide materiel necessary to enable the Contractor to perform this Contract or in respect of which the Contractor Deliverables are to be provided, and that materiel is subject to a non-UK export licence, authorisation, exemption or other related transfer or export control as described in the provisions of Clause 17.11 (*Contractor obligation to provide information*) above, the Authority shall provide a completed DEFFORM 528 or will provide a new or updated DEFFORM 528 to the Contractor within thirty (30) days of the date of knowledge and in any case not later than thirty (30) days prior to the delivery of such materiel to the Contractor.
- 17.20 In the event that the Authority becomes aware that the DEFFORM 528 disclosure was incomplete or inaccurate or in the event additional such materiel is identified, then the Authority shall provide, as soon as reasonably practicable a new or revised DEFFORM 528. In the event that the Authority becomes aware that a prior disclosure included in DEFFORM 528 submitted to the Contractor was incomplete or inaccurate less than thirty (30) days prior to the delivery to the Contractor of any material to which the updated or new disclosure relates, the Parties will meet as soon as reasonably practicable to discuss how to mitigate the impact of the incomplete or inaccurate disclosure.
- 17.21 Where:
- 17.21.1 restrictions are advised by the Authority to the Contractor in a DEFFORM 528 provided pursuant to Clause 17.19 or 17.20 (*Authority obligation to provide information*); or
 - 17.21.2 any of the information provided by the Authority in any DEFFORM 528 proves to be incorrect or inaccurate,

the Authority and the Contractor shall act promptly to mitigate the impact of such restrictions or incorrect or inaccurate information. Such mitigation shall include, where appropriate, mutually supported attempts to obtain removal or modification to the restrictions or to obtain appropriate authorisations from the relevant foreign government. If the restrictions or incorrect or inaccurate information adversely affect the ability of the Contractor to perform its obligations under this Contract, the matter shall be handled under the terms of Clause 84 (*Change*) and/or 85 (*Amendments to Contract*) or as may otherwise be provided by this Contract as appropriate and if no

alternative solution satisfies the essential terms of this Contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the Authority may terminate this Contract. Termination under these circumstances will be under the terms of Clause 79 (*Termination for Convenience*).

Interim position

- 17.22 Pending agreement of any amendment of this Contract as set out in Clause 17.17 (*Contractor obligation to provide information*) or 17.21 (*Authority obligation to provide information*), provided the Contractor takes such steps as are reasonable to mitigate the impact, the Contractor shall be relieved from its obligations to perform those elements of this Contract directly affected by the restrictions or provision of incorrect or incomplete information.

PART 4 - PRICE/COSTS/PAYMENT

18 Payment under CP&F

- 18.1 In consideration of the Contractor performing the Contractor Deliverables, the Authority shall pay the Contract Price to the Contractor in accordance with Schedule 9 (*Pricing and Payment*) and the following provisions of this Clause 18 (*Payment under CP&F*).
- 18.2 Payment under this Contract of the Contract Price will be made by electronic transfer and prior to submitting any invoices under Clause 18.3 (*Payment under CP&F*) the Contractor will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance ("**CP&F**") electronic procurement tool via the current supported CP&F gateway.
- 18.3 Where the Contractor submits an invoice to the Authority in accordance with Clause 18.2 (*Payment Under CP&F*), the Authority will consider and verify that invoice in a timely fashion.
- 18.4 The Authority shall, subject to Clause 21 (*Disputed Amounts*), pay the Contractor any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Authority has determined that the invoice is valid and undisputed.
- 18.5 Where the Authority fails to comply with its obligations in Clause 18.3 (*Payment under CP&F*) and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Clause 18.4 (*Payment under CP&F*) only (and not further or otherwise) after a reasonable time has passed.
- 18.6 Neither:
- 18.6.1 the approval for payment of a valid and undisputed invoice by the Authority; or
 - 18.6.2 a failure by the Authority to comply with its obligations in Clause 18.3 (*Payment under CP&F*) which ultimately results in an invoice being

regarded as valid and undisputed (for the purposes of and in the circumstances described in Clause 18.5 (*Payment under CP&F*)),

shall be construed as acceptance by the Authority of the performance of the Contractor's obligations or as a waiver of its rights and remedies either under this Contract or otherwise.

19 Unique Identifiers

- 19.1 Having regard to and subject to Clause 18 (*Payment under CP&F*), the Authority and the Contractor shall comply with the provisions of this Clause 19 (*Unique Identifiers*).
- 19.2 For CP&F purchase orders, the Contract or an order issued under a framework agreement will reference UOIs or URRIs, or both. The application of UOIs and URRIs is at the line item level. The Contractor must quote the applicable Unique Identifier in any communication concerning a line item.
- 19.3 For EBC contractor logistic support contracts, the Contractor will generate EUPIs in fulfilling demands raised under a contractor logistic support contract. An EUPI applies for each package and the Contractor must quote it in any communication concerning a package. Where a delivery includes more than one package, each package must have a separate EUPI.
- 19.4 Confirmation of a receipt of deliveries by Unique Identifiers shall not be construed as an acceptance of the Articles for the purposes of Clause 60 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*) or any other term of this Contract relating to acceptance by the Authority.

20 The Use of the Electronic Business Delivery Form

Form usage

- 20.1 Having regard to and subject to Clause 18 (*Payment under CP&F*), the Authority and the Contractor shall comply with the provisions of this Clause 20 (*The Use of the Electronic Business Delivery Form*).
- 20.2 The Contractor must use the electronic business delivery form for all deliveries of Articles and performance of Contractor Deliverables.
- 20.3 The electronic business delivery form, DEFFORM 129J, must accompany the package or consignment to which it applies. The Contractor must either:
- 20.3.1 attach the form as a label, directly to the package surface; or
- 20.3.2 forward the form in a document envelope,
- as provided in Clauses 20.4 and 20.5 (*Form Structure*).

Form structure

For the provision of Articles

20.4 Where delivery is for a physical Article, the following criteria apply:

- 20.4.1 the nominal label size is A6 (102 mm x 152 mm) but A5 (148 mm x 210 mm) is acceptable. If required by package size, the Contractor may use other label sizes, but only if no degradation to the text, bar code legibility and quality occurs, as referred to in Clause 20.7 (*Bar Code Symbolology and Print Quality*);
- 20.4.2 the Contractor must use the bar coded Unique Identifier as defined in Clause 19 (*Unique Identifiers*), unless specified otherwise in this Contract; and
- 20.4.3 the Contractor must attach two labels to each package or consignment delivered. One label must be detachable for use in processing the information through the appropriate Authority receipting system.

For the provision of Contractor Deliverables which are not physical Articles

20.5 Where performance is for Contractor Deliverables which are not physical Articles, the following criteria apply:

- 20.5.1 standard size is A4 (210 mm x 297 mm);
- 20.5.2 the Contractor must use the bar coded Unique Identifier as defined in Clause 19 (*Unique Identifiers*), unless specified otherwise in this Contract; and
- 20.5.3 the Contractor must provide one form either on completion of the Contractor Deliverables which are not physical Articles or on completion of each agreed stage of the Contractor Deliverables which are not physical Articles.

Bar code symbolology and print quality

- 20.6 The bar code symbolology used shall meet the requirements of STANAG 4329, "NATO Standard Bar Code Symbolologies", specifically Code 39 (ISO/IEC 16388), unless otherwise specified.
- 20.7 The barcode print quality shall be as defined in ISO/IEC 16388 (Information technology - Automatic identification and data capture techniques - Code 39 bar code symbolology specification). The Overall Grade shall be at least Grade B at point of printing and not less than Grade C, at final point of receipt.

Methods of printing

- 20.8 For method of printing the DEFFORM 129J, electronic business delivery form, see Def Stan 81-041 (Part 6). Laser printing is preferred.

21 Disputed Amounts

- 21.1 The Authority may withhold payment of any amount it believes, acting reasonably, the Contractor is not entitled to pursuant to this Contract ("**Disputed Amount**") pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount. The Authority shall notify the Contractor of the reasons for withholding the Disputed Amount (together with supporting evidence) on or before the day on which the Disputed Amount would (but for this Clause 21.1 (*Disputed Amounts*)) otherwise fall due.
- 21.2 The Authority shall pay any undisputed amounts on or before the day on which they fall due.
- 21.3 Within ten (10) Business Days following receipt by the Contractor of any notice served by the Authority pursuant to Clause 21.1 (*Disputed Amounts*) (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to this Contract), the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice and the grounds for such agreement or disagreement. If the Contractor indicates that it does agree, the Authority shall be entitled:
- 21.3.1 to retain on a permanent basis any amounts withheld pursuant to Clause 21.1 (*Disputed Amounts*); and
- 21.3.2 to reclaim from the Contractor the amount of any over-payment which may have been made to the Contractor, and reserves the right to claim interest on any such amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which the over-payment was made until that amount has been paid in full and whether before or after judgment.
- 21.4 If the Contractor responds pursuant to Clause 21.3 (*Disputed Amounts*) that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to Clause 21.1 (*Disputed Amounts*) (or such other notice regarding the existence of a Disputed Amount as may be served by the Authority pursuant to this Contract), the matter or matters in question shall be determined under the Dispute Resolution Procedure.
- 21.5 If the determination of any Dispute conducted pursuant to Clause 21.4 (*Disputed Amounts*) shows that:
- 21.5.1 the Authority has withheld any amount which the Contractor was entitled to be paid; or
- 21.5.2 the Contractor has claimed under Clause 18 (*Payment under CP&F*) any amount which it was not entitled to be paid,
- the Authority shall pay such amount to the Contractor or the Contractor shall repay such amount to the Authority (as relevant) with interest (if applicable) in each case on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made (in the case of a

failure to pay by the Authority) or from the date on which the over payment was made (in the case of excessive claims by the Contractor) until all relevant monies have been paid in full and whether before or after judgment.

22 Payment of Bills using the Bankers Automated Clearing Service System

- 22.1 The Authority shall make payment to the Contractor of all valid claims submitted for payment in accordance with Clause 18 (*Payment under CP&F*) by means of the Bankers Automated Clearing Service ("**BACS**") directly into the Contractor's nominated bank account. To facilitate payment by means of the BACS system, the Contractor shall provide the Authority in advance of the submission of valid claims, if he has not already done so, details of the name and address of his bank, the sort code and account number.

23 Recovery of Sums Due

- 23.1 Whenever, under this Contract, any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under this Contract, or under any other contract with the Authority or with any Government Department.
- 23.2 Without prejudice to any other right or remedy, the Authority reserves the right to set off any amount owing at any time from the Contractor to the Authority against any amount payable by the Authority to the Contractor under this Contract or under any other contract with the Authority, or with any other Government Department.

24 VAT

- 24.1 All sums payable under this Contract exclude any UK output VAT and any similar EU (or non-EU) taxes chargeable on the provision of the Contractor Deliverables by the Contractor to the Authority.
- 24.2 If the Contractor is required by UK VAT Law to be registered for UK VAT (or has registered voluntarily for UK VAT purposes) in respect of its business activities at the time of any provision, and the circumstances of any provision are such that the Contractor is liable to pay the tax due to HM Revenue and Customs ("**HMRC**"), the Authority shall pay to the Contractor, in addition to the Contract Price (or any other sum due to the Contractor), a sum equal to the output VAT chargeable on the tax value of the provision of the Contractor Deliverables, and all other payments under this Contract according to the law at the relevant tax point.
- 24.3 The Contractor is responsible for the determination of VAT liability. The Contractor is to consult its client relationship manager or the HMRC enquiries desk (and not the Authority's Representative) in cases of doubt. The Contractor shall notify the Authority's Representative of the Authority's VAT liability under this Contract and any changes to it within twenty (20) Business Days of becoming aware the liability is other than at the standard rate of VAT. In the event of any doubt about the applicability of the tax in such cases, the Authority's Representative may require the Contractor to obtain and pass to the Authority a formal ruling from HMRC. The Contractor shall promptly comply with any such Authority requirement. Where the Contractor obtains a ruling from HMRC, it shall supply a copy to the Authority within

three (3) Business Days of receiving such ruling unless it proposes to challenge such ruling. Where the Contractor challenges such ruling it shall supply to the Authority a copy of the final decision issued by HMRC on completion of the challenge within three (3) Business Days of receiving such decision.

- 24.4 Where the provision of the Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT Law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables. The Contractor shall be responsible for ensuring that it takes into account any changes in VAT Law and VAT Law regarding registration.
- 24.5 Where the Contractor Deliverables are deemed to be provided to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor, in addition to the Contract Price (and any other sum due to the Contractor under this Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables within thirty (30) Business Days of a written request for payment of any such sum by the Contractor.
- 24.6 In relation to the Contractor Deliverables supplied under the Contract the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (and/or similar EU and non-EU input taxes). However, these input taxes will be allowed where it is proven to the Authority that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the Contractor has complied with this requirement either party may resolve this matter by reference to the Dispute Resolution Procedure.
- 24.7 Should HMRC decide that the Contractor has incorrectly determined the VAT liability, in accordance with Clause 24.2 (VAT), the Authority will pay the VAT assessed by HMRC. In the event that HMRC so determines, the Contractor shall pay any interest charged on any assessment and/or penalties directly to HMRC. Such interest or penalties or both shall not be recoverable from the Authority under this Contract or any other contract. The Contractor shall supply the Authority with a copy of all correspondence between HMRC and the Contractor's advisors regarding the VAT assessment within three (3) Business Days of a written request from the Authority's Representative for such correspondence.

PART 5 - PERFORMANCE AND REMEDIES

25 Key Performance Indicators, Performance Monitoring and Quality Performance Indicators

- 25.1 The Parties shall comply with the provisions of Schedule 9 (*Pricing and Payment*), Schedule 6 (*Performance Management Regime*), Schedule 8 (*Governance and Management*) and Schedule 12 (*Quality Performance Indicators*).
- 25.2 Without prejudice to Schedule 9 (*Pricing and Payment*), Schedule 6 (*Performance Management Regime*) and Schedule 8 (*Governance and Management*), the Authority, the Authority's Representative and any agents or consultants of the

Authority (such agents and consultants to be subject to the Contractor's consent, not to be unreasonably withheld or delayed) may, between the hours of 8:30 am to 17:30 pm on any Monday to Friday (which is a Business Day (under limb (a) of that definition) and with reasonable prior notice (having regard to any co-location business which the Contractor hereby confirms will require a short notice period of no more than one (1) hour), undertake inspection of any of the Contractor Deliverables, and make any audit or check of any aspect of the Contractor's performance of this Contract as required by the Authority or where the same shall have been requested by the National Audit Office. The Contractor shall promptly provide all reasonable co-operation in relation to any inspection, audit or check.

- 25.3 Without prejudice to Clause 25.2 (*Key Performance Indicators, Performance Monitoring and Quality Performance Indicators*), the Authority may undertake its own performance monitoring at any time for any purpose in relation to this Contract (and for any UK Government purposes as requested by the Authority from time to time with the consent of the Contractor (such consent not to be unreasonably withheld or delayed)), including in order to ensure that the Contractor Deliverables are being provided in accordance with this Contract.

26 Technical Assistance to the Authority

- 26.1 The Contractor acknowledges that the Authority:

- 26.1.1 may (from time to time) use the services of personnel from other Government Departments to assist with managerial, technical and/or other support in relation to this Contract; and
- 26.1.2 may (from time to time) use the services of specialist commercial organisations to provide managerial, technical and/or other support in relation to this Contract, together with any person with whom either or both of the Parties may be required to liaise and/or communicate for the purposes of this Contract and the wider aims of the Authority in connection with the Contractor Deliverables,

and the Contractor agrees that, in such circumstances, such personnel and such organisations shall be deemed to be approved representatives of the Authority and the Contractor shall make available such information (and/or consents to such information being made available (as the case may be) to such personnel and such organisations) and/or facilities as are necessary to enable such personnel and/or such organisations to fulfil their obligations to the Authority.

27 Authority Performance Failures¹⁴

- 27.1 Subject to the provisions of Clauses 27.7 to 27.13 (inclusive) (*Discretionary GFA*), if and to the extent that a GFA Failure is the direct cause of the Contractor's inability to provide the Contractor Deliverables or perform any of its other obligations under this Contract or of the degradation of the Contractor's performance against the KPI regime set out in Schedule 6 (*Performance Management Regime*), then subject to

¹⁴ Tenderers should identify any GFA they consider is relevant to the performance of their services as part of their response to the ITN.

Clause 27.2 (*Authority Performance Failures*) the Contractor is entitled, save where the GFA Failure has been caused by any act or omission of the Contractor or any Contractor Related Party [(other than, in the case of Contractor Related Parties only, a failure of the Authority to provide manpower in accordance with Schedule 7 (*Authority Obligations*))]¹⁵ under this Contract to apply for relief from those of its obligations that it is unable to perform as a direct result of such GFA Failure. If such act or omission of the Contractor or any Contractor Related Party has contributed to the GFA Failure, the Contractor's entitlement to relief shall be reduced by an amount proportional to such contribution to the GFA Failure.

27.2 To obtain relief pursuant to Clause 27.1 (*Authority Performance Failures*) the Contractor shall:

27.2.1 as soon as practicable, and in any event within twenty (20) Business Days after it became aware that the GFA Failure has adversely affected or is likely to adversely affect the ability of the Contractor to provide the Contractor Deliverables or to perform its obligations, give to the Authority a notice of its claim for relief from its obligations under this Contract;

27.2.2 as soon as practicable and in any event within ten (10) Business Days of service on the Authority of the notice referred to in Clause 27.2.1 (*Authority Performance Failures*) notify the Authority of full details which are available in respect of the GFA Failure and the relief claimed;

27.2.3 comply with the provisions of this Clause 27 (*Authority Performance Failures*), the provisions of Schedule 6 (*Performance Management Regime*), the provisions of Schedule 8 (*Governance and Management*) and the provisions of Schedule 9 (*Pricing and Payment*);

27.2.4 demonstrate to the reasonable satisfaction of the Authority that:

(i) the GFA Failure was the direct cause of the Contractor's inability to provide the Contractor Deliverables or perform any of its other obligations under this Contract or of the degradation of the Contractor's performance against the KPI regime set out in in Schedule 6 (*Performance Management Regime*); and

(ii) the relief claimed could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice, without incurring material expenditure; and

27.2.5 continue to perform its obligations under this Contract subject to the constraints of the GFA Failure.

27.3 If and to the extent that the Contractor has complied with its obligations under this Clause 27 (*Authority Performance Failures*), then:

¹⁵ Words in square brackets to be considered, depending on Tenderers' proposals in relation to RAF CAM's role in maintenance activities.

- 27.3.1 the Authority shall not be entitled to exercise its rights arising as a result of the GFA Failure to terminate this Contract; and
- 27.3.2 the Authority shall give the Contractor such relief from its obligations as the Authority considers is reasonable for such a GFA Failure, in accordance with the procedures described in Schedule 9 (*Pricing and Payment*) and Schedule 6 (*Performance Management Regime*) provided always that where the Authority is able to assist to mitigate the GFA Failure (which may include requiring the Contractor to obtain a replacement for the relevant GFA or varying the Contractor Deliverable so as to reduce and/or eliminate the impact of the GFA Failure) and elects to do so by notice in writing to the Contractor, the Contractor shall accept such requirement or variation. In the event that the Contractor is required to obtain a replacement for the relevant GFA it shall be reimbursed any reasonable additional costs, reasonably incurred (on the production of satisfactory evidence of such expenditure) in connection with the acquisition of such replacement GFA.
- 27.4 The Contractor shall notify the Authority if at any time it realises or becomes aware of any information relating to the GFA Failure, giving details of that information, to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.
- 27.5 If the Parties cannot agree the extent of any relief from the Contractor's obligations under this Contract or the Authority disagrees that any GFA Failure has occurred (or as to its consequences), or that the Contractor is entitled to any relief under this Clause 27 (*Authority Performance Failures*) the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.
- 27.6 The Contractor shall not be entitled to any common law or equitable rights (including rights to damages or to any other rights under contract, tort or otherwise) in relation to the occurrence or subsistence of any GFA Failure.

Discretionary GFA¹⁶

- 27.7 If the Contractor requests that the Authority provide to the Contractor any Discretionary GFA, it shall do so by written notice to the Authority's Representative and any such notice shall:
- 27.7.1 provide a detailed description of the proposed Discretionary GFA;
- 27.7.2 detail the period during which the proposed Discretionary GFA is required to be used by the Contractor and/or any Sub-Contractor;
- 27.7.3 confirm how the Contractor and/or any Sub-Contractor intends to use such proposed Discretionary GFA;
- 27.7.4 describe any benefits to the Authority arising as the result of the Authority providing such proposed Discretionary GFA; and

¹⁶ The Authority cannot accept any liability for Discretionary GFA it provides to the Contractor.

- 27.7.5 identify any other relevant issues relating to the intended use by the Contractor and/or any Sub-Contractor of the proposed Discretionary GFA (including any impact on the provisions of this Contract and the performance by the Contractor of the Contractor Deliverables which may arise as the result of provision by the Authority of the proposed Discretionary GFA (including any proposed changes to Schedule 6 (*Performance Management Regime*) and Schedule 7 (*Authority Obligations*) or the relevant Task Order or relevant Option)).
- 27.8 If information referred to in this Clause 27 (*Authority Performance Failures*) is provided by the Contractor after the dates referred to in this Clause 27 (*Authority Performance Failures*) then the Contractor shall not be entitled to any relief in respect of the period for which the information is delayed.
- 27.9 The Authority's Representative may (but shall not be obliged to) consider any Contractor notice issued in accordance with Clause 27.7 (*Discretionary GFA*). If the Authority's Representative does consider such notice, he may (but shall not be obliged to) respond to the Contractor by an Authority notice to be issued to the Contractor at any time following receipt of the relevant Contractor notice, such Authority notice (if issued by the Authority's Representative) shall:
- 27.9.1 require further information relating to the subject matter of the notice and/or invite the Contractor to discuss the proposal further at a time and place convenient to the Authority's Representative; and
- 27.9.2 identify any additional contractual and/or other provisions which the Authority requires to be incorporated into the Contract as a condition of providing the proposed Discretionary GFA; or
- 27.9.3 confirm that the Authority does not wish to provide the proposed Discretionary GFA.
- 27.10 The Contractor confirms that:
- 27.10.1 subject to Clause 27.10.2, Clauses 63.1, 63.2, 63.4 63.8 (other than the reference to such Clause being subject to Clause 63.11), 63.9, 63.12, 63.13, 63.14 and 63.15 (*Issued Property*), Clause 64 (*Accounting for property of the Authority*), Clause 68.2 (*Transport*), shall (as a minimum) apply to any Discretionary GFA which is provided by the Authority to the Contractor following a request pursuant to Clause 27.7 (*Discretionary GFA*) and Clauses 63.3, 63.5, 63.6, 63.7, 63.10, 63.11 (*Issued Property*) shall not apply to any such Discretionary GFA;
- 27.10.2 prior to providing any proposed Discretionary GFA:
- (i) where any amendments to Clauses 63.1, 63.2, 63.4, 63.8, 63.9, 63.12, 63.13, 63.14 and 63.15 (*Issued Property*), Clause 64 (*Accounting for property of the Authority*), Clause 68.2 (*Transport*) (each as referred to in Clause 27.10.1 (*Discretionary GFA*)) are required by the Authority and/or where any additional contractual provisions are required by the Authority following or subsequent to

the matters contemplated in Clauses 27.9.1 and 27.9.2 (*Discretionary GFA*), such amendments and/or additional contractual provisions shall be incorporated into this Contract by means of a Contractor Change Notice (provided always that the Authority subsequently agrees to such Contractor Change Notice) to be issued by the Contractor within a reasonable period following receipt of the Authority's notice and/or conclusion of the discussions referred to in Clauses 27.9.1 and 27.9.2 (*Discretionary GFA*) and the provisions of Schedule 11 (*Change Procedure*) shall apply; and

(ii) where no amendments or additional contractual provisions are required by the Authority as contemplated in Clause 27.10.2(i) above or after a Change, when the procedures outlined in Clause 27.10.2(i) above have been followed, the relevant proposed Discretionary GFA shall be set out in the table forming Part 3 (*Discretionary GFA*) to Schedule 7 (*Authority Obligations*) or the relevant Task Order or relevant Option, identifying:

- (A) the nature of the Discretionary GFA;
- (B) the date the Discretionary GFA is required by the Contractor and/or the Sub-Contractor;
- (C) the period the Contractor and/or the Sub-Contractor requires the Discretionary GFA;
- (D) any matters relating to the use by the Contractor and/or the Sub-Contractor of the Discretionary GFA; and
- (E) any additional matters relating to the Discretionary GFA as may be agreed by the Parties (including any packaging or delivery instructions),

and the provisions of Clauses 27.12 and 27.13 (*Discretionary GFA*) shall apply.

27.11 Notwithstanding any agreement between the Parties as to the period during which the Contractor and/or any Sub-Contractor may have use of any Discretionary GFA, the Authority's Representative may require any Discretionary GFA to be returned to the Authority or delivered to any Third Party at any place within the United Kingdom by notice in writing to the Contractor's Representative and the Contractor shall return or deliver such Discretionary GFA in accordance with any requirements set out in the notice and within three (3) Business Days of receipt of such notice (and the provisions of Clause 63.14 (*Issued Property*) shall apply to the return of the Discretionary GFA).

27.12 The Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any Discretionary GFA which it makes available to the Contractor and neither the Authority nor any of their agents or

employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

- 27.12.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in any Discretionary GFA which it provides to the Contractor; or
 - 27.12.2 the provision by the Authority of any Discretionary GFA and/or any requirement of the Authority for the Contractor to return any Discretionary GFA earlier than previously agreed by the Parties (in accordance with Clause 27.12 (*Discretionary GFA*)) and/or any failure to make available to the Contractor any Discretionary GFA (whether or not the provision of the Discretionary GFA was the subject of a Change).
- 27.13 Neither the provision by the Authority of any Discretionary GFA nor failure by the Authority to provide any Discretionary GFA shall:
- 27.13.1 give the Contractor any right under this Contract to an extension of time or additional payment or damages or any other relief or remedy whatsoever against the Authority;
 - 27.13.2 give rise to a GFA Failure (other than to the extent that the GFA Failure is a direct result of the Authority failing to comply with its obligations in Clause 9.3 (*Necessary Consents*) and where the Contractor has fully satisfied its obligations in Clause 9.1.2 (*Necessary Consents*));
 - 27.13.3 affect, modify, reduce or extinguish either the obligations of the Contractor under this Contract or the rights or remedies of the Authority under this Contract; or
 - 27.13.4 subject to Clauses 27.7.5 and 27.9.2 (*Discretionary GFA*), be taken to amend, add to, delete or waive any term or condition of this Contract.

28 Indemnity and Liabilities

Unlimited liabilities

- 28.1 Neither Party limits its liability for:
- 28.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable) including, in the case of the Contractor, any Contractor Related Party;
 - 28.1.2 fraud or fraudulent misrepresentation by it or its employees;
 - 28.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 28.1.4 any liability to the extent it cannot be limited or excluded by Law.

- 28.2 The financial caps on liability set out in Clauses 28.3 and 28.4 below shall not apply to the following:
- 28.2.1 for any indemnity given by the Contractor to the Authority under this Contract, including but not limited to:
- (i) the Contractor's indemnity in relation to paragraph 7 (*Third Party Intellectual Property – Rights and Restrictions*) of Schedule 14 (*IPR*);
 - (ii) the Contractor's indemnity in relation to TUPE under Schedule 16 (*Transfer Regulations*);
- 28.2.2 for any indemnity given by the Authority to the Contractor under this Contract, including but not limited to:
- (i) not used;
 - (ii) the Authority's indemnity in relation to TUPE under Schedule 16 (*Transfer Regulations*);
- 28.2.3 breach by the Contractor of Clause 40 (*Protection of Personal Data*) and Data Protection Legislation; and
- 28.2.4 to the extent it arises as a result of a Default by either Party, any fine or penalty incurred by the other Party pursuant to Law and any costs incurred by such other Party in defending any proceedings which result in such fine or penalty.

Financial limits

- 28.3 Subject to Clauses 28.1 and 28.2 and to the maximum extent permitted by Law:
- 28.3.1 throughout the Contract Period, the Contractor's total liability in respect of losses that are caused by Defaults of the Contractor shall in no event exceed:
- (i) in respect of Clause 49 (*The Contractor's Property and Personnel at Government Establishments*), two million seven hundred and fifty thousand pounds (£2,750,000) in aggregate;
 - (ii) in respect of liability arising as a result of the occurrence of any of the circumstances defined as a Contractor Default, three hundred and sixty thousand pounds (£360,000) in aggregate;
 - (iii) not used; and
 - (iv) in respect of Clause 65 (*Loss of or Damage to the Articles*), two million two hundred thousand pounds (£2,200,000) in aggregate;
- 28.3.2 not used;

- 28.3.3 on the exercise of any and, where more than one, each Option period or agreed extension to the Contract Period, the limitation of the Contractor's total liability (in aggregate) set out in Clauses 28.3.1 and 28.3.2 above shall be fully replenished such that on and from each such exercise or extension of the Contract Period, the Authority shall be able to claim up to the full value of the limitation set out in Clauses 28.3.1 and 28.3.2.
- 28.4 Subject to Clauses 28.1, 28.2 and 28.5, and to the maximum extent permitted by Law, the Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.
- 28.5 Clause 28.4 shall not exclude or limit the Contractor's right under this Contract to claim for the Prices.

Consequential loss

- 28.6 Subject to Clauses 28.1, 28.2 and 28.7, neither Party shall be liable to the other Party or to any Third Party, whether in contract (including under any warranty), in tort (including negligence), under statute or otherwise for or in respect of:
- 28.6.1 indirect loss or damage;
 - 28.6.2 special loss or damage;
 - 28.6.3 consequential loss or damage;
 - 28.6.4 loss of profits (whether direct or indirect);
 - 28.6.5 loss of turnover (whether direct or indirect);
 - 28.6.6 loss of business opportunities (whether direct or indirect); or
 - 28.6.7 damage to goodwill (whether direct or indirect),
- even if that Party was aware of the possibility of such loss or damage to the other Party.
- 28.7 The provisions of Clause 28.6 shall not restrict the Authority's ability to recover any of the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Contractor:
- 28.7.1 any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the Authority:
 - (i) to any Third Party;

- (ii) for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and
 - (iii) relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- 28.7.2 any or all wasted expenditure and Losses incurred by the Authority arising from the Contractor's Default, including wasted management time;
- 28.7.3 the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Contract Period and any Option period or agreed extension to the Contract Period (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the replacement services over and above the Contract Price that would have been payable for the relevant Contractor Deliverables);
- 28.7.4 any Losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Authority Data, or other data or software, including, to the extent the Authority Data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Authority Data, data or software;
- 28.7.5 damage to the Authority's physical property and tangible assets, including damage under Clauses 49 (*The Contractor's Property and Personnel at Government Establishments*) and 63 (*Issued Property*);
- 28.7.6 costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any Third Party Intellectual Property Rights or breach of any obligations of confidence;
- 28.7.7 any additional costs incurred by the Authority in relation to the Authority's contracts with a Third Party and/or Other Contractor (including any compensation or interest paid to a Third Party by the Authority) as a result of the Default (including the extension or replacement of such contracts);
- 28.7.8 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; or
- 28.7.9 any savings, discounts or price reductions during the Contract Period and any Option period or agreed extension to the Contract Period committed to by the Contractor pursuant to this Contract.

Invalidity

- 28.8 If any limitation or provision contained or expressly referred to in this Clause 28 (*Indemnity and Liabilities*) is held to be invalid under any Law, it will be deemed to be omitted to that extent, and if any Party becomes liable for loss or damage to which

that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Clause 28 (*Indemnity and Liabilities*).

Third Party and/or Other Contractor claims or losses

28.9 Without prejudice to any other rights or remedies the Authority may have under this Contract (including but not limited to any indemnity claim under paragraph 7 (*Third Party Intellectual Property – Rights and Restrictions*) to Schedule 14 (*IPR*) or at Law), the Authority shall be entitled to make a claim under this Contract against the Contractor in respect of any Losses incurred by the Authority which arise out of a claim made against the Authority by a Third Party and/or Other Contractor under any contract with that Third Party and/or Other Contractor provided that such Third Party and/or Other Contractor claim:

28.9.1 arises naturally and ordinarily as a result of the Contractor's failure to provide the Contractor Deliverables or failure to perform any of its obligations under this Contract; and

28.9.2 is a type of claim or loss that would have been recoverable under this Contract if the Third Party and/or Other Contractor were a Party to this Contract (whether as the Authority or the Contractor), such claim to be construed as direct Losses for the purpose of this Contract.

No double recovery

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

Contractor liability to any Third Party and conduct of claims

28.11 Except where otherwise expressly stated in this Contract, nothing contained in this Contract shall affect any liability the Contractor may have to a Third Party arising out of its default, performance or non-performance or its negligent act or omission or wilful misconduct and shall not be construed as an indemnity by the Authority against any claims originating with Third Parties, provided that if a claim is raised directly against the Authority but in respect of which the Authority is entitled to an indemnity from the Contractor, then the Authority shall, subject to Clauses 28.11.1 to 28.11.4 (*Indemnity and Liabilities*) below, allow the Contractor to have conduct of the claim at its own cost provided that the Contractor:

28.11.1 gives reasonable security to the Authority for any costs or liability arising out of the conduct of the claim by the Contractor;

28.11.2 consults with and keeps the Authority reasonably informed of the conduct of the claim;

- 28.11.3 does not settle or compromise or prejudice the defence to any such claim without the prior consent of the Authority (not to be unreasonably withheld or delayed); and
- 28.11.4 does not bring the name of the Authority into disrepute in any way in its conduct of the action,

and provided always that notwithstanding the foregoing the Authority shall at all times have the right to refuse to allow the Contractor to have conduct of the claim if the Authority considers that conduct of the claim should be retained by the Authority on grounds of national interest including national security.

29 Insurances

- 29.1 Without prejudice to its obligation to indemnify or otherwise be liable to the Authority under this Contract, the Contractor shall for the periods specified in Schedule 13 (*Required Insurances*) take out and maintain, or procure the taking out and maintenance of insurances in accordance with the requirements specified in Schedule 13 (*Required Insurances*) and any other insurances required by Law (together the "**Required Insurances**"). The Contractor shall ensure that the Required Insurances are effective in each case not later than the date on which the relevant risk commences.
- 29.2 The Required Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 29.3 Where specified in Schedule 13 (*Required Insurances*), the Contractor shall ensure that the relevant policy of insurance shall contain an indemnity to principals clause or additional insureds equivalent, under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury or third party property damage, and for which the Contractor is legally liable in respect of this Contract.
- 29.4 The Contractor shall not (and the Contractor shall procure that none of its Sub-Contractors of any tier 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 Required Insurances.
- 29.5 If the Contractor is in breach of Clause 29.1 (*Insurances*), the Authority may elect, but shall not be obliged, to purchase any insurance which the Contractor is required to maintain pursuant to this Contract but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.
- 29.6 The Contractor shall, upon the date of this Contract and within fifteen (15) Business Days after the renewal of any of the Required Insurances, provide evidence, in a form satisfactory to the Authority, that the Required Insurances are in full force and effect and meet the requirements of this Clause 29 (*Insurances*) and Schedule 13 (*Required Insurances*). The supply to the Authority of any evidence of insurance cover in compliance with the requirements of this Clause 29.6 (*Insurances*) shall not imply acceptance by the Authority that the extent of insurance cover is sufficient or

that the terms and conditions thereof are satisfactory, in either case, for the purposes of this Contract nor be a waiver of the Contractor's liability under this Contract.

- 29.7 The Contractor shall notify the Authority at least ten (10) Business Days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances. This Clause 29.7 shall not apply where the termination of any Required Insurances occurs purely as a result of a change of insurer in respect of any of the Required Insurances required to be taken out and maintained in accordance with this Clause 29 (*Insurances*).
- 29.8 The Contractor shall promptly notify to insurers any matter arising from, or in relation to, the Contractor Deliverables and/or this Contract for which it may be entitled to claim under any of the Required Insurances. In the event that the Authority receives a claim relating to the Contractor Deliverables or this Contract, the Contractor shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 29.9 Except where the Authority is the claimant party, the Contractor shall notify the Authority immediately (such notification to be accompanied by reasonable particulars of the incident or circumstances giving rise to such incident) after any incident or circumstances which may give rise to a claim amounting to or in excess of one hundred thousand pounds (£100,000) in connection with this Contract and the Required Insurances;
- 29.10 The Contractor shall maintain a written register of all Losses which result in a claim under the Required Insurances in connection with this Contract and shall allow the Authority to review such register at any time.
- 29.11 Where any Required Insurance requires payment of a premium, the Contractor shall be liable for such premium.
- 29.12 Where any Required Insurance referred to in Schedule 13 (*Required Insurances*) is subject to an excess or deductible, below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible which would otherwise be insured but for the excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Required Insurances whether under the terms of this Contract or otherwise.
- 29.13 Without prejudice to its obligations in Clause 3.1.1(iii) (*The Contractor's Obligations*), the Contractor shall discharge in full all duties and obligations in respect of the Insurance Act 2015 (including complying with the duty of fair presentation to insurers and taking the actions needed to protect the Authority's separate interests) at all times, including when placing, renewing, procuring, maintaining or amending any insurances required by the Contract and including in circumstances where the Contractor is required to name the Authority on any such insurances to protect the Authority's separate interests.

30 States of Emergency, Periods of Tension, Transition to War, Hostilities, Surge and Crisis Event

- 30.1 The Contractor shall continue to provide the Contractor Deliverables required in peace and in a Crisis Event. The Contractor shall provide all the Contractor Deliverables throughout such Crisis Event unless directed otherwise by the Authority. The Authority shall advise the Contractor of any changes or additions to the Contract requirements arising out of or in connection with a Crisis Event and the provisions of Clause 84 (*Change*) shall apply, provided that the agreement or determination of any Change pursuant to Clause 84 (*Change*) shall not relieve the Contractor of its obligation to comply with the Authority's directions under this Clause 30 (*States of Emergency, Periods of Tension, Transition to War, Hostilities, Surge and Crisis Event*) in the period up to the agreement or determination of such Change.

31 Force Majeure

- 31.1 Neither Party shall be in breach of this Contract, nor liable for late or non-performance of any of its obligations under this Contract, if such delay or failure results from a "**Force Majeure Event**". For the purposes of this Contract, a Force Majeure Event is defined as one of the following:

- 31.1.1 war, civil war, armed conflict or terrorism;
- 31.1.2 nuclear, chemical or biological contamination, unless the source or cause of the contamination is as a result of the acts of or breaches by the Party claiming relief;
- 31.1.3 pressure waves caused by devices travelling at supersonic speeds; or
- 31.1.4 national strike (subject to the affected Party being able to demonstrate that any such strike is relevant to this Contract, is outside that Party's control and that Party is unable to mitigate against it (including, in the case of the Contractor, the Contractor demonstrating the same in respect of any Sub-Contractor (where applicable)),

and which directly causes the Party claiming relief to be unable to comply with all or a material part of its obligations under this Contract.

- 31.2 The affected Party shall immediately notify the other Party in writing on the occurrence of a Force Majeure Event, including details of the Force Majeure Event, its effect on the that Party's obligations under this Contract, and the actions proposed to mitigate its effect.
- 31.3 Subject to Clause 31.4 (*Force Majeure*) below, the affected Party shall be entitled to an appropriate extension of time for performing such obligations provided always that the such Party has used, to the satisfaction of the other Party, all reasonable endeavours, both to mitigate the effects of the Force Majeure Event, and to facilitate the continued performance of its obligations under this Contract.
- 31.4 The maximum extension of time granted under this Clause 31.4 (*Force Majeure*) shall be a period of two (2) months after which time the Authority may, on giving

written notice to the Contractor, terminate those elements of the Contract so effected by the Force Majeure Event with immediate effect.

- 31.5 Where Clause 31.4 (*Force Majeure*) applies and the Authority has terminated the Contract, the Authority shall have the option to purchase from the Contractor the items referred to in Clauses 80.10 to 80.12 (inclusive) (*Termination for Force Majeure*) and/or sufficient additional information, documents and data together with the right to use the same and all relevant IPR (including Contractor Background IPR).

32 Authority Step-In

Grounds for step-in

- 32.1 Subject to Clause 32.2 (*Grounds for step-in*), if the Authority:

32.1.1 reasonably believes that it needs to take action in connection with the Contractor Deliverables:

- (i) because a serious risk exists to the health or safety of persons or property or to the environment;
- (ii) to discharge a statutory duty;
- (iii) on the occurrence of an urgent operational and/or capability requirement; and/or
- (iv) because a breach by the Contractor would result in a significant interruption in the delivery of the whole or part of the Contractor Deliverables,

then the Authority shall be entitled to take action in accordance with this Clause 32 (*Authority Step-In*).

- 32.2 Save in the case of emergency, the Authority shall give the Contractor reasonable prior written notice of its intention to take action pursuant to Clause 32.1 (*Grounds for step-in*), and the Parties shall discuss the relevant circumstances in which the Authority and/or any Third Party acting on the instruction of the Authority, intends to take action and perform the Contractor Deliverables and the level of assistance reasonably required by the Authority from the Contractor.

Procedure for Authority step-in

- 32.3 If Clause 32.1 (*Grounds for step-in*) applies and the Authority wishes to take action, the Authority's Representative shall notify (the "**Step-In Notice**") the Contractor's Representative in writing of the following:

32.3.1 the action it wishes to take and whether the Authority requires any Third Party to carry out and/or assist the Authority in taking such action;

32.3.2 the reason for such action;

- 32.3.3 the date it wishes such action to commence;
- 32.3.4 the time period which it believes shall be necessary for such action; and
- 32.3.5 to the extent practicable, the effect on the Contractor and its obligation to provide the Contractor Deliverables during the period such action is being taken.

Following service of the Step-In Notice and without prejudice to Clause 32.2 (*Grounds for step-in*), the Contractor may make representations to the Authority regarding the contents of such notice. The Authority shall take such action as notified under Clause 32.3 (*Procedure for Authority step-in*) (the “**Required Action**”) and the Contractor shall give such reasonable assistance to the Authority while it is taking the Required Action.

Effects of step-in without the Contractor’s Breach

- 32.4 If the Contractor is not in breach of its obligations under this Contract and the Authority exercises its right to take action in connection with the Contractor Deliverables pursuant to Clause 32.1 (*Grounds for step-in*):
 - 32.4.1 then for so long as and to the extent that the Required Action and the actions under the Step-Out Plan (as defined in Clause 32.7.2 (*Authority Step-Out*)) are taken and this prevents the Contractor from providing the Contractor Deliverables, the Contractor shall be relieved from its obligations to provide such part of the Contractor Deliverables as the Authority is undertaking and any element of the Contractor Deliverables which the Contractor is unable to provide as a direct result of the Authority taking the Required Action; and
 - 32.4.2 in respect of the period in which the Authority is taking the Required Action and the actions under the Step-Out Plan, and provided that the Contractor provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent incremental costs are incurred), the Contract Price due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Contractor Deliverables affected by the Required Action in full over that period and in addition the amount of any incremental costs incurred and the Authority shall continue to pay the Contractor in accordance with the payment plan as detailed in Schedule 9 (*Pricing and Payment*).

Effects of step-in following the Contractor’s breach

- 32.5 If the Contractor is in breach of its obligations under this Contract and the Authority exercises its right to take action in connection with the Contractor Deliverables pursuant to Clause 32.1 (*Grounds for step-in*):
 - 32.5.1 then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing the Contractor Deliverables, the Contractor shall be relieved from its obligations to

provide such part of the Contractor Deliverables as the Authority is undertaking and any element of the Contractor Deliverables which the Contractor is unable to provide as a direct result of the Authority taking the Required Action; and

- 32.5.2 in respect of the period in which the Authority is taking the Required Action, the Contract Price due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Contractor Deliverables affected by the Required Action in full over that period and the Authority shall continue to pay the Contractor in accordance with the payment plan as detailed in Schedule 9 (*Pricing and Payment*) less an amount equal to the Authority's reasonable and properly incurred costs of taking the Required Action.

Authority step-out

- 32.6 The Authority's Representative shall provide the Contractor's Representative with reasonable notice of the Authority's intention to cease the performance of the Required Action ("**Step-Out**") and the date on which it intends to do so.
- 32.7 On receipt of the notice referred to in Clause 32.6 (*Authority step-out*), the Parties shall jointly agree:
- 32.7.1 the method by which the Authority shall Step-Out; and
- 32.7.2 a step-out plan (a "**Step-Out Plan**") which shall include the actual date that the Authority shall step out and the Contractor shall resume performance of the Contractor Deliverables.
- 32.8 Subject to Clause 32.7 (*Authority step-out*), on the date on which the obligations contained in the Step-Out Plan have been achieved:
- 32.8.1 the Authority will be released from all of its obligations and liabilities in relation to the Required Action and the Step-Out Plan other than its obligations to pay the Contractor as required in this Clause 32 (*Authority step-in*); and
- 32.8.2 the Contractor shall resume all or any part of the Contractor Deliverables which was the subject of the Required Action.

PART 6 - INFORMATION PROVISIONS

33 Authority Data

- 33.1 For the purposes of this Clause 33 (*Authority Data*), "**Authority Data**" means:
- 33.1.1 the data, text, drawings, diagrams or images (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and:

- (i) which are supplied to the Contractor by or on behalf of the Authority; or
- (ii) which the Contractor is required to generate, process, store or transmit and which are material to the performance of this Contract; or

33.1.2 any Personal Data for which the Authority is the Controller,

provided that, for the avoidance of doubt, the term Authority Data does not imply any ownership rights in any Authority Data pursuant to this Clause 33 (*Authority Data*).

- 33.2 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 33.3 The Contractor shall not store, copy, disclose, modify, adapt or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract (and in accordance with the relevant licence rights set out in Schedule 14 (*IPR*)) or as otherwise expressly authorised in writing by the Authority.
- 33.4 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format reasonably specified by the Authority from time to time and/or specified in the Scope (in each case at no additional cost to the Authority).
- 33.5 The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- 33.6 The Contractor shall perform secure back-ups of all electronic Authority Data held on the Contractor's IT systems and shall ensure that up-to-date back-ups are stored in accordance with Good Industry Practice and the Business Continuity Plans and the Contractor shall procure (as reasonably required by the Authority) that the Sub-Contractors perform secure back-ups of all electronic Authority Data held on the Sub-Contractor's IT systems. The Contractor shall ensure that such back-ups are made available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than six (6) monthly intervals (or such other intervals as may be agreed by the Parties in writing).
- 33.7 The Contractor shall ensure that any electronic system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with GovS 007: Security.
- 33.8 If the Authority Data is corrupted, lost or sufficiently degraded so as to be unusable as a result of the Contractor's failure to fulfil its obligations under this Contract and/or exercise reasonable skill and care, the Authority may:
- 33.8.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data and the Contractor shall do so as soon as practicable but not later than five (5) Business Days from the date of receipt of the Authority's notice; and/or

- 33.8.2 itself restore or procure the restoration of Authority Data in any manner reasonably available to it, and shall be repaid by the Contractor any reasonable expenses incurred directly in doing so.
- 33.9 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

Malicious Software

- 33.10 The Contractor shall, as an enduring obligation throughout the term of this Contract and without prejudice to its obligations in Schedule 2 (*Scope*):
- 33.10.1 use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of any Malicious Software in the Contractor System; and
- 33.10.2 use all reasonable endeavours to ensure that neither it nor any Contractor Related Party introduces any Malicious Software into the Authority System.
- 33.11 Notwithstanding Clause 33.10 (*Malicious Software*), if Malicious Software is found, the Parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses.
- 33.12 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 33.11 (*Malicious Software*) shall be borne by the Parties as follows:
- 33.12.1 by the Contractor where such Malicious Software has been introduced:
- (i) by the Contractor and/or any Contractor Related Party, including where such Malicious Software originates from the Contractor System, any Third Party software supplied by the Contractor or the Authority Data (whilst the Authority Data was under the control of the Contractor) unless the Contractor can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the Contractor; or
 - (ii) by a Third Party as a result of a security vulnerability in the Contractor System or any Third Party software supplied by the Contractor and/or a failure by the Contractor to comply with Clause 33.10 (*Malicious Software*); and
- 33.12.2 otherwise by the Authority.

34 Authority Disclosed Data

- 34.1 Subject to Clause 34.2 (*Authority Disclosed Data*), the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any data disclosed by the Authority prior to and/or after the Effective Date and neither the Authority nor any of their agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:
- 34.1.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in any data disclosed by the Authority prior to and/or after the Effective Date; or
- 34.1.2 any failure to make available to the Contractor prior to and/or after the Effective Date any materials, documents, drawings, plans or other information relating to this Contract.
- 34.2 The Contractor acknowledges that any data (including all information provided by the Authority to the Contractor for the purposes of assisting the Contractor to carry out the Contractor Deliverables or providing contextual or other information relating to the Contractor Deliverables and/or other related contracts and procurements whether or not such data is referred to or set out in Schedule 7 (*Authority Obligations*)) is data for the purposes of this Clause 34 (*Authority Disclosed Data*) and, for the avoidance of doubt, in addition to the restriction of liability of the Authority as set out in this Clause 34 (*Authority Disclosed Data*), the Contractor shall not be entitled to any relief from its obligations under this Contract (including relief otherwise permitted under Clause 27 (*Authority Performance Failures*)) in the event that any of such data disclosed by the Authority is as described in Clause 34.1.1 (*Authority Disclosed Data*) and/or is not made available to the Contractor as described in Clause 34.1.2 (*Authority Disclosed Data*).
- 34.3 Nothing in this Clause 34 (*Authority Disclosed Data*) shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the Contractor in respect of any statements made fraudulently or fraudulent omissions to make statements prior to and/or after the Effective Date.

35 The Contractor's Records

- 35.1 The Contractor shall (and shall procure that its Sub-Contractors shall) at all times, and in accordance with Good Industry Practice, maintain all records in the possession, custody or control of the Contractor (or the Sub-Contractor (as the case may be)) relating to this Contract and the provision of the Contractor Deliverables (without prejudice to any other express provisions in this Contract relating to such information):
- 35.1.1 of all incidents relating to health, safety, the environment and security which occur during the Contract Period to the extent that the Authority is not legally obliged to do so as owner of the Authority Sites;
- 35.1.2 of all claims made by a Third Party against either Party that are submitted to the Contractor and/or a Sub-Contractor in connection with this Contract;

- 35.1.3 of all claims made under any policy of insurance that the Contractor is required to maintain pursuant to Clause 29 (*Insurances*);
- 35.1.4 of all Disputes dealt with pursuant to the Dispute Resolution Procedure that arise during the Contract Period;
- 35.1.5 of all certification and/or authorised documentation relating to the attainment of Necessary Consents, Third Party quality standards and/or evidence of compliance with any specified Def Stan requirements;
- 35.1.6 relating to hazardous substances pursuant to Clause 58 (*Supply of Hazard Data*); and
- 35.1.7 any of the Contractor owned Intellectual Property Rights, the Contractor's use of Authority owned Intellectual Property Rights and records relating to applicable Third Party Intellectual Property Rights,

(the "**Records**") and without prejudice to Clause 37 (*Disclosure of Information*) and Clause 43 (*Intellectual Property Rights*) make the Records available to be examined and if necessary, copied, by or on behalf of the Authority, as the Authority may reasonably require when requested upon reasonable notice.

- 35.2 The Authority shall be entitled to disclose the Records set out in Clause 35.1 (*The Contractor's Records*) to potential Follow-On Contractors as the Authority may reasonably require.
- 35.3 The Records shall be retained for a period of at least six (6) years from:
 - 35.3.1 the end of the Contract Period; or
 - 35.3.2 the final payment,
 whichever occurs latest.

36 SME Spend Data Collection

- 36.1 In this Clause 36, the following words and expressions shall have the following meanings given to them:
 - 36.1.1 "**Reporting Date**" means 31 March (or such alternative date agreed between the Parties (acting reasonably) in writing having regard for the end date of the Contractor's financial year) each year of the Contract Period;
 - 36.1.2 "**Revenue**" means the aggregate revenue (excluding VAT and before the application of any deduction, set-off or other remedy) that the Contractor has received under this Contract with the Authority;
 - 36.1.3 "**SME**" means Small and Medium-sized Enterprise, an enterprise falling within the category of micro, small and medium-sized enterprises defined

by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;

- 36.1.4 **"Sub-Contract"** means any sub-contract entered into or to be entered into by the Contractor or any purchase order placed or to be placed by the Contractor in connection with this Contract;
 - 36.1.5 **"Sub-Contract Revenue"** means the aggregate revenue (excluding VAT and before the application of any deduction, set-off or other remedy) that any Sub-Contractor has been paid by the Contractor under a Sub-Contract;
 - 36.1.6 **"Sub-Contractor"** means any sub-contractor of the Contractor; and
 - 36.1.7 **"VCSE"** means Voluntary, Community and Social Enterprise, a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.
- 36.2 The Contractor shall by 30 June (or such alternative date agreed between the Parties (acting reasonably) in writing having regard for the end date of the Contractor's financial year)) each year during the Contract Period at no additional cost, charge and expense to the Authority provide to the Authority the information identified in DEFFORM 139 (as amended by the Authority from time to time and with each such amended version taking effect in accordance with Clause 36.4), including:
- 36.2.1 the total Revenue on and prior to the Reporting Date in respect of the relevant financial year immediately prior to the Reporting Date;
 - 36.2.2 the total value of Sub-Contract Revenue paid under the Contract in respect of the relevant financial year immediately prior to the Reporting Date; and
 - 36.2.3 the total value of Sub-Contract Revenue paid to SMEs and VCSEs in respect of the relevant financial year immediately prior to the Reporting Date.
- 36.3 The Authority may issue from time to time guidance to the Contractor in relation to the completion of DEFFORM 139 (and the Contractor shall not unreasonably refuse to comply with any such guidance so issued when completing such DEFFORM and complying with this Clause 36 (*SME Spend Data Collection*)).
- 36.4 The Authority may at any time during the Contract Period change the reporting template in DEFFORM 139, provided that the Authority shall have given a minimum of thirty (30) days' advance notice in writing of the scope and nature of such change or changes. The changes may include the data required or format of the report or both. The Parties agree that no such change shall constitute a formal amendment of this Contract.
- 36.5 Notwithstanding the requirements of DEFCON 609 (*The Contractor's Records*) (Edition 07/21), the Contractor shall retain the information identified in Clause 36.2

and supporting records for a period of twenty-four (24) months commencing on the date of their provision pursuant to Clause 36.2.

37 Disclosure of Information

- 37.1 In this Clause 37 (*Disclosure of Information*), “**Information**” means any information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with this Contract, including information provided in the tender or negotiations which preceded Contract Award;
- 37.2 Subject to Clauses 37.5 to 37.10 (*Disclosure of Information*), each Party:
- 37.2.1 shall treat in confidence all Information it receives from the other;
 - 37.2.2 shall not disclose any of that Information to any Third Party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of this Contract;
 - 37.2.3 shall not use any of that Information otherwise than for the purpose of this Contract; and
 - 37.2.4 shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under this Contract.
- 37.3 The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed to the Contractor by or on behalf of the Authority under or in connection with this Contract:
- 37.3.1 is disclosed to its Employees and Sub-Contractors, only to the extent necessary for the performance of this Contract; and
 - 37.3.2 is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing work or having work performed for the Authority under this Contract or any Sub-Contract.
- 37.4 The Contractor shall ensure that its Employees and Sub-Contractors are aware of its arrangements for discharging the obligations at Clauses 37.1 and 37.3 (*Disclosure of Information*) before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.
- 37.5 A Party shall not be in breach of Clauses 37.2, 37.3, 37.7, 37.8 and 37.9 (*Disclosure of Information*) to the extent that either Party:
- 37.5.1 exercises rights of use or disclosure granted otherwise than in consequence of, or under, this Contract;

- 37.5.2 has the right to use or disclose the Information in accordance with other conditions of this Contract; or
- 37.5.3 can show:
- (i) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of this Contract or any other agreement between the Parties;
 - (ii) that the Information was already known to it (without restrictions on disclosure or use) prior to it receiving it under or in connection with this Contract;
 - (iii) that the Information was received without restriction on further disclosure from a Third Party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - (iv) from its records that the same information was derived independently of that received under or in connection with this Contract,
- provided the relationship to any other Information is not revealed.
- 37.6 Neither Party shall be in breach of this Clause 37 (*Disclosure of Information*) where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this Clause 37 (*Disclosure of Information*).
- 37.7 The Authority may disclose the Information:
- 37.7.1 to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body, which shall include: disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes. Where such a disclosure is made the Authority shall ensure that the recipient is made aware of its confidentiality;
 - 37.7.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 37.7.3 subject to Clause 37.8, to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate:
 - (i) in the course of carrying out its public functions; and/or

- (ii) in the case of any Contractor Deliverables, to assist any Other Contractor to perform and/or comply with its obligations to the Authority;
- 37.7.4 subject to Clause 37.8, on a confidential basis to a professional adviser, consultant or other person engaged by any Central Government Body and/or the Authority (including benchmarking organisation) for any purpose relating to or connected with this Contract;
- 37.7.5 on a confidential basis for the purpose of the exercise of its rights under this Contract; or
- 37.7.6 on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 37 (*Disclosure of Information*).

- 37.8 Where the Authority intends to disclose Information to a commercial entity which is not a Central Government Body in accordance with Clauses 37.7.3 or 37.7.4, the Authority will endeavour to provide the Contractor with three (3) Business Days' notice in advance of such disclosure. In relation to a disclosure of Information made under Clause 37.7.3, if reasonably requested by the Contractor within two (2) Business Days of such notice being given, where the Authority has not already done so, it will endeavour to procure from the intended recipient of the Information an agreement containing confidentiality terms the same as, or substantially similar to, those placed on the Authority under this Clause 37 (*Disclosure of Information*).
- 37.9 Before sharing any Information in accordance with Clause 37.7 (*Disclosure of Information*), the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.
- 37.10 The Authority shall not be in breach of this Contract where it can show that any disclosure of Information is made solely and to the extent necessary to comply with the FOI Act or the Environmental Information Regulations 2004 ("**the Regulations**"). To the extent permitted by the time for compliance under the FOI Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the FOI Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the FOI Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the FOI Act or the Regulations. For the avoidance of doubt, nothing in this Clause 37 (*Disclosure of Information*) shall affect the Contractor's rights at law.

37.11 Nothing in this Clause 37 (*Disclosure of Information*) shall affect the Parties' obligations of confidentiality where information is disclosed orally in confidence.

Controlled Information

37.12 This Clause 37.12 (*Controlled Information*) and Clauses 37.13 to 37.15 (inclusive) (*Controlled Information*) shall apply in respect of any Controlled Information communicated to and/or held by the Contractor, in addition to and notwithstanding Clauses 37.1 to 37.11 (inclusive) (*Disclosure of Information*), or any other confidentiality Clause of this Contract.

37.13 The Contractor shall:

- 37.13.1 hold the Controlled Information and not use it other than for the purpose of discharging its obligations under this Contract;
- 37.13.2 not copy the Controlled Information except as strictly necessary for the purpose of discharging its obligations under this Contract;
- 37.13.3 not disclose the Controlled Information to any Third Party unless so authorised in writing beforehand by the Authority;
- 37.13.4 protect the Controlled Information diligently against unauthorised access and against loss; and
- 37.13.5 act diligently to ensure that:
 - (i) Controlled Information is disclosed to its Employees only to the extent necessary for the purpose of discharging its obligations under this Contract; and
 - (ii) Employees to whom Controlled Information is disclosed are made aware of and required to comply with the terms of these Clauses 37.12 to 37.15 (inclusive) (*Controlled Information*).

37.14 Where Controlled Information is provided to the Contractor, it shall:

- 37.14.1 compile a register of that Controlled Information, which shall include an explicit description of the Controlled Information, a record of the number of copies made and a record of all access to the Controlled Information including access to any copies of the Controlled Information;
- 37.14.2 maintain such register for the duration of this Contract and for two (2) Years following expiry or earlier termination of this Contract in accordance with its terms;
- 37.14.3 make such 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 Clause 37.14.2 (*Controlled Information*); and

- 37.14.4 on expiry or earlier termination of this Contract in accordance with its terms, return to the Authority all original and duplicate copies of the Controlled Information, or else at the Authority's option destroy these copies and provide a certificate of destruction to the Authority.
- 37.15 Nothing in these Clauses 37.12 to 37.15 (inclusive) (*Controlled Information*) shall diminish or extinguish any right of the Contractor to copy, use or disclose any information that is not Controlled Information to the extent that it can show:
- 37.15.1 that the information concerned was or has become published or publicly available for use without breach of any provision of this Contract or any other agreement between the Parties;
- 37.15.2 that such information was already known to it (without restrictions on disclosure or use) prior to receiving it under or in connection with this Contract;
- 37.15.3 that the information concerned was lawfully provided by a Third Party without restriction on use or further disclosure; or
- 37.15.4 from its records, that such information was derived independently of the Controlled Information,

to the extent that copying, use or disclosure of such other information shall not disclose its relationship to any Controlled Information.

Publicity and communications with the media

- 37.16 The Contractor shall not by itself, its Employees or agents (and shall ensure that its Sub-Contractors shall not):
- 37.16.1 communicate with representatives of the press, television, radio or other communications media on any matter concerning the provision of the Contractor Deliverables or this Contract;
- 37.16.2 photograph or film in or upon any Authority Sites and/or any Other Contractor's Premises;
- 37.16.3 erect or exhibit on any part of the Authority Sites and/or any Other Contractor's Premises any signs or trade boards; or
- 37.16.4 exhibit or attach to any part of the Authority Sites and/or any Other Contractor's Premises any notice or advertisement,

unless:

- (i) the Authority has given its prior written consent; or
- (ii) as otherwise required to comply with Law, provided always that the Contractor shall, to the extent reasonably practicable, notify

the Authority in advance (and provide the Authority with a copy) of the relevant communication, sign, notice or material.

- 37.17 Should the Contractor wish to release any publicity material or display hardware that arises from this Contract, the Contractor must seek the prior approval of the Authority. Publicity material includes open publication in the Contractor's publicity literature or website or through the media, displays at exhibitions in any country, lectures or symposia, scientific or technical papers, or any other occasion where members of the general public may have access to the information, even if organised or sponsored by the Authority or any other government department.

38 Transparency

- 38.1 For the purpose of this Clause 38 (*Transparency*):

38.1.1 "**Sensitive Information**" means the information listed in DEFFORM 539A, being information notified by the Contractor to the Authority, which is acknowledged by the Authority as being sensitive, at the point at which the Contract is entered into or amended (as relevant) and remains sensitive information at the time of publication;

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

38.1.3 "**Transparency Information**" means the content of the Contract in its entirety, including from time to time agreed changes to the Contract, except for (i) any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 (EIR), which shall be determined by the Authority, and (ii) any Sensitive Information.

- 38.2 Notwithstanding any other term of the Contract, including DEFCON 531 where applicable, the Contractor understands that the Authority may publish the Publishable Performance Information and the Transparency Information to the general public.

- 38.3 Subject to clause 38.4, the Authority shall publish and maintain an up-to-date version of the Transparency Information and Publishable Performance Information in a format readily accessible and reusable by the general public under an open licence where applicable.

- 38.4 If, in the Authority's reasonable opinion, publication of any element of the Transparency Information and Publishable Performance Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information and Publishable Performance Information in its entirety. Accordingly, the Authority acknowledges that it shall only exclude Transparency Information and

Publishable Performance Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication on that basis, it will provide a clear statement to the general public explaining the categories of information that have been excluded from publication and reasons for withholding that information.

- 38.5 The Contractor shall assist and co-operate with the Authority as reasonably required to enable the Authority to publish the Transparency Information and Publishable Performance Information, in accordance with the principles set out

38.5.1 before publishing, redact any information that would be exempt from disclosure if it was the subject of a request for information under the FOIA and/or the EIR, for the avoidance of doubt, including Sensitive Information;

38.5.2 taking into account the Sensitive Information set out in DEFFORM 539A, consult with the Contractor where the Authority intends to publish information which has been identified as Sensitive Information. For the avoidance of doubt the Authority, acting reasonably, shall have absolute discretion to decide what information shall be published or be exempt from disclosure in accordance with the FOIA and/or the EIR; and

38.5.3 present information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Contract is being performed.

39 Accuracy of Information

- 39.1 The Contractor shall be responsible for the accuracy of all drawings, documentation, information and/or other items supplied to the Authority by the Contractor in connection with the provision of the Contractor Deliverables.

40 Protection of Personal Data

- 40.1 In this Clause 40 (*Protection of Personal Data*), the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

40.1.1 “**Contractor Personnel**” means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Contract;

40.1.2 “**Data Loss Event**” means any event that results in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;

40.1.3 “**Data Protection Legislation**” has the meaning given in Schedule 1 (*Definitions and Acronyms*);

- 40.1.4 “**Data Protection Impact Assessment**” means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
- 40.1.5 “**Data Subject Request**” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
- 40.1.6 “**DPA 2018**” means the Data Protection Act 2018;
- 40.1.7 “**Law**” has the meaning given in Schedule 1 (*Definitions and Acronyms*);
- 40.1.8 “**Protective Measures**” means appropriate technical and organisational measures which may include (as appropriate):
- (i) pseudonymising and encrypting Personal Data;
 - (ii) ensuring confidentiality, integrity, availability and resilience of systems and services;
 - (iii) ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and
 - (iv) regularly assessing and evaluating the effectiveness of such measures adopted by it, including those set out in DEFFORM 532;
- 40.1.9 “**Sub-processor**” means any Third Party appointed to process Personal Data on behalf of the Contractor related to this Contract;
- 40.1.10 “**UK GDPR**” means the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in UK Law by the EU (Withdrawal) Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;
- 40.1.11 The following expressions shall have the same meanings as in Article 4 of the UK GDPR:
- (i) Controller;
 - (ii) Processor;
 - (iii) Data Subject;
 - (iv) Personal Data;
 - (v) Personal Data Breach; and
 - (vi) Data Protection Officer.
- 40.2 In connection with the Personal Data received under this Contract, each Party undertakes to comply with its obligations under Data Protection Legislation and in

particular, but without limitation, each Party shall have regard to guidance issued by the Information Commissioner's Office and take appropriate technical and organisational measures against unauthorised or unlawful Processing of Personal Data provided to it by the other Party, and against accidental loss, alteration, unauthorised disclosure or destruction of or damage to that Personal Data.

- 40.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor of the personal data contained in and/or referred to in DEFFORM 532. The only processing that the Contractor is authorised to do is listed in DEFFORM 532 by the Authority and may not be determined by the Contractor. The completed DEFFORM 532 shall form part of the Contractor Deliverables for this Contract.
- 40.4 The Contractor shall notify the Authority without undue delay if it considers that any of the Authority's instructions infringe the Data Protection Legislation. The Authority agrees that the Contractor shall not be required to provide legal advice to the Authority and that no notification (or absence of notification) by the Contractor will be construed as legal advice or a representation by the Contractor.
- 40.5 The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing that is likely to result in a high risk to the rights and freedoms of Data Subjects. Such assistance may, at the discretion of the Authority, include:
- 40.5.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 40.5.2 an assessment of the necessity and proportionality of the processing operations in relation to the services provided under the Contract;
 - 40.5.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 40.5.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 40.6 The Contractor shall, in relation to any Personal Data processed in connection with its processing obligations under this Contract:
- 40.6.1 process that Personal Data only in accordance with DEFFORM 532, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
 - 40.6.2 ensure that it has in place Protective Measures, including those set out in DEFFORM 532, as appropriate to protect against a Data Loss Event, which the Authority may acting reasonably reject (but failure to reject shall not amount to approval by the Authority of the adequacy of the Protective Measures), having taken account of the:

- (i) nature of the data to be protected;
- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;

40.6.3 ensure that:

- (i) subject to Clause 40.6.1, the Contractor Personnel do not process Personal Data except in accordance with the Contract (and in particular DEFFORM 532);
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data by ensuring that they undertake the Government's Baseline Personnel Security Standard or other standard as specified in the Contract and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this Clause;
 - (B) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any Third Party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
 - (C) have undergone adequate training in the use, care, protection and handling of Personal Data; and

40.6.4 not transfer Personal Data outside of the UK (other than to/from the EU and EEA) unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

- (i) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or DPA 2018 Article 73) as determined by the Authority;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and

- (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- 40.6.5 at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of this Contract unless the Contractor is required by Law to retain the Personal Data.
- 40.7 Subject to Clause 40.6, the Contractor shall notify the Authority without undue delay if, in connection with Personal Data processed under this Contract, it:
 - 40.7.1 receives a Data Subject Request (or purported Data Subject Request);
 - 40.7.2 receives a request to rectify, block or erase any Personal Data;
 - 40.7.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 40.7.4 receives any communication from the Information Commissioner or any other regulatory authority;
 - 40.7.5 receives a request from any Third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 40.7.6 becomes aware of a Data Loss Event.
- 40.8 The Contractor's obligation to notify under Clause 40.7 shall include the provision of further information to the Authority in phases, as details become available.
- 40.9 Taking into account the nature of the processing, the Contractor shall provide the Authority with reasonable assistance, insofar as possible, in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 40.7 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
 - 40.9.1 the Authority with full details and copies of the complaint, communication or request;
 - 40.9.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 40.9.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 40.9.4 assistance as requested by the Authority following any Data Loss Event;
 - 40.9.5 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

- 40.10 The Contractor shall maintain complete and accurate records and information as necessary to fulfil its obligations under Clause 40.9.
- 40.11 The Contractor shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor as required to demonstrate the Authority's compliance with its obligations as a Controller. Such audits will be conducted in accordance with general audit conditions contained in this Contract.
- 40.12 The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 40.13 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:
- 40.13.1 notify the Authority in writing of the intended Sub-processor and processing;
 - 40.13.2 obtain the written consent of the Authority;
 - 40.13.3 enter into a written contract with the Sub-processor which give effect to the terms set out in this Clause 40 (*Protection of Personal Data*) such that they apply to the Sub-processor; and
 - 40.13.4 provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 40.14 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 40.15 The Contractor may, at any time on not less than thirty (30) Business Days' notice, revise this Clause 40 (*Protection of Personal Data*) by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 40.16 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than thirty (30) Business Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 40.17 Any amendments to this Contract resulting from Clause 40.15 and/or Clause 40.16 shall be conducted in accordance with Schedule 11 (*Change Procedure*).

41 Official-Sensitive Security Requirements

- 41.1 The Contractor shall protect (including protection from deliberate and/or opportunistic attack) all Information relating to the aspects designated as "OFFICIAL" and "OFFICIAL SENSITIVE" as identified in the Security Aspects Letter in accordance with the security conditions contained at Appendix 3 to the Terms and Conditions applicable to Part 1 and Part 2 of this Contract.

- 41.2 The Contractor shall include the requirements and obligations set out in Clause 41.1 (*Official-Sensitive Security Requirements*) in any Sub-Contract placed in connection with or for the purposes of this Contract which requires disclosure of OFFICIAL-SENSITIVE Information to the Sub-Contractor or under which any Information relating to aspects designated as OFFICIAL-SENSITIVE is created by the Sub-Contractor. The Contractor shall also include in the Sub-Contract a requirement for the Sub-Contractor to flow the requirements of this Clause 41 (*Official-Sensitive Security Requirements*) to its Sub-Contractors and through all levels of the supply chain to the lowest level where any OFFICIAL-SENSITIVE Information is handled.

42 Cyber

Definitions

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

“Associated Company” means:

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

“Cyber Risk Profile” means the level of cyber risk relating to this Contract assessed by the Authority or in relation to any Sub-contract assessed by the Contractor, in each case in accordance with the Cyber Security Model. The Cyber Risk Profile at the Effective Date is Low;

“Cyber Implementation Plan” means the plan referred to in Clause 42.3 (*Contractor Obligations*);

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

- (a) unauthorised access to an information system or electronic communications network on which MOD Identifiable Information resides;
- (b) disruption or change of the operation (including but not limited to takeover of control) of an information system or electronic communications network on which MOD Identifiable Information resides;
- (c) unauthorised destruction, damage, deletion or the change of MOD Identifiable Information residing in an information system or electronic communications network;

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

“Cyber Security Instructions” means Def Stan 05-138, together with any relevant ISN and specific security instructions relating to this Contract issued by the Authority to the Contractor;

“Cyber Security Model” and **“CSM”** mean the process by which the Authority ensures that MOD Identifiable Information is adequately protected from Cyber Security Incident and includes the CSM Risk Assessment Process, DEF STAN 05-138 and the CSM Supplier Assurance Questionnaire conducted via the Supplier Cyber Protection Service;

“CSM Risk Assessment Process” means the risk assessment process which forms part of the Cyber Security Model and is used to measure the Cyber Risk Profile for this Contract and any Sub-contract;

“CSM Supplier Assurance Questionnaire” means the supplier assessment questionnaire which forms part of the Cyber Security Model and is to be used by the Contractor to demonstrate compliance with this Clause 42 (*Cyber*);

“Data” means any data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media;

“Def Stan 05-138” means the Defence Standard 05-138 as amended or replaced from time to time;

“Electronic Information” means all information generated, processed, transferred or otherwise dealt with under or in connection with this Contract, including but not limited to Data, recorded or preserved in electronic form and held on any information system or electronic communications network;

“Good Industry Practice” means in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgment and the making of any expenditure that would reasonably be expected from a skilled person in the same type of undertaking under the same or similar circumstances;

“ISN” means Industry Security Notices issued by the Authority to the Contractor whether directly or by issue on the gov.uk website at: <https://www.gov.uk/government/publications/industry-security-notices-isns>;

“JSyCC WARP” means the Joint Security Co-ordination Centre MOD Defence Industry Warning, Advice and Reporting Point or any successor body notified by way of ISN;

“MOD Identifiable Information” means all Electronic Information which is attributed to or could identify an existing or proposed MOD capability, defence activities or personnel and which the MOD requires to be protected against loss, misuse, corruption, alteration and unauthorised disclosure;

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

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

“Sub-contract” means any sub-contract awarded directly by the Contractor as a consequence of or in connection with this Contract;

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

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

Authority Obligations

42.2 The Authority shall:

- 42.2.1 determine the Cyber Risk Profile appropriate to this Contract and notify the Contractor of the same at the earliest possible date; and
- 42.2.2 notify the Contractor as soon as reasonably practicable where the Authority reassesses the Cyber Risk Profile relating to this Contract, which shall be in accordance with Clause 42.7 (*General*).

Contractor Obligations

42.3 The Contractor shall, and shall procure that its Sub-contractors shall:

- 42.3.1 comply with Def Stan 05-138 or, where applicable, the Cyber Implementation Plan attached to this Contract and for the avoidance of doubt any Cyber Implementation Plan shall be prepared and implemented in accordance with Good Industry Practice taking account of any risk-balance case and any mitigation measures required by the Authority and shall ensure that any measures taken to protect MOD Identifiable Information are no less stringent than those taken to protect its own proprietary information;

- 42.3.2 complete the CSM Risk Assessment Process in accordance with the Authority's instructions, ensuring that any change in the Cyber Risk Profile is notified to any affected Sub-contractor, and complete a further CSM Risk Assessment or CSM Supplier Assurance Questionnaire where a change is proposed to the Contractor's supply chain or on receipt of any reasonable request by the Authority;
- 42.3.3 re-perform the CSM Supplier Assurance Questionnaire no less than once in each year of this Contract commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire to demonstrate continued compliance with the Cyber Security Instructions;
- 42.3.4 having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge its obligations under this Clause 42 (*Cyber*) in accordance with Good Industry Practice provided always that where there is a conflict between the Contractor's obligations under Clause 42.3.1 and this Clause 42.3.4 (*Contractor Obligations*) the Contractor shall notify the Authority in accordance with the notification provisions in Def Stan 05-138 as soon as it becomes aware of the conflict and the Authority shall determine which standard or measure shall take precedence;
- 42.3.5 comply with all Cyber Security Instructions notified to it by the Authority as soon as reasonably practicable;
- 42.3.6 notify the JSyCC WARP in accordance with ISN 2017/03 as amended or updated from time to time and the Contractor's NSA/DSA, and in the case of a Sub-contractor also notify the Contractor, immediately in writing as soon as they know or believe that a Cyber Security Incident has or may have taken place providing initial details of the circumstances of the incident and any mitigation measures already taken or intended to be taken, and providing further information in phases, as full details become available;
- 42.3.7 in coordination with their NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the Authority and its agents and representatives to take all steps to mitigate the impact of the Cyber Security Incident and minimise the likelihood of any further similar Cyber Security Incidents. For the avoidance of doubt, this shall include complying with any reasonable technical or organisational security measures deemed appropriate by the Authority and the Contractor's NSA/DSA in the circumstances and taking into account the Cyber Risk Profile; and
- 42.3.8 consent to the Authority recording and using information obtained via the Supplier Cyber Protection Service in relation to this Contract for the purposes of the Cyber Security Model which shall include any agreed Cyber Implementation Plan. For the avoidance of doubt such information shall include the cyber security accreditation of the Contractor and/or Sub-contractor as appropriate; and

- 42.3.9 include provisions equivalent to those set out in the Annex to DEFCON 658 (*Cyber Provisions to be included in relevant Sub-contracts*) (Edition 09/21) (the “**equivalent provisions**”) in all relevant Sub-contracts.

Management of Sub-Contractors

42.4

- 42.4.1 Provided that it is reasonable in all the circumstances to do so, the Authority agrees that the Contractor shall be entitled to rely on the self-certification by the Sub-contractor of its compliance with this Clause 42 (*Cyber*) in accordance with Clause 42.3.1 (*Contractor Obligations*).
- 42.4.2 Where a Sub-contractor notifies the Contractor that it cannot comply with the requirements of Def Stan 05-138, the Contractor shall require a Sub-contractor to prepare and implement a Cyber Implementation Plan in accordance with Good Industry Practice taking account of any risk-balance case and any mitigation measures required by the Contractor and shall ensure that any measures taken to protect MOD Identifiable Information are no less stringent than those taken to protect the proprietary information of the Sub-contractor. Where the Contractor has reasonably relied on the Sub-contractor's self-certification and the Sub-contractor is subsequently found to be in breach of its obligations, the Contractor shall not be in breach of this Clause 42 (*Cyber*).
- 42.4.3 The Contractor shall, and shall require its Sub-contractors to, include provisions equivalent to those set out in the Annex to DEFCON 658 (*Cyber Provisions to be included in relevant Sub-contracts*) (Edition 09/21) in all relevant Sub-contracts and shall notify the Authority in the event that it becomes aware of any material breach of the provisions set out in the Annex to DEFCON 658 (*Cyber Provisions to be included in relevant Sub-contracts*) (Edition 09/21) by its Sub-contractor.

Records

42.5

- 42.5.1 The Contractor shall keep and maintain, and shall ensure that any Sub-contractor shall keep and maintain, until six (6) years after the end of the Contract Period or final payment under this Contract, or as long a period as may be agreed between the Parties, full and accurate records including but not limited to:
- (i) copies of all documents required to demonstrate compliance with Def Stan 05-138 and this Clause 42 (*Cyber*), including but not limited to any information used to inform the CSM Risk Assessment Process and to carry out the CSM Supplier Assurance Questionnaire, together with any certificates issued to the Contractor and/or Sub-contractor; and

- (ii) copies of all documents demonstrating compliance with Clause 42.3.5 and in relation to any notifications made under Clause 42.3.6 and/or investigation under Clause 42.3.7 (*Contractor Obligations*).

42.5.2 The Contractor shall, and shall ensure that any Sub-contractor shall, on request provide the Authority, the Authority's Representatives and/or the Contractor's NSA/DSA such access to those records under Clause 42.5.1 (*Records*) as may be required in connection with this Contract.

Audit

42.6

42.6.1 In the event of a Cyber Security Incident the Contractor agrees that the Authority and its representatives, in coordination with the Contractor's NSA/DSA, may conduct such audits as are required to establish:

- (i) the cause of the Cyber Security Incident;
- (ii) the impact of the Cyber Security Incident;
- (iii) the MOD Identifiable Information affected, and
- (iv) the work carried out by the Contractor to resolve the Cyber Security Incident and to mitigate the effects,

to ensure that the Cyber Security Incident is resolved to the satisfaction of the Authority and the NSA/DSA.

42.6.2 In addition to the rights in Clause 42.6.1, the Authority or its representatives and/or the Contractor's NSA/DSA, either solely or in any combination, may at any time during a period of six (6) years after termination of the Contract or the end of the Contract Period or final payment under the Contract whichever is the later, but not more than once in any calendar year, conduct an audit for the following purposes where the Contractor continues to hold MOD Identifiable Information:

- (i) to review and verify the integrity, confidentiality and security of any MOD Identifiable Information; and
- (ii) to review the Contractor's and/or any Sub-contractor's compliance with their obligations under Def Stan 05-138 or a Cyber Implementation Plan; and
- (iii) to review any records created during the provision of the Contractor Deliverables, including but not limited to any documents, reports and minutes which refer or relate to the Contractor Deliverables for the purposes of Clause 42.5.1 and 42.5.2 (*Records*).

- 42.6.3 The Authority, acting reasonably and having regard to the confidentiality and security obligations owed by the Contractor to Third Parties, shall propose the scope of each audit in writing with a view to seeking the agreement of the Contractor but shall make the ultimate decision on the scope. For the avoidance of doubt the scope of the audit shall not grant the Authority any unsupervised access to any of the Contractor's information systems or electronic communications networks. The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor and/or Sub-contractor or delay the provision of the Contractor Deliverables and supplier information received by the Authority in connection with the audit shall be treated as confidential information.
- 42.6.4 The Contractor shall, and shall ensure that any Sub-contractor shall, on demand provide the Authority and any relevant regulatory body, including the Contractor's NSA/DSA, (and/or their agents or representatives), together the "**Auditors**", with all reasonable co-operation and assistance in relation to each audit, including but not limited to:
- (i) all information requested by the Authority within the permitted scope of the audit;
 - (ii) reasonable access to any Sites controlled by the Contractor or any Associated Company used in the performance of the Contract to the extent required within the permitted scope of the audit and, where such Sites are outwith the control of the Contractor, shall secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and
 - (iii) access to any relevant staff.
- 42.6.5 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) calendar days' notice of its intention to conduct an audit.
- 42.6.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 42 (*Cyber*), unless the audit identifies a material breach of the terms of this 42 (*Cyber*) by the Contractor in which case the Contractor shall reimburse the Authority for all the Authority's reasonable costs incurred (which shall be evidence to the Contractor) in the course of the audit.
- 42.6.7 The Contractor shall in their Sub-contracts procure rights for the Authority to enforce the terms of this Clause 42.6 (*Audit*) in accordance with the Contracts (Rights of Third Parties) Act 1999.

General

42.7

- 42.7.1 On termination or expiry of this Contract the provisions of this Clause 42 (*Cyber*) excepting Clause 42.3.2 and Clause 42.3.3 (*Contractor Obligations*) shall continue in force so long as the Contractor and/or and Sub-contractor holds any MOD Identifiable Information relating to this Contract.
- 42.7.2 Without prejudice to Clause 82.1.1 (*Continuing Obligations*), termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Clause 42 (*Cyber*) that have accrued up to the date of termination or expiry, including but not limited to the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination or expiry.
- 42.7.3 The Contractor agrees that the Authority has absolute discretion to determine changes to Def Stan 05-138 or the Cyber Risk Profile or both and issue new or updated Cyber Security Instructions. In the event that there is such a change to Def Stan 05-138 or the Cyber Risk Profile or both, then either Party may seek an adjustment to the Contract Price for any associated increase or decrease in costs and the Contractor may request an extension of time for compliance with such revised or amended Def Stan 05-138 or Cyber Risk Profile or both provided always that the Contractor shall seek to mitigate the impact on time and cost to the extent which it is reasonably practicable to do so and further provided that such costs shall not be allowed unless they are considered to be appropriate, attributable to the Contract and reasonable in all the circumstances.
- 42.7.4 Subject to Clause 42.7.3, where the Contractor seeks such adjustment or extension, the provisions of Schedule 11 (*Change Procedure*) shall apply to determine the request for adjustment or extension, provided always that:
- (i) notwithstanding paragraph 5.1 (*Contractor's Estimate*) of Schedule 11 (*Change Procedure*), the Contractor shall deliver an Estimate to the Authority within eight (8) weeks of the occurrence of the change in Def Stan 05-138 or Cyber Risk Profile or both (or such longer period as may be agreed by the Parties), and such Estimate shall, without prejudice to paragraph 5.2 (*Contractor's Estimate*) of Schedule 11 (*Change Procedure*), identify the impact of that change and accompanied by full details of the request for adjustment (and for the purposes of Schedule 11 (*Change Procedure*) the notice given by the Authority pursuant to Clause 42.7.3 (*General*) of the changes to Def Stan 05-138 or Cyber Risk Profile or both shall be deemed to be an Authority Change Notice and the request for such proposed changes shall be deemed to be the Authority Change the subject of such Authority Change Notice);
 - (ii) the Contractor shall not be entitled to refuse the proposed Authority Change pursuant to paragraph 3.3 (*Right to propose Authority Changes*) of Schedule 11 (*Change Procedure*) insofar as it relates to Def Stan 05-138 or Cyber Risk Profile or both whether

or not the Contractor Estimate is rejected. If the Contractor does not agree with the Authority's determination, then the provisions of the Dispute Resolution Procedure shall apply.

- 42.7.5 The Contractor shall not recover any costs and/or other Losses under or in connection with this Clause 42 (*Cyber*) where such costs and/or other Losses are recoverable or have been recovered by the Contractor elsewhere in this Contract or otherwise. For the avoidance of doubt this shall include but not be limited to the cost of implementing any upgrades or changes to any information system or electronic communications network whether in response to a Cyber Security Incident or otherwise, where the Contractor is able to or has recovered such sums in any other provision of this Contract or has recovered such costs and/or Losses in other contracts between the Contractor and the Authority or with other bodies.

PART 7 - INTELLECTUAL PROPERTY RIGHTS

43 Intellectual Property Rights

- 43.1 The Parties shall comply with their respective rights and obligations in this Clause 43 (*Intellectual Property Rights*), Clause 44 (*Authorisation by the Crown for use of Third Party Intellectual Property Rights*) and Schedule 14 (*IPR*).

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

- 44.1 Notwithstanding any other provisions of the Contract and for the avoidance of doubt, award of the Contract by the Authority and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Contractor acknowledges that any such authorisation by the Authority under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved.

PART 8 - SECURITY PROVISIONS

45 Security – Secret Matters

- 45.1 In this Clause 45 (*Security – Secret Matters*):
- 45.1.1 “**Secret Matter**” means any matter connected with this Contract, or its performance which is designated by the Authority in the Security Aspects Letter 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;
- 45.1.2 “**Employee**” shall include any person who is an employee or director of the Contractor or who occupies the position of a director of the Contractor, by whatever title given; and

- 45.1.3 **“GovS 007: Security”** means the Government Functional Standard GovS: Security relating to the government’s expectations for protecting:
- (i) the government’s people, information and assets;
 - (ii) visitors to government property and Third Party suppliers while engaged on government business; and
 - (iii) citizen data.

Official Secrets Acts

45.2 The Contractor shall:

- 45.2.1 take all reasonable steps to make sure that all Employees engaged on any work in connection with this Contract have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the completion or termination of this Contract;
- 45.2.2 if directed by the Authority, make sure that any such Employees shall sign a statement acknowledging that, both during the term of this Contract and after its completion or termination, it is bound by the Official Secrets Acts 1911-1989 (and where applicable by any other legislation); and
- 45.2.3 make sure that any such Employees are aware that all provisions of the Security Aspects Letter and any other statutory provisions and/or guidance provided by the Authority to the Contractor from time to time, apply to such Employees and will continue so to apply after the completion or termination of this Contract.

Security measures

- 45.3 Unless it has the written authorisation of the Authority to do otherwise, neither the Contractor nor any of its Employees shall, either before or after the completion or termination of this Contract, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:
- 45.3.1 who is not a British citizen;
 - 45.3.2 who does not hold the appropriate authority for access to the protected matter;
 - 45.3.3 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;
 - 45.3.4 who is not an Employee of the Contractor; or
 - 45.3.5 who is an Employee of the Contractor and has no need to know the information for the proper performance of this Contract.

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

45.4.1 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 this Contract; and

45.4.2 any Secret Matter is at all times strictly safeguarded in accordance with the GovS 007: Security (as amended from time to time) and, upon request, is delivered up to the Authority who shall be entitled to retain it.

A decision of the Authority on the question of whether the Contractor has taken or is taking reasonable steps as required by this Clause 45 (*Security – Secret Matters*) shall be final and conclusive.

45.5 The Contractor shall:

45.5.1 provide to the Authority:

(i) upon request, such records giving particulars of those Employees who have had, at any time, access to any Secret Matter that is required to be kept in accordance with Clause 45.4.2 (*Security – Secret Matters*);

(ii) upon request, such information as the Authority may from time to time require so as to be satisfied that the Contractor and its Employees are complying with its obligations under this Clause 45 (*Security – Secret Matters*), including the measures taken or proposed by the Contractor so as to comply with its obligations and to prevent any breach of them; and

(iii) full particulars of any failure by the Contractor and its Employees to comply with any obligations relating to any Secret Matter arising under this Clause 45 (*Security – Secret Matters*) immediately upon such failure becoming apparent; and

45.5.2 ensure that, for the purpose of checking the Contractor's compliance with the obligation in Clause 45.4.2 (*Security – Secret Matters*), a representative of the Authority shall be entitled at any time to enter and inspect any premises used by the Contractor which are in any way connected with this Contract and inspect any document or thing in any such premises, which is being used or made for the purposes of this Contract. Such representative shall be entitled to all such information as it may reasonably require.

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

Sub-Contracts

- 45.7 If the Contractor proposes to make a Sub-Contract which will involve the disclosure of Secret Matter to the Sub-Contractor, the Contractor shall:
- 45.7.1 submit for approval of the Authority the name of the proposed Sub-Contractor, a statement of the work to be carried out and any other details known to the Contractor which the Authority shall reasonably require;
 - 45.7.2 incorporate into the Sub-Contract the terms of the Appendix to DEFCON 659A (*Security Measures*) (Edition 09/21) and such secrecy and security obligations as the Authority shall direct. In the appendix "Agreement" shall mean the "Sub-Contract", "First Party" shall mean "the Contractor" and "Second Party" shall mean the "Sub-Contractor"; and
 - 45.7.3 inform the Authority immediately if it becomes aware of any breach by the Sub-Contractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the Sub-Contract.

Termination

- 45.8 The Authority shall be entitled to terminate this Contract immediately if:
- 45.8.1 the Contractor is in breach of any obligation under this Clause 45 (*Security – Secret Matters*); or
 - 45.8.2 the Contractor is in breach of any secrecy or security obligation imposed by any other contract with the Crown,

where the Authority considers that the circumstances of the breach jeopardise the secrecy or security of the Secret Matter and claim such damages as may have been sustained as a result of the Contractor's breach of this Clause 45 (*Security – Secret Matters*).

Acknowledgement by the Contractor

- 45.9 By entering into this Contract, the Contractor confirms that:
- 45.9.1 it has received the Security Aspects Letter;
 - 45.9.2 the Secret Matter has been brought to the attention of the person directly responsible for the security of this Contract;
 - 45.9.3 the nature and details of the Secret Matter are understood; and
 - 45.9.4 measures will be taken to safeguard the Secret Matter in accordance with the requirements of this Clause 45 (*Security – Secret Matters*).

Submission of security information

- 45.10 The Contractor shall submit all information required to be submitted under this Clause 45 (*Security – Secret Matters*) to:

Directorate of Defence Security
Scientific, Technical and Industrial Security
6th Floor, Zone D
Main Building
Whitehall
SW1A 2HB

or such other address as may be notified in writing by the Authority to the Contractor from time to time.

46 Personnel Security

- 46.1 Without prejudice to the provisions of Clauses 46.2 and 46.3 (*Personnel Security*), if the Authority considers that any of the Employees are for any reason unsatisfactory to the Authority, it may:

46.1.1 refuse admission to the relevant person(s) to the Authority Site and/or any Other Contractor's Premises; and/or

46.1.2 direct the Contractor to end the involvement of the relevant person(s) in the provision of the Contractor Deliverables,

and the Contractor shall replace and/or procure the replacement of any such Employees as soon as reasonably practicable, whilst ensuring that any Key Role is not vacant for a period exceeding ten (10) Business Days.

- 46.2 The Contractor shall ensure and/or procure that the Employees comply with all reasonable requirements of the Authority and/or Other Contractor (as the case may be) concerning conduct at Authority Sites and/or any Other Contractor's Premises and make themselves familiar with and at all times shall conduct themselves in accordance with any rules and regulations as issued from time to time by the Authority in relation to the relevant Authority Site and/or by the Authority and/or any Other Contractor in relation to any Other Contractor's Premises.

- 46.3 The Authority reserves the right to refuse access to, or remove anyone from, any Authority Site and/or any Other Contractor's Premises who fails to comply with the applicable rules and regulations.

- 46.4 Should an Employee be refused access to, or be removed from an Authority Site and/or any Other Contractor's Premises for failure to comply with applicable rules and regulations, the Contractor shall not be relieved from its obligations to provide the Contractor Deliverables in full.

Security clearance

- 46.5 The Contractor shall be responsible for ensuring that each Employee holds and maintains a valid security clearance up to and including "Secret" level at all times during their employment or engagement in connection with this Contract.

Admission to Authority Sites

- 46.6 The Contractor shall provide the Authority with details of each Employee and any other details the Authority may require, together with details of the Authority Site to which access is required and the capacity in which such person is concerned with the provision of the Contractor Deliverables.
- 46.7 The Authority shall in respect of any access required to an Authority Site, issue a pass for all Employees who are security cleared to an appropriate level for the Authority Site pursuant to Clause 46.5 (*Security clearance*) on or before such person is intended to enter onto an Authority Site in connection with the provision of the Contractor Deliverables. Passes shall remain the property of the Authority and the Contractor shall ensure that passes shall be surrendered on demand or on termination or expiry of this Contract.
- 46.8 A person not in possession of a pass who is required by the Contractor or any Sub-Contractor to attend an Authority Site to provide emergency reactive services shall be allowed temporary admission to the Authority Site provided that the Contractor shall, or shall procure that any Sub-Contractor shall, ensure that such individual is accompanied at all times whilst on the Authority Site by a member of the Contractor or Sub-Contractor's staff who has been issued with a pass pursuant to Clause 46.5 (*Security clearance*).
- 46.9 Whilst engaged at the Authority's Sites, the Contractor shall, and shall procure that any Sub-Contractor shall, ensure that all Employees and other accompanied emergency reactive workers pursuant to Clause 46.8 (*Admission to Authority Sites*) comply with the Authority's policies as notified to the Contractor from time to time relating to the conduct of staff and security arrangements.
- 46.10 Notwithstanding the provisions of Clauses 46.6 to 46.9 (inclusive) (*Admission to Authority Sites*), the Authority may refuse any person admission to an Authority Site or require the removal of any person from an Authority Site:
- 46.10.1 if such person is not in possession of a pass pursuant to Clause 46.7 (*Admission to Authority Sites*) or is not an accompanied emergency reactive worker pursuant to Clause 46.8 (*Admission to Authority Sites*); and/or
 - 46.10.2 if such person, in the Authority's opinion, represents a risk to themselves and/or an Authority Related Party and/or any other Third Party and/or property and the Authority has given written notice to the Contractor's Representative to this effect; and/or
 - 46.10.3 if the Authority has reasonable grounds for considering that the presence or conduct of such person at the Authority Site is undesirable and the Authority has given written notice to the Contractor's Representative to this effect; and/or
 - 46.10.4 for any other reason.

46.11 The Authority's decision on any matter arising under Clause 46.10 (*Admission to Authority Sites*) shall be final and conclusive.

46.12 Where a person is refused admission:

46.12.1 to an Authority Site or is removed from an Authority Site pursuant to Clauses 46.10.1 to 46.10.3 (inclusive) (*Admission to Authority Sites*), then the Contractor shall not be relieved from its obligations to provide the Contractor Deliverables in full; or

46.12.2 to an Authority Site or is removed from an Authority Site pursuant to Clause 46.10.4 (*Admission to Authority Sites*), then the Authority shall give the Contractor such relief from its obligations in respect of those Contractor Deliverables in which such person is or would have been engaged for a reasonable period to allow the Contractor or any Sub-Contractor to make alternative arrangements to replace the person whose admission has been refused or whose removal has been required by the Authority.

47 Co-operation for Security Investigation

47.1 The Contractor shall, and shall procure that each Sub-Contractor shall, notify the Authority's Representative immediately it becomes aware that an Employee or an accompanied emergency reactive worker pursuant to Clause 46.8 (*Admission to Authority Sites*) has breached Clause 45 (*Security – Secret Matters*) and/or Clause 46 (*Personnel Security*).

47.2 The Contractor shall, and shall procure that its Sub-Contractors shall, give reasonable assistance to the Authority's Representative and/or any other representative or adviser of the Authority for the purposes of carrying out any investigation that the Authority undertakes (acting reasonably).

PART 9 - SITE ISSUES

48 Authority Sites

The Contractor's rights over Authority Sites

48.1 During the Contract Period, the Authority shall, in the case of Authority Sites, afford the following rights to the Contractor and Contractor Related Parties solely for the purpose of the provision of the Contractor Deliverables:

48.1.1 a non-exclusive licence to enter and remain upon those parts of the Authority Sites that the Contractor and/or any Contractor Related Party requires access to; and

48.1.2 such non-exclusive rights of access to and egress from the Authority Sites as are necessary for the Contractor and/or Contractor Related Parties to perform their obligations and exercise their rights under this Contract or their relevant contracts and in particular for the purposes of providing the Contractor Deliverables, provided that such routes may be varied by the

Authority to such alternative routes as the Authority may reasonably specify from time to time if such variation does not have a material adverse effect on the provision of the Contractor Deliverables; and

- 48.1.3 use of services and utilities including water, waste water, gas, electricity, telephone and other services serving the Authority Sites as specified in Schedule 7 (*Authority Obligations*) as may be reasonably required by the Contractor and/or any Contractor Related Party,

provided that:

- (i) the rights shall not in any circumstances entitle the Contractor or any Contractor Related Party to exclusive occupancy or exclusive possession of any part of the Authority Sites (save as may be required by the Contractor and approved by the Authority and/or Other Contractor in order to comply with relevant health and safety legislation on a temporary basis); and
- (ii) the Contractor and Contractor Related Parties do not cause any material disruption to the operations or activities carried out by:
 - (A) the Authority on or at the Authority Sites or any of the Authority's legal duties or other functions; and/or
 - (B) any Third Party on or at the Authority's Sites or any such Third Party's legal duties or other functions.

The Contractor's Conduct on Authority Sites

- 48.2 The Contractor shall ensure, and/or shall procure, that in providing the Contractor Deliverables at the Authority Sites and/or any Other Contractor's Premises (as the case may be) it and/or any Contractor Related Party shall:

- 48.2.1 not act or omit to act in any way which shall give rise to a right for any person to obtain title to or any right or interest over an Authority Site and/or any Other Contractor's Premises (as the case may be) or any part of any of them (save in accordance with the terms of this Contract);
- 48.2.2 not use or occupy the Authority Sites and/or any Other Contractor's Premises (as the case may be) for any purpose other than the provision of the Contractor Deliverables and only to the extent that such Contractor Deliverables are required to be performed at such Authority Site and/or Other Contractor's Premises;
- 48.2.3 not deposit or manufacture on the Authority Sites and/or any Other Contractor's Premises (as the case may be) any materials which are not required for the provision of the Contractor Deliverables and, in the case of materials which are required for the provision of the Contractor Deliverables, shall only deposit or manufacture such materials at such Authority Site and/or Other Contractor's Premises to the extent that such part of the Contractor Deliverables to which such materials are being

deposited or manufactured are required to be performed at such Authority Site and/or Other Contractor's Premises;

- 48.2.4 not store materials or park vehicles in the immediate external vicinity of the boundaries of the Authority Sites and/or any Other Contractor's Premises (as the case may be) other than for reasonable periods necessary for loading and unloading;
- 48.2.5 not discharge any oil, grease or deleterious, dangerous, poisonous, explosive or radioactive matter from the Authority Sites and/or any Other Contractor's Premises (as the case may be) into any rivers or any ditches or conduits on such Authority Sites and/or Other Contractor's Premises (as the case may be) and/or any Adjoining Property and not permit or suffer the blockage of any of such rivers, ditches and conduits by reason of anything done or omitted on such Authority Sites and/or Other Contractor's Premises (as the case may be) by the Contractor or Contractor Related Parties, and shall, subject to the Authority's obligations in Schedule 7 (*Authority Obligations*), comply at the Contractor's expense with any requirements of the Environment Agency or any other Relevant Authority which are required to remedy the breach of this Clause 48.2.5 (*The Contractor's conduct on Authority Sites*). The Authority shall in the case of the Authority Sites allow and in the case of any Other Contractor's Premises, and to the extent applicable, use reasonable endeavours to procure the Contractor access to environmental systems for inspection to confirm they meet the necessary standards;
- 48.2.6 procure that those parts of the Authority Site and/or any Other Contractor's Premises (as the case may be) which are from time to time occupied by the Contractor and/or Contractor Related Parties for the purpose of carrying out the provision of the Contractor Deliverables (and only to the extent that such Contractor Deliverables are required to be performed at such Authority Site and/or Other Contractor's Premises) are maintained in a clean and tidy state so far as practicable having regard to the nature of the Contractor Deliverables and at the end or sooner determination of this Contract the Authority Sites are handed back in no worse condition than they are in at the Effective Date ; and
- 48.2.7 not without the written consent of the Authority's Representative erect any temporary structure.

49 Contractor's Presence at the Centre

- 49.1 The facilities at the Centre or any part of it shall be made available to the Contractor under:¹⁷
 - 49.1.1 a licence to occupy in accordance with Clause 49.2; or
 - 49.1.2 at the Authority's election, a lease in the form reasonably required by the Authority.

¹⁷ To be reviewed and developed when Tenderers' proposals are received as to space required for e.g. storage.

49.2 Where the Authority determines that facilities will be made available to the Contractor under licence in accordance with Clause 49.1, the Authority shall grant (by this Contract) to the Contractor a non-exclusive right to occupy the facilities on the Centre (the "**Licensed Facilities**") during the Contract Period solely for the purposes of providing the Contractor Deliverables (and not, for the avoidance of doubt, for any other purpose) in common with the Authority and all others authorised by the Authority and, without prejudice to Clause 48 (*Authority Sites and/or Other Contractor's Premises*), on the following terms:

49.2.1 the Contractor shall:

- (i) use the Licensed Facilities solely for the purposes of performing the Contractor Deliverables (and not, for the avoidance of doubt, for any other purpose) and shall not use the Licensed Facilities for carrying out any other aspect of the Contractor's business;
- (ii) not apply for, or implement, any planning permission relating to the Licensed Facilities;
- (iii) within fourteen (14) days of receipt (or sooner if necessary) produce to the Authority a certified copy of any notice, order, permission or proposal affecting the Licensed Facilities, and, without delay, take all necessary steps to comply with any such notice, direction or order (notwithstanding that the same may not be enforceable against a Crown body) but only insofar as relating to the use by the Contractor of the Licensed Facilities and, at the request and cost of the Authority, to make or join with the Authority in making such objections or representations in respect of it as the Authority may reasonably require;
- (iv) not cause any damage to the Licensed Facilities or Conduits or overload them;
- (v) comply at all times with any instructions from the Authority's Representative and any authorised staff;
- (vi) not hold any auction or public exhibition or political meeting, or use the Licensed Facilities for any illegal or immoral use;
- (vii) not, without the prior written consent of the Authority (which consent may be withheld at the absolute discretion of the Authority or may be granted subject to such conditions as the Authority in its absolute discretion may impose), use the Licensed Facilities or any part thereof for any purposes that will permit members of the public to have access to the Licensed Facilities;
- (viii) use only approved radio frequencies or other approved systems of communication which have been approved for use by the Authority's Representative (such approval not to be unreasonably withheld or delayed) and so as not to cause any interference with the Authority's communication network;

- (ix) observe all regulations made by the Authority from time to time in accordance with the principles of good estate management and notified to the Contractor relating to the use of the Licensed Facilities;
- (x) permit the Authority or its servants and agents, for reasons of security, to search any vehicles, containers and other premises owned by the Contractor, or in its custody or control, or belonging to or in the custody of the Contractor's servants or agents, entering or on the Licensed Facilities;
- (xi) ensure that electricity, gas, heating fuel, water, sewage, telecommunications, data and other services and utilities are not used improperly by the Contractor and are used responsibly for the purposes of this Contract, and the Contractor will not dispose of any oil or deleterious matter into any Conduits likely to cause a blockage or to exceed the capacity of such systems;
- (xii) comply with all Law relating to:
 - (A) the Licensed Facilities and the occupation and use of the Licensed Facilities by the Contractor;
 - (B) the use of all service media and machinery and equipment at or serving the Licensed Facilities;
 - (C) any works carried out at the Licensed Facilities; and
 - (D) all materials kept at or disposed from the Licensed Facilities;
- (xiii) not:
 - (A) permit firearms or weapons to be taken on to the Licensed Facilities by the Personnel;
 - (B) (other than with the express prior written consent of the Authority's Representative) take (or permit to be taken) dogs (except working dogs assisting disabled staff or visitors) on to the Licensed Facilities;
 - (C) affix or permit to be affixed any wireless or television aerial brackets stays or ancillary wiring on or to the exterior of the Licensed Facilities until written approval has been given by the Authority's Representative and then only in accordance with any conditions it may impose;
 - (D) take or allow to be taken any photographs of or within the Licensed Facilities; or

- (xiv) erect any pole or mast (whether in connection with telegraphic, telephonic, radio or television communication or otherwise) or other matter or thing upon the Licensed Facilities;

49.2.2 the Contractor acknowledges that:

- (i) it will occupy the facilities at the Licensed Facilities (or any part thereof) as a licensee and that no relationship of landlord and tenant is created between the Authority and the Contractor pursuant to this Contract;
- (ii) the Authority retains control, possession and management of the Licensed Facilities during the Contract Period and the Contractor has no right to exclude the Authority from the Licensed Facilities;
- (iii) nothing in the licence to occupy granted by this Contract shall impose or be deemed to impose any restriction on the use by the Authority of any other part of the Licensed Facilities or any neighbouring premises, provided always that the Authority shall not carry on, or permit to be carried on in any part of the Affected Property or neighbouring premises, any activities which are inconsistent with the performance by the Contractor of its rights and obligations under this Contract;
- (iv) the licence to occupy granted by this Contract is personal to the Contractor and is not assignable and/or transferrable and the right given in this Clause 49 (*Contractor's Presence at the Centre*) may only be exercised by the Contractor and any Sub-Contractor (to the extent only that the exercise of such right by any Sub-Contractor is necessary solely for the provision of the service); and
- (v) the Authority shall be entitled at any time during the Contract Period on giving reasonable notice to require the Contractor to transfer to comparable space and the Contractor shall comply with such requirement. The Authority shall submit such a requirement in accordance with the Change Procedure and any additional costs associated with such a transfer by the Contractor will be agreed in accordance with the Change Procedure;
- (vi) the Contractor shall not have or make any claim against the Crown or the Authority in respect of any personal injury (including without prejudice to the generality of the foregoing injury resulting in death) or loss of or damage to the Licensed Facilities which may be suffered by the Contractor in the exercise of the user permitted by the licence to occupy or any rights granted by the licence to occupy whatever the cause of such loss damage or injury may be; and

49.2.3 notwithstanding anything to the contrary in this Contract, the licence to occupy granted by this Contract shall terminate on the earlier of:

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

provided that where such licence is terminated under Clause 49.2.3(ii), the termination shall become effective upon the service of notice in writing on the Contractor by the Authority.

49.3 Except as otherwise stated in this Contract or in any licence granted pursuant to Clause 49.2:

49.3.1 any land or premises (including compound and temporary buildings) made available to the Contractor by the Authority in connection with this Contract will be made available to the Contractor free of charge;

49.3.2 use by the Contractor of services and utilities including water, waste water, gas, electricity, heating fuel and other services serving the Licensed Facilities will be free of charge,

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

49.4 Without prejudice to the provisions of Clause 63 (*Issued Property*) and Clause 64 (*Accounting for the Property of the Employer*), the Contractor shall, except as otherwise provided for in this Contract, make good or, at the option of the Authority, pay compensation for all damage occurring to the property of the Authority (as defined in Clause 64.2 (*Accounting for the Property of the Employer*)) and/or any other Authority or HM Government land and buildings occasioned by the Contractor or any Contractor Related Party, arising from its or their presence on such property in connection with this Contract.

50 The Contractor's Property and Personnel at Government Establishments

Liability in respect of damage to Government and Third Party property

50.1 Without prejudice to the provisions of Clause 63 (*Issued Property*) and of Clause 65 (*Loss of or Damage to Articles*), the Contractor shall, except as otherwise provided for in this Contract, make good or, at the option of the Authority, pay compensation for all damage occurring to any Government and/or Third Party property (which includes land or buildings), occasioned by the Contractor, or by any Contractor's Representative or Contractor Related Party, arising from his or their presence on a Government Establishment in connection with this Contract, provided that this Clause 50.1 (*Liability in respect of damage to Government and Third Party property*) shall not apply to the extent that the Contractor is able to show that any such damage was not caused or contributed to by any circumstances within its reasonable control.

- 50.2 The total liability of the Contractor under Clause 50.1 shall be subject to any limitation specified in this Contract.

The Contractor's property

- 50.3 All property of the Contractor and Contractor Related Parties shall be at the risk of the Contractor whilst it is on any Government Establishment and the Authority shall accept no liability for any Loss or damage howsoever occurring to or caused by such property, except where any such Loss or damage occurred on a Government Establishment and such Loss or damage was caused or contributed to by any act, neglect or default of any Authority servant, agent or contractor then the Authority shall accept liability for such Loss or damage to the extent to which such Loss or damage is so caused or contributed to by such Authority servant, agent or contractor.

Transport overseas

- 50.4 Where the Contractor's representatives are required by this Contract to join or visit a Government Establishment overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) may be provided by the Authority by Royal Air Force or by Authority chartered aircraft. The Contractor shall make such arrangements through the Authority's Representative. When such transport is not available within a reasonable time, the Contractor shall make his own transport arrangements. The Authority shall reimburse the Contractor's costs for such transport provided that any claim for transport shall be in accordance with the actual limits listed in the Ministry of Defence Statement of Civilian Personnel Policy as amended from time to time and on presentation of evidence supporting the use of alternative transport and of the costs involved.

Medical treatment overseas

- 50.5 Out-patient medical treatment given to the Contractor's representatives by a medical officer at a Government Establishment overseas shall be free of charge. Treatment in an Authority hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Government Establishment, and transportation of the Contractor's representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Contractor at the appropriate local rate.

Injuries, disease and dangerous occurrences

- 50.6 The Contractor shall report any injury, disease or dangerous occurrence at any Government Establishment arising out of the performance of this Contract, which is required to be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 ("**RIDDOR**") to the Officer in Charge of the relevant Government Establishment. This would be in addition to any report, which the Contractor may be required to submit under RIDDOR to the relevant enforcing authority (e.g. Health and Safety Executive or Local Authority).

Dependants of Contractor's Representatives

- 50.7 No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Contractor's representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Authority rates.

Provision of funds overseas

- 50.8 The Contractor shall, wherever possible, arrange for funds to be provided to its representatives overseas through normal banking channels (e.g. by travellers cheques). If banking or other suitable facilities are not available, the Authority shall, upon request by the Contractor and subject to any reasonable limitation required by the Contractor, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made by the Government Establishment to which the Contractor's representatives are attached. All such advances made by the Authority shall be recovered from the Contractor.

Health and safety hazard control

- 50.9 Without prejudice to the Contractor's obligations under Clause 58 (*Supply of Hazard Data*), where the Contractor enters a Government Establishment for the purpose of providing the whole or any part of the Contractor Deliverables:

- 50.9.1 the Contractor shall notify the officer in charge or the site project liaison officer or overseeing officer or other person nominated by the Authority and/or Other Contractor (as the case may be) of:

- (i) any health and safety hazards associated with the delivery of that part of the Contractor Deliverable to be provided by it or Contractor Related Party;
- (ii) any foreseeable risks to the health and safety of all persons associated with such hazards; and
- (iii) any precautions to be taken by it as well as any precautions which, in its opinion, ought to be taken by the Authority or other person, in order to control such risks;

- 50.9.2 the Authority shall notify the Contractor of:

- (i) any health and safety hazards which may be encountered by the Contractor or any Contractor Related Party on the Government Establishment;
- (ii) any foreseeable risks to the health and safety of the Contractor or any Contractor Related Party, associated with such hazards; and
- (iii) any precautions to be taken by the Authority and/or any Third Party as well as any precautions which, in its opinion, ought to be taken by the Contractor, in order to control such risks;

- 50.9.3 the Contractor shall notify the Contractor Related Parties of and, where appropriate, provide adequate instruction in relation to:
- (i) the hazards, risks and precautions notified by it to the Authority under Clause 50.9.1 (*Health and safety hazard control*);
 - (ii) the hazards, risks and precautions notified by the Authority to the Contractor under Clause 50.9.2 (*Health and safety hazard control*); and
 - (iii) the precautions which, in its opinion, ought to be taken by the Contractor Related Parties in order to control those risks;
- 50.9.4 the Contractor shall provide the officer in charge or the site project liaison officer or overseeing officer nominated in this Contract with:
- (i) copies of those sections of its own and, where appropriate, Contractor Related Party's safety policies which are relevant to the risks notified under Clause 50.9.1 (*Health and safety hazard control*);
 - (ii) copies of any related risk assessments; and
 - (iii) copies of any notifications and instructions issued by it to any Contractor Related Party under Clause 50.9.3 (*Health and safety hazard control*);
- 50.9.5 the Authority shall provide the Contractor with:
- (i) copies of those sections of its own or (to the extent that the same are provided to the Authority) any Third Party's (as the case may be) safety policies which are relevant to the risks notified under Clause 50.9.2 (*Health and safety hazard control*);
 - (ii) copies of any related risk assessments; and
 - (iii) copies of any notifications and instructions issued by it to its employees similar to those called for from the Contractor under Clause 50.9.3 (*Health and safety hazard control*); and
- 50.9.6 where the Contractor identifies a health and safety hazard associated with services provided by the Authority under Schedule 7 (*Authority Obligations*), the Contractor shall notify the Authority of the hazard and the risk to the Contractor's or the Authority's personnel;
- (i) the Authority shall implement any urgent temporary actions agreed by the Parties to rectify the hazard within five (5) Business Days; and
 - (ii) the Authority shall implement permanent changes to rectify the hazard as soon as practicable but no later than three (3) months

from the notification in Clause 50.9.6 (*Health and safety hazard control*).

51 Access and facilities to be provided by the Contractor

- 51.1 The Contractor shall provide to the Authority and the representatives of the Authority, following reasonable notice, relevant accommodation/facilities, at no direct cost to the Authority, and all reasonable access to its premises for monitoring the Contractor's progress and quality standards in performing the Contractor Deliverables.
- 51.2 As far as reasonably practical, the Contractor shall ensure that the provisions of Clause 51.1 are included in its Sub-Contracts with those suppliers identified in this Contract. The Authority, through the Contractor, shall arrange access to such Sub-Contractors.

PART 10 - PEOPLE ISSUES

52 Transfer of Undertakings (Protection of Employment) (TUPE)

- 52.1 The Parties shall comply with their respective rights and obligations in Schedule 16 (*Transfer Regulations*).

53 Child Labour and Employment Law and Modern Slavery Act

- 53.1 The Contractor shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where this Contract is being performed.
- 53.2 The Contractor agrees to take reasonable efforts to reflect this Clause 53 (*Child Labour and Employment Law*) in any Sub-Contract that it enters into to satisfy the requirements of this Contract and to require its Sub-Contractors to reflect this Clause 53 (*Child Labour and Employment Law*) in their Sub-Contracts that they enter into to satisfy the requirements of this Contract.
- 53.3 The Authority has a zero-tolerance approach to modern slavery and human trafficking, and it is committed to acting ethically in its business dealings and relationships and to implement and enforce effective procedures and controls to prevent modern slavery and human trafficking in its business dealings and relationships. The Authority expects the same high standards from all its consultants, contractors, suppliers, employees and agents. The Contractor undertakes and warrants that it:
- 53.3.1 has not committed any offence under the Modern Slavery Act 2015;
- 53.3.2 has in place adequate procedures and controls to prevent modern slavery and human trafficking as contemplated by the Modern Slavery Act 2015; and
- 53.3.3 shall comply, and shall require its Sub-Contractors, suppliers, employees and agents to comply with the Modern Slavery Act and the Authority's

Anti-Slavery and Human Trafficking Policy entitled "Tackling Modern Slavery in Supply Chains".

53.4 The Contractor acknowledges and confirms that:

- 53.4.1 preventing modern slavery in public sector supply chains is likely to be most effective if done in co-operation with its contractors;
- 53.4.2 the Authority expects all of its suppliers to maintain high standards of integrity and professionalism in their business dealings, adhering to the laws of the countries in which they operate;
- 53.4.3 the Authority seeks to apply the ethos of the Modern Slavery Act 2015 across all of its procurements as best practice in order to prevent modern slavery in order for the Authority, the Contractor and its Sub-Contractors to avoid the taint of being associated with it.

54 Equality

- 54.1 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.
- 54.2 Without prejudice to the generality of the obligation in Clause 54.1 (*Equality*), the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent legislation in the country where this Contract is being performed.
- 54.3 The Contractor agrees to take reasonable efforts to secure the observance of the provisions of this Clause 54 (*Equality*) by any of its employees, agents or other persons acting under its direction or control who are engaged in the performance of this Contract.
- 54.4 The Contractor agrees to take reasonable efforts to reflect this Clause 54 (*Equality*) in any Sub-Contract that it enters into to satisfy the requirements of this Contract and to require its Sub-Contractors to reflect this Clause 54 (*Equality*) in their Sub-Contracts that they enter into to satisfy the requirements of this Contract.

PART 11 - ASSET RELATED PROVISIONS

55 Packaging (for Articles other than Munitions)

Definitions

- 55.1 For the purposes of this Clause 55 (*Packaging (for Articles other than Munitions)*):
 - 55.1.1 "**Packaging**" when used as a verb shall mean the preparation of Articles for transportation, storage and delivery in accordance with this Contract.

The term includes, as appropriate, cleaning and preservation processes, packing techniques and marking procedures.

- 55.1.2 **"Packaging"** when used as a noun shall mean the materials, and components, used for the preparation of the Articles for transportation, storage and delivery in accordance with this Contract.
- 55.1.3 **"Packaging Design Authority"** or **"PDA"** shall mean the organisation that is responsible for the design of the packaging, identified in Box 3 of DEFFORM 111.
- 55.1.4 **"Military Packager Approval Scheme"** or **"MPAS"** shall mean an Authority sponsored scheme to certify military Packaging designers and register organisations, as capable of producing acceptable Services Packaging Instruction Sheet (**"SPIS"**) designs in accordance with Defence Standard (Def Stan) 81-041 (Part 4).
- 55.1.5 **"Commercial Packaging"** shall mean commercial Packaging for military use as described in Def Stan 81-041 (Part 1).
- 55.1.6 **"Military Level Packaging"** or **"MLP"** shall mean Packaging that provides enhanced protection in accordance with Def Stan 81-041 (Part 1), beyond that which Commercial Packaging normally provides for the military supply chain.
- 55.1.7 **"Military Packaging Level"** or **"MPL"** shall have the meaning described in Def Stan 81-041 (Part 1).
- 55.1.8 **"Primary Packaging Quantity"** or **"PPQ"**, and Standard Family Specification (**"SFS"**) shall have the meaning as described in Def Stan 81-041 (Part 1).
- 55.1.9 **"Robust Articles"** shall mean Robust items as described in Def Stan 81-041 (Part 2).
- 55.1.10 **"Dangerous Goods"** shall mean those substances, preparations and articles that are capable of posing a risk to health, safety, property or the environment which are prohibited by regulation, or classified and authorised only under the conditions prescribed by the:
- (i) Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (**"CDG"**) (as amended 2011);
 - (ii) European Agreement Concerning the International Carriage of Dangerous Goods by Road (**"ADR"**);
 - (iii) Regulations Concerning the International Carriage of Dangerous Goods by Rail (**"RID"**);
 - (iv) International Maritime Dangerous Goods (**"IMDG"**) Code;

- (v) International Civil Aviation Organisation (“**ICAO**”) Technical Instructions for the Safe Transport of Dangerous Goods by Air; and
- (vi) International Air Transport Association (“**IATA**”) Dangerous Goods Regulations.

55.1.11 “**Safety Data Sheet**” shall have the meaning as defined in REACH.

Specifications for Packaging

- 55.2 General requirements for service Packaging, including details of UK and NATO MLP and Commercial Packaging descriptions, are contained in Def Stan 81-041 (Part 1) "Packaging of Defence Materiel". Def Stans, NATO Standardisation Agreements (“**STANAGs**”) and further information are available from the DStan internet site at: <http://www.dstan.mod.uk/>
- 55.3 Not Used.
- 55.4 In the event of conflict between this Contract and Def Stan 81-041, this Contract shall take precedence.

Responsibilities

- 55.5 Packaging responsibilities are as follows:
 - 55.5.1 The Contractor shall be responsible for providing Packaging which fully complies with the requirements of this Contract.
 - 55.5.2 The Authority shall indicate in this Contract or order raised against a framework agreement (where applicable) the standard or level of Packaging required for each Article, including the PPQ. If a standard or level of Packaging (including the PPQ) is not indicated in this Contract or order, the Contractor shall request such instructions from the Authority before proceeding further.
 - 55.5.3 The Contractor shall ensure all relevant information necessary for the effective performance of this Contract is made available to all Sub-Contractors.
 - 55.5.4 Where the Contractor or any of their Sub-Contractors have concerns relating to the appropriateness of the Packaging design and or MPL prior to manufacture or supply of the Articles they shall use DEFFORM 129B to feedback these concerns to the Contractor or Authority, as appropriate.
 - 55.5.5 Where the volumetric data of individual package designs is required to be compiled as part of the codification data set, the Contractor shall do so in accordance with DEFCON 117 (*Supply of Information for NATO Codification and Defence Inventory Introduction*) (Edition 07/21).

Commercial Packaging

55.6 The Contractor shall supply Commercial Packaging meeting the standards and requirements of Def Stan 81-041 (Part 1). In addition the following requirements apply:

55.6.1 The Contractor shall provide Packaging which:

- (i) will ensure that each Article may be transported and delivered to the consignee named in this Contract in an undamaged and serviceable condition; and
- (ii) is labelled to enable the contents to be identified without need to breach the package; and
- (iii) is compliant with statutory requirements and this Clause 55 (*Packaging (for Articles other than Munitions)*).

55.6.2 The Packaging used by the Contractor to supply identical or similar Articles to commercial customers or to the general public (i.e. point of sale packaging) will be acceptable, provided that it complies with the following criteria:

- (i) reference in this Contract to a PPQ means the quantity of an Article to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;
- (ii) Robust Articles, which by their nature require minimal or no packaging for commercial deliveries, shall be regarded as "PPQ packages" and shall be marked in accordance with Clauses 55.13 (*Package labelling and marking*) to 55.16 (*Consignment of aggregated packages*). References to "PPQ packages" in subsequent text shall be taken to include Robust Articles; and
- (iii) for ease of handling, transportation and delivery, packages which contain identical Articles may be bulked and overpacked, in accordance with Clauses 55.13 (*Package labelling and marking*) to 55.15 (*Bar code marking*).

Packaging Regulations for Dangerous Goods

55.7 The Contractor shall ascertain whether the Articles being supplied are, or contain, Dangerous Goods, and shall supply the Dangerous Goods in accordance with:

55.7.1 The Health and Safety At Work Act 1974 (as amended);

55.7.2 The Classification Hazard Information and Packaging for Supply Regulations (CHIP) 2009 (as amended);

55.7.3 The REACH Regulations 2007 (as amended); and

- 55.7.4 The Classification, Labelling and Packaging Regulations (CLP) 2009 (as amended).
- 55.8 The Contractor shall package the Dangerous Goods as limited quantities, excepted quantities or similar derogations, for UK or worldwide shipment by all modes of transport in accordance with the regulations relating to the Dangerous Goods and:
- 55.8.1 The Safety Of Lives At Sea Regulations (SOLAS) 1974 (as amended); and
- 55.8.2 The Air Navigation (Amendment) Order 2019.
- 55.9 As soon as possible, and in any event no later than one (1) month before delivery is due, the Contractor shall provide a Safety Data Sheet in respect of each Dangerous Good in accordance with the REACH Regulations 2007 (as amended) and the Health and Safety At Work Act 1974 (as amended).

UK military or NATO Packaging

- 55.10 The Contractor shall comply with the requirements for the design of MLP which include Clauses 55.10 (*UK military or NATO Packaging*) and 55.11 (*Military Packaging design procedure*) as follows:

- 55.10.1 Where there is a requirement to design UK or NATO MLP, the work shall be undertaken by an MPAS registered organisation, or one that although non-registered is able to demonstrate to the Authority that its quality systems and military package design expertise are of an equivalent standard.

Note 1: The MPAS certification (for individual designers) and registration (for organisations) scheme details are available from:

DES SEOC SCG-SCEng-Pkg
MOD Abbey Wood
Bristol, BS34 8JH

Tel. +44(0)30679-35353

DESSEOCSCG-SCEng-Pkg@mod.gov.uk

Note 2: The MPAS Documentation is also available on the DStan website

- 55.10.2 MLP shall be designed to comply with the relevant requirements of Def Stan 81-041, and be capable of meeting the appropriate test requirements of Def Stan 81-041 (Part 3). Packaging designs shall be prepared on a Service Packaging Instruction Sheet (SPIS), in accordance with Def Stan 81-041 (Part 4).
- 55.10.3 The Contractor shall ensure a search of the SPIS index (the “**SPIN**”) is carried out to establish the SPIS status of each requirement (using DEFFORM 129A ‘Application for Packaging Designs or their Status’).

- 55.10.4 New designs shall not be made where there is an existing usable SPIS, or one that may be easily modified.
- 55.10.5 Where there is a usable Standard Family Specification (SFS), it shall be used in place of a SPIS design unless otherwise stated by this Contract. When an SFS is used or replaces a SPIS design, the Contractor shall upload this information on to SPIN in Adobe PDF.
- 55.10.6 All SPIS, new or modified (and associated documentation), shall, on completion, be uploaded by the Contractor on to SPIN. The format shall be Adobe PDF.

Manufacture of Packaging to a Military Packaging Level

- 55.10.7 Where it is necessary to use an existing SPIS design, the Contractor shall ensure the Packaging manufacturer is a registered organisation in accordance with Clause 55.10.1 (*UK military or NATO Packaging*), or if un-registered, is compliant with MPAS ANNEX A Supplement (Code) M. The Contractor shall ensure, as far as possible, that the SPIS is up to date.

Intellectual Property Rights (IPR)

- 55.10.8 The documents supplied under Clause 55.10.6 (*UK military or NATO Packaging*) shall be considered as a contract data requirement and be subject to the terms of DEFCON 15 (*Design Rights and Rights to Use Design Information*) (Edition 06/21) and DEFCON 21 (*Retention of Records*) (Edition 06/21).

Military Packaging design procedure

- 55.11 Unless otherwise stated in this Contract, one of the following procedures for the production of new or modified SPIS designs shall be applied:

- 55.11.1 If the Contractor or their Sub-Contractor is the PDA they shall:
- (i) On receipt of instructions received from the Authority's representative nominated in Box 2 of DEFFORM 111, prepare the required package design in accordance with Clause 55.10 (*UK military or NATO Packaging*).
 - (ii) Where the Contractor or their Sub-Contractor is registered they shall, on completion of any design work, provide the Authority with the following documents electronically:
 - (A) a list of all SPIS which have been prepared or revised against this Contract; and
 - (B) a copy of all new/revised SPIS, complete with all continuation sheets and associated drawings, where applicable, to be uploaded onto SPIN.

- (iii) Where the PDA is not a registered organisation, then they shall obtain approval for their design from a registered organisation before proceeding, then follow Clause 56.11.1(ii) (*Military Packaging design procedure*).
- 55.11.2 Where the Contractor or their Sub-Contractor is not the PDA and is un-registered, they shall not produce, modify or update SPIS designs. They shall obtain current SPIS design(s) from the Authority or a registered organisation before proceeding with manufacture of Packaging. To allow designs to be provided in ample time, they should apply for SPIS designs as soon as practicable.
- 55.11.3 Where the Contractor or their Sub-Contractor is un-registered and has been given authority to produce, modify, and update SPIS designs by this Contract, it shall obtain approval for their design from a registered organisation using DEFFORM 129A before proceeding, then follow Clause 55.11.1(ii) (*Military Packaging design procedure*).
- 55.11.4 Where the Contractor or their Sub-Contractor is not a PDA but is registered, it shall follow Clauses 55.11.1(i) and 55.11.1(ii) (*Military Packaging design procedure*).

Tools

- 55.12 If Special Jigs, Tools Etc. are required for the production of MLP, the Contractor shall obtain written approval from the Authority's Representative before providing them.

Package labelling and marking

- 55.13 In addition to any marking required by international or national legislation or regulations, the following package labelling and marking requirements apply:

Labelling – General

- 55.13.1 If this Contract specifies UK or NATO MLP, labelling and marking of the packages shall be in accordance with Def Stan 81-041 (Part 6) and this Clause 55 (*Packaging (for Articles other than Munitions)*) as follows:
 - (i) Labels giving the mass of the package, in kilograms, shall be placed such that they may be clearly seen when the items are stacked during storage.

Marking – General

- (ii) Each consignment package shall be marked with details as follows:
 - (A) name and address of consignor;
 - (B) name and address of consignee (as stated in this Contract or order);

- (C) destination where it differs from the consignee's address, normally either:
 - 1) delivery destination/address; or
 - 2) transit destination, where delivery address is a point for aggregation/disaggregation and/or onward shipment elsewhere, e.g., railway station, where that mode of transport is used; and
 - (D) the unique order identifiers and the CP&F Delivery Label / Form which shall be prepared in accordance with DEFFORM 129J.
- (iii) If aggregated packages are used, their consignment marking and identification requirements are stated at Clause 55.16 (*Consignment of aggregated packages*).

Marking of Commercial Packaging

55.13.2 If this Contract specifies Commercial Packaging, an external surface of each PPQ package and each consignment package, if it contains identical PPQ packages, shall be marked, using details of the Articles as shown in this Contract schedule, to state the following:

- (i) description of the Article;
- (ii) the full thirteen digit NATO Stock Number ("**NSN**");
- (iii) the PPQ;
- (iv) maker's part/catalogue, serial and/or batch number, as appropriate;
- (v) the Contract and order number when applicable;
- (vi) the words "Trade Package" in bold lettering, marked in blue in respect of trade packages, and black in respect of export trade packages;
- (vii) shelf life of item where applicable;
- (viii) for rubber items or items containing rubber, the quarter and year of vulcanisation or manufacture of the rubber product or component (marked in accordance with Def Stan 81-041);
- (ix) any statutory hazard markings and any handling markings, including the mass of any package which exceeds three (3) kg gross; and
- (x) any additional markings specified in this Contract.

Bar code marking

55.14 Bar code marking shall be applied to the external surface of each consignment package and to each PPQ package contained therein. The default symbology shall be as specified in Def Stan 81-041 (Part 6). As a minimum the following information shall be marked on packages:

55.14.1 the full 13-digit NSN;

55.14.2 denomination of quantity ("**D of Q**");

55.14.3 actual quantity (quantity in package);

55.14.4 manufacturer's serial number and/or batch number, if one has been allocated; and

55.14.5 the unique order identifier.

55.15 Requirements for positioning bar codes in relation to related text, as well as positioning on package etc., are defined in Def Stan 81-041 (Part 6). If size of the bar code does not allow a label to be directly attached, then a tag may be used. Any difficulties over size or positioning of barcode markings shall initially be referred to the organisation nominated in Box 3 of DEFFORM 111.

Consignment of aggregated packages

55.16 The requirements for the consignment of aggregated packages are as follows:

55.16.1 With the exception of packages containing Dangerous Goods, over-packing for delivery to the consignee shown in this Contract may be used by the consignor to aggregate a number of packages to different Packaging levels, provided that the package contains Articles of only one NSN or class group. Over-packing shall be in the cheapest commercial form consistent with ease of handling and protection of over-packed items.

55.16.2 Two adjacent sides of the outer container shall be clearly marked to show the following:

(i) class group number;

(ii) name and address of consignor;

(iii) name and address of consignee (as stated on this Contract or order);

(iv) destination if it differs from the consignee's address, normally either:

(A) delivery destination/address; or

- (B) transit destination, if the delivery address is a point of aggregation/disaggregation and/or onward shipment e.g. railway station, where that mode of transport is used;
- (v) where applicable, the reference number if the delivery note produced by CP&F relating to the contents. The consignee's copy of each delivery note shall be placed in the case/container. If the Articles listed in the delivery note are packed in several cases, the consignee's copy shall be placed in the first case and a separate list detailing the contents shall be prepared for each case after the first and placed in the case to which it relates. Each case is to be numbered to indicate both the number of the case and the total number of cases concerned e.g. 1/3, 2/3, 3/3;
- (vi) shipping label in accordance with DEFCON 129J (*The Use of the Electronic Business Delivery Form*) (Edition 11/16); and
- (vii) any statutory hazard markings and any handling markings.

Concessions

- 55.17 Authorisation of the Contractor to undertake Packaging design, or to use a packaging design, that was not part of the original requirement under this Contract, shall be considered as an alteration to the specification under Schedule 11 (*Change Procedure*).

Environmental - requirements for wood used in Packaging

- 55.18 The Contractor shall ensure that timber and wood-containing products supplied under this Contract comply with Clause 73 (*Timber and Wood-Derived Products*) and Annex I and Annex II of the International Standards for Phytosanitary Measures, "Guidelines for Regulating Wood Packaging Material in International Trade", Publication No 15 (ISPM 15).

Environmental – Packaging and Packaging waste

- 55.19 All Packaging shall meet the requirements of the Packaging (Essential Requirements) Regulations 2003 (as amended) where applicable.
- 55.20 In any design work the Contractor shall comply with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended) or equivalent legislation. Evidence of compliance shall be a contractor record in accordance with Clause 35 (*The Contractor's Records*).

Packaging design liability statement

- 55.21 This Clause 55 (*Packaging (for Articles other than Munitions)*) is concerned with the supply of Packaging suitable to protect and ease handling, transport and storage of specified items. Where there is a failure of suitable Packaging (a design failure), or Packaging fails and this is attributed to the Packaging supplier, then the supplier shall be liable for the cost of replacing the Packaging.

55.22 Liability for other Losses resulting from Packaging failure or resulting from damage to Packaging, (such as damage to the packaged item etc.), shall be specified elsewhere in this Contract.

56 Supply of Information for NATO Codification and Defence Inventory Introduction

56.1 The purpose of Codification is to catalogue Items of Supply, using the minimum information required to distinguish them from similar items available. The cataloguing information is not normally a full technical specification and definition that could be used for manufacture of alternative items.

56.2 For the purposes of this Clause 56 (*Supply of Information for NATO Codification and Defence Inventory Introduction*) and Clause 57 (*Codification Requirements of Item Identification*):

56.2.1 "**Codification**" shall mean the application of unique identification and classification information to Items of Supply, using a common supply language (as set out in Clause 57 (*Codification Requirements for Item Identification*)) which is recorded in sufficient detail to distinguish uniquely Items of Supply from other items, using NATO Stock Numbers or "**NSN**".

56.2.2 "**Codification Purposes**" shall mean use to enable maximum effectiveness in national and international logistic support, data management in the area of materiel, supply and inventory introduction and management, throughout the life of an equipment, by the United Kingdom Ministry of Defence and its NATO partners.

56.2.3 "**Codification Authority**" shall mean the United Kingdom National Codification Bureau or "**UKNCB**", except as provided in Clause 56.11.

56.2.4 "**Authority's Agent**" shall mean the Government Departments or contractors authorised by the Codification Authority to undertake NATO codification.

56.2.5 "**Form, Fit and Function**" shall mean, in respect of each of its elements:

- (i) Form: The shape, size, dimensions, and other physically measurable parameters that uniquely characterise an article. For software, form denotes the language and media;
- (ii) Fit: The characteristics of an article to enable it to interface or interconnect with a part of another article, including the dimensional relationship between mating parts and the limits of tolerances;
- (iii) Function: The actions that a product is designed to perform in normal use or operation.

56.2.6 "**Item**" shall mean the part or the whole of any Article or any other Article to the same design or any modification of it.

- 56.2.7 **"Item of Supply"** shall mean an Item, or where two or more Items are attached or assembled together, the minimum assembly of Items listed in the Design Control Authority's Master Parts List or required to be delivered to the Authority under this Contract.
- 56.2.8 **"Item Identification"** shall mean the minimum information required to uniquely identify the Item of Supply derived from information supplied in response to the requirements specified in Clause 57 (*Codification Requirements of Item Identification*).
- 56.2.9 **"Technical Data"** shall mean the cataloguing information identified in Clause 57 (*Codification Requirements of Item Identification*) to be supplied to enable the creation of Item Identification.
- 56.2.10 **"Design Control Authority" or "DCA"** shall mean the individual, company, firm, corporation, designing authority or government department, which controls the design, characteristics and production of an Item by means of its engineering drawings, specifications and inspection requirements.
- 56.2.11 **"NATO Commercial & Government Entity code" or "NCAGE"** shall mean the unique code allocated to a supplier by the UKNCB.
- 56.3 In the case of an Item of Supply for which the Contractor is the DCA, the Contractor shall:
- 56.3.1 provide Technical Data to the Codification Authority, or the Authority's Agent specified by the Codification Authority, where:
- (i) the Item of Supply is not already codified in the NATO Codification System or **"NCS"**; or
 - (ii) the Contractor has not previously supplied that information either in the recommended spare parts list supplied by the Contractor in the initial provisioning phase or under another contract;
- 56.3.2 where the Item of Supply has already been NATO codified, supply the NSN(s) to the Codification Authority, or the Authority's Agent; and
- 56.3.3 inform the Codification Authority, or its Agent, when and to whom the data was supplied if the information has previously been supplied by the Contractor.
- 56.4 In the case of an Item of Supply for which the Contractor is not the DCA, the Contractor shall ensure that the Technical Data is supplied, either by the subcontract DCA or by the Contractor. The Contractor shall, where appropriate, consider including the terms of this Condition, or equivalent text, in any Sub-Contracts, to ensure delivery of the cataloguing information.

- 56.5 Unless otherwise provided by the Contract, the cost of supplying the information under Clauses 56.3 and 56.4 above, and any other information specifically called for under the Contract, shall be deemed to have been included in the Contract Price.
- 56.6 The Contractor may from time to time be requested to supply additional information necessary for Codification. To the extent that it has the right to do so, the Contractor shall supply that additional data. The extent of information shall be governed by the requirements of the Codification system at that time. Full details of the Codification system can be obtained from the Codification Authority.
- 56.6.1 At any time during the life of the contract the Contractor shall notify the Codification Authority of all modifications or design changes made to an Item of Supply, which affect the Item Identification, including reference number changes, Form, Fit or Function.
- 56.6.2 Fair and reasonable payment, based upon the actual work involved, will be made to the Contractor for the supply of additional information under Clause 56.6 above and, in respect of modifications and design changes approved by the Authority; the supply of updated information under Clause 56.6.1.
- 56.7 Subject to the restrictions resulting from Clause 56.9, the Authority shall have the right, free of charge, to use and copy or have used and copied for Codification Purposes information supplied under the provisions of this Clause 56, use and copying being limited to that necessary for Codification Purposes. The Authority may convert or have converted any Technical Data provided in whatever format to an alternative format, including digital formats.
- 56.8 Subject to the restrictions resulting from Clause 56.9, the information constituting the Item Identification may be included in the databases of codification data which are produced by the Authority or any international organisation of which the Authority is a member and may be made available to other Governments, contractors, organisations or individuals who are authorised to have access to those databases by the Authority or the organisation(s) of which the Authority is a member.
- 56.9 The Contractor shall endeavour to ensure that all information supplied under this Clause 56 can be used for Codification Purposes; however, where any of the information supplied is marked to indicate it is proprietary in nature the Contractor shall indicate the restrictions which apply to its use.
- 56.10 The Codification Authority shall not retain or use the Technical Data supplied under this Clause 56 for any purpose other than for Codification.
- 56.11 If the DCA is located in a NATO country other than the UK, the equivalent organisation in that NATO country shall be substituted for the UKNCB. All contact between the Contractor and those equivalent organisations will be via the UKNCB.
- 56.12 If the DCA is located in a country which is not a member of the NATO Alliance or a NATO sponsored (NCS participating) country, the Codification Authority will be deemed to be the UKNCB, which may nominate an agent to act on its behalf.

56.13 The Contractor, Sub-Contractor or supplier may contact the Codification Authority for any information concerning the NCS.

56.14 The requirements set out in Clause 57 (*Codification Requirements for Item Identification*) shall apply in relation to Item Identification.

57 Codification Requirements for Item Identification

57.1 Information to be supplied and used for the purposes of Codification is governed by the requirements of the NCS Item Identification Guide (“**IIG**”) and the approved item name shall be used for Codification. The exact requirements are item specific and will vary on an item by item basis.

57.2 Information may be provided in the form of engineering drawings, international/national or commercial standards and specifications, commercial literature such as catalogues, brochures or similar documentation, in hard or soft copy. Alternatively arrangement may be made to allow the data to be retrieved via a Uniform Resource Locator (“**URL**”) or similar.

57.3 Clauses 56 (*Supply of Information for NATO Codification and Defence Inventory Introduction*) and 57 (*Codification Requirements for Item Identification*) cover all Items of Supply, and the following information must be supplied:

57.3.1 The NCAGE or name, address and contact details of the Design Control Authority (DCA).

57.3.2 The name of the Item of Supply, as recognised by the DCA.

57.3.3 Identifying References:

- (i) the DCA's drawing or part number(s), and National or International Standard or Specification Reference, or both (indicating definitive or non-definitive). The references will be assumed to be fully definitive unless stated otherwise;
- (ii) where the Contractor's own identifying reference differs from the DCA's reference, this shall also be provided;
- (iii) any associated bar code or product identification numbers, assigned by companies compliant with EAN International or the Uniform Code Council (“**UCC**”);
- (iv) for medical items, the ATC Code (World Health Organisation (WHO) Anatomical Therapeutic Codes), BNF code (British National Formulary) or the ECRI Universal Medical Device Nomenclature code shall be supplied where relevant.

57.3.4 The following Volumetric Data. Definitions equate to those in ASD S2000M and the data is to be supplied in the format specified therein:

- (i) length, width and height/depth of packaged unit (“**SPU**”), used with an associated unit of issue code;
- (ii) length, width and height/depth of unpackaged unit (“**SUU**”), used with an associated unit of issue code;
- (iii) gross weight of packaged unit (“**WPU**”), used with an associated unit of issue code;
- (iv) gross weight of unpackaged unit (“**WUU**”), used with an associated unit of issue code.

57.4 The following additional information shall be supplied where it is necessary for the information to be used to fully distinguish Items of Supply, as determined by the applicable approved item name and NCS IIG. The DCA is not required to disclose particulars of proprietary processes, manufacturing techniques or proprietary material specifications:

- 57.4.1 Basic material (the base material from which the item is fabricated) surface treatment (the finish by which the item is plated, dipped and/or coated, including any special cleanliness conditions).
- 57.4.2 All key dimensions shall be supplied for common mechanical parts, such as nuts, bolts, screws, washers etc.
- 57.4.3 Where items are threaded, include the size, type, length, class and direction of the thread.
- 57.4.4 Electrical characteristics, such as nominal voltage, current or rated power, or both, of the item, rated resistance, capacitance or inductance, and operating frequencies.
- 57.4.5 For any pressure system components and equipment details of the pressure ratings.
- 57.4.6 Temperature ratings.
- 57.4.7 Information on distinguishing features, e.g. colour, shape, style, holes, cut-outs, keyways or slots, etc.
- 57.4.8 Radioactive components - radioactive materials.
- 57.4.9 Software - the software identification number.
- 57.4.10 Markings - markings that indicate the primary purpose, function or application of the Item of Supply.

57.5 For assemblies only, the Contractor shall supply the final assembly drawing or parts list, or both, including known NSNs and part numbers of constituent parts.

- 57.6 Where the Item of Supply is designed for a specific application, the source data shall identify the end item application.
- 57.7 Where the Item of Supply contains items of a hazardous nature, the information shall identify the existence of any hazard and the Contractor shall provide a safety data sheet in accordance with Clause 58 (*Supply of Hazard Data*).

Requests For NATO Codification

- 57.8 Where the Contractor is required to apply for NATO Codification on behalf of the Authority:
- 57.8.1 All requests for codification action must be submitted using the Authority's mandated system.
- 57.8.2 Access to the Authority's mandated system is via a user account allocated by UK NCB (subject to conditions).
- 57.8.3 The Contractor shall supply the following additional information to the Codification Authority to enable automated item introduction on the Authority's relevant base inventory system. Where this information is not known, the Authority's Representative shall be contacted for guidance:

Data Field	CRISP	SS3	SCCS	ASTRID
Domestic Management Code – DMC		Y		
Inventory Management Code – IMC	Y			
Supply Management Branch – SMBi			Y	
Requirement for Provenance and Traceability (items fitted to aircraft requiring Certificate of Conformity)	Y	Y	Y	Y
Used on next higher assembly – End item information	Y	Y	Y	Y
Unit of Issue Code	Y	Y	Y	Y
Hazardous Indicator	Y	Y	Y	Y
Materiel Accounting Classification Code	Y	Y	Y	Y
Shelf Life Code	Y	Y	Y	
Estimated Price	Y			
Procurement Reference Code	Y	Y		
Special To Contents Container Indicator	Y		Y	
Periodic Maintenance Interval Code	Y			
Pre-Issue Inspection Code	Y			
Quality Assurance Documentation Code	Y			
Inventory Classification Code		Y		
Capital Indicator Code		Y		

58 Supply of Hazard Data

- 58.1 The Contractor shall provide to the Authority:

- 58.1.1 for each hazardous material or substance supplied a “**Safety Data Sheet**” (“**SDS**”) in accordance with the extant Classification, Labelling and Packaging (GB CLP) Regulation (“**GB CLP**”); or
- 58.1.2 for each hazardous Article, safety information as required by the Health and Safety at Work etc. Act 1974 at the time of supply.

Nothing in this Clause 58 (*Supply of Hazard Data*) shall reduce or limit any statutory duty or legal obligation of the Authority or the Contractor and/or the Contractor's obligations under Schedule 2 (*Scope*).

- 58.2 If the item of supply contains or is a substance falling within the scope of the extant Registration, Evaluation, Authorisation and Restriction of Chemicals Regulations (“**UK REACH**”):

- 58.2.1 the Contractor shall provide to the Authority an SDS for the substance in accordance with UK REACH. If the Contractor becomes aware of new information which may affect the risk management measures or new information on the hazard, the Contractor shall update the SDS and forward it to the Authority and to the address listed in Clause 58.8 (*Supply of Hazard Data*); and
- 58.2.2 the Authority, if it becomes aware of new information regarding the hazardous properties of the substance, or any other information that might call into question the appropriateness of the risk management measures identified in the SDS supplied, shall report this information in writing to the Contractor.

- 58.3 If the Contractor is required, under, or in connection with this Contract, to supply Articles or components of Articles that, in the course of their use, maintenance, disposal, or in the event of an accident, may release hazardous materials or substances, the Contractor shall provide to the Authority a list of those hazardous materials or substances, and, for each hazardous material or substance listed, provide an SDS.

- 58.4 The Contractor shall provide to the Authority a completed DEFFORM 68.

- 58.5 If the Articles, materials or substances are ordnance, munitions or explosives, in addition to the requirements of the GB CLP and UK REACH the Contractor shall comply with the hazard reporting requirements of Def Stan 07-085 (Design Requirements for Weapons and Associated Systems).

- 58.6 If the Articles, materials or substances are or contain or embody a radioactive substance as defined in the extant Ionising Radiation Regulations, the Contractor shall additionally provide details of:

- 58.6.1 activity; and
- 58.6.2 the substance and form (including any isotope).

- 58.7 If the Articles, materials or substances have magnetic properties, the Contractor shall additionally provide details of the magnetic flux density at a defined distance, for the condition in which it is packed.
- 58.8 Any SDS to be provided in accordance with this Clause 58 (*Supply of Hazard Data*), including any related information to be supplied in compliance with the Contractor's statutory duties under Clauses 58.1.1 and 58.2.1 (*Supply of Hazard Data*), any information arising from the provisions of Clauses 58.5, 58.6 and 58.7 (*Supply of Hazard Data*) and the completed DEFFORM 68, shall be sent directly to the Authority's Representative as soon as practicable, and no later than one (1) month prior to the delivery of the relevant Articles, materials or substances. In addition, so that the safety information can reach users without delay, the Contractor shall send a copy preferably as an email with attachment(s) in Adobe PDF or MS WORD format, or, if only hard copy is available, to the addresses below:
- 58.8.1 Hard copies to be sent to:
- Hazardous Stores Information System (HSIS)
Department of Safety & Environment, Quality and Technology (D S & EQT)
Spruce 2C, #1260
MOD Abbey Wood (South)
Bristol BS34 8JH
- 58.8.2 Emails to be sent to:
- DESTECH-QSEPEnv-HSISMulti@mod.gov.uk
- 58.9 Failure by the Contractor to comply with the requirements of this Clause 58 (*Supply of Hazard Data*) shall be grounds for rejecting the affected Articles. Any withholding of information concerning hazardous Articles, materials or substances shall be regarded as a breach of this Contract for which the Authority reserves the right to require the Contractor to rectify the breach immediately at no additional cost to the Authority or to terminate this Contract pursuant to Clause 78 (*Termination for Contractor Default*) without compensation to the Contractor.
- 58.10 Where delivery is made to the Defence Fulfilment Centre ("DFC") and/or other Team Leidos location/building, the Contractor must comply with the Logistic Commodities and Services Transformation ("LCST") Supplier Manual.

59 Use of Asbestos

Definitions

- 59.1 For the purposes of this Clause 59 (*Use of Asbestos*), "**Asbestos**" shall have the same meaning as "asbestos" defined in Regulation 2 of the Control of Asbestos Regulations 2012 or "**COAR Regulations**".

Prohibition of Asbestos

- 59.2 Subject to Clauses 59.4 and 59.5, no Asbestos of any type shall be incorporated into any Articles or other material to be supplied under this Contract.

Notification

- 59.3 The Contractor shall notify the Authority in writing as soon as it becomes aware that Asbestos may be incorporated in Articles or other materials to be supplied or processed during performance of this Contract.

Exemption

- 59.4 The Authority may issue a Defence Exemption Certificate under the REACH Enforcement Regulations 2008 (the “**Enforcement Regulations**”) exempting the Contractor from parts of the Enforcement Regulations. The Contractor may incorporate Asbestos into Articles and/or material supplied, or use or process it in the performance of the Contractor Deliverables under this Contract in accordance with the conditions set out in the Defence Exemption Certificate.
- 59.5 If at any stage during the Contract Period, an alternative substance becomes available, the Contractor shall bring this to the attention of the Authority immediately, by notice in writing. The Authority shall then determine, in consultation with the Contractor and the Health and Safety Executive where appropriate, whether the substance would be suitable for incorporation into any Articles or material which have yet to be supplied under this Contract. The Authority may require the Contractor to suspend any further production of such Articles or material or delivery of the relevant Contractor Deliverables incorporating Asbestos, pending such determination, thereby relieving the Contractor (for the time being) of any obligations to provide such Articles, material or such Contractor Deliverables. In the event that the Authority determines that the alternative substance would be suitable for incorporation into such Articles or material or in the performance of such Contractor Deliverables in lieu of Asbestos, the Authority may vary its requirements in the light of any such determination.
- 59.6 If, at any stage during the Contract Period, the Authority issues a further certificate which varies or revokes any Defence Exemption Certificate granted in accordance with the Enforcement Regulations, the effect of which is that any further supply of the Articles or delivery of such Contractor Deliverables under this Contract would be prohibited by the Enforcement Regulations, the Contractor shall, on becoming aware of the further certificate, immediately refrain from incorporating Asbestos into any such Articles or performing such Contractor Deliverable and shall provide the Authority with written confirmation of this within forty-eight (48) hours. The Authority reserves the right to vary its requirements in the light of any such decision.
- 59.7 The Contractor shall obtain from the Health and Safety Executive or the Authority, as appropriate, an exemption from the requirements of COAR Regulations 29 or 30 where an exemption is necessary for performance of this Contract.

60 Delivery, Acceptance, Rejection and transfer of Title and Risk

Delivery

- 60.1 Unless otherwise agreed by the Parties, delivery of Articles shall occur upon the Articles being handed over by the Contractor to the Authority or to the Authority's Representative at the then relevant address in the United Kingdom that the Authority has notified the Contractor (such address as may change from time to time following notification (by any means) by the Authority to the Contractor).
- 60.2 Unless otherwise agreed by the Parties and subject to the provisions of Clause 61 (*Vesting*), the title and risk in the Articles shall pass from the Contractor to the Authority upon delivery at the address in Clause 60.1 (*Delivery*) provided the Contractor has complied with its obligations in this Clause 60 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*).
- 60.3 The Contractor shall ensure that the Articles are packaged in accordance with the terms of this Contract (including Clause 55 (*Packaging (for Articles other than Munitions)*)).
- 60.4 Where, after delivery, an Article is rejected by the Authority in accordance with Clauses 60.5 to 60.11 (*Rejection*), that Article shall, for the purposes of this Contract, be considered as not having been delivered under this Contract and the title and risk in that Article shall return to the Contractor unless a notice of objection has been issued to the Authority in accordance with Clause 60.11 (*Rejection*).

Rejection

- 60.5 Prior to acceptance by the Authority in accordance with Clauses 60.12 to 60.16 (*Acceptance*) (inclusive), the Authority may reject any Article (whether or not after inspection) which does not conform with the requirements of this Contract.
- 60.6 The Authority may (whether or not after inspection) reject the whole of any consignment of the Articles if:
- 60.6.1 a reasonable proportion or percentage of such Articles in that consignment does not conform with the requirements of this Contract; or
 - 60.6.2 samples, whether of the Articles or of the material in the Articles, taken randomly from that consignment do not conform with the requirements of this Contract.
- 60.7 For the purposes of this Clause 60 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*), an item of Issued Property in connection with which the Contractor is required to perform obligations in accordance with this Contract shall, following completion of the relevant part of the Contractor Deliverables, be subject to rejection under Clauses 60.5 and 60.6 (*Rejection*) as if it was an Article, but without prejudice to the Authority's proprietary and other rights in that item of Issued Property. The provisions of Clauses 60.8 to 60.11 (*Rejection*) (inclusive) shall similarly apply to such items.
- 60.8 Subject to Clause 60.11 (*Rejection*) and Clause 62 (*Counterfeit Materiel*), the Contractor shall at its own expense and within ten (10) Business Days of being notified of the rejection, or within any other applicable period specified in this

Contract, remove any such Article and/or consignment which the Authority has rejected.

- 60.9 If the Contractor fails to remove the rejected Article or consignment in accordance with Clause 60.8 (*Rejection*), the Authority may return it to the Contractor at the Contractor's risk and expense.
- 60.10 The Contractor shall at its own expense and within the contractual period for delivery, or within such further reasonable period as the Authority may allow, supply and deliver Articles that conform with the requirements of this Contract.
- 60.11 The Contractor may object in writing to a notification of rejection by the Authority within the period specified at Clause 60.8 (*Rejection*). If the objection is not resolved within a reasonable time, it shall be treated as a Dispute and the provisions of the Dispute Resolution Procedure shall apply. Unless otherwise agreed the Contractor shall not remove the Articles which are the subject of the rejection notice unless and until the objection or Dispute has been resolved in favour of the Authority.

Acceptance

- 60.12 Subject to Clause 60.13 (*Acceptance*), acceptance of an Article occurs at the time and in accordance with the procedure specified in this Contract on the date that is ten (10) Business Days from delivery in accordance with Clause 60.1 (*Delivery*) unless the Authority has rejected such Article in accordance with Clause 60.6 (*Rejection*).
- 60.13 The Authority shall not have accepted an Article:
- 60.13.1 merely because the Authority asks for, or agrees to, its repair by or under an arrangement with the Contractor; or
 - 60.13.2 unless otherwise specified in this Contract, merely because the Article has been delivered to a Third Party.
- 60.14 The Authority shall not be deemed to have accepted an Article unless it has had a reasonable opportunity to examine it after delivery for the purpose of ascertaining whether it is in conformity with this Contract.
- 60.15 Acceptance of any Article does not limit or in any way affect the Contractor's obligations to remedy any defects which are discovered in any Articles after the date such Article was accepted.
- 60.16 Where software is to be supplied as a requirement of this Contract it will be subject to the provisions of this Clause 60 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*) as if it were an Article.

Risk

- 60.17 For the avoidance of doubt, title and risk in an Article will, subject to Clause 60.18 remain with the Contractor until such time as the Article has been delivered to the Authority in accordance with Clause 60.2 (*Delivery*).

60.18 Where following such delivery referred to in Clause 60.17 the relevant Article is rejected by the Authority in accordance with this Clause 60 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*) then title and risk will, on the date the Article is rejected by the Authority, be allocated so that title in the Article will remain with the Authority and risk in the Article will be with the Contractor (until such time as the relevant Article is again delivered to the Authority in accordance with Clause 60.2 (*Delivery*)).

61 Vesting

61.1 Subject to the following provisions of this Clause 60.3 (*Vesting*):

61.1.1 each Article as it is constructed together with its component parts and equipment so far as incorporated in the Articles; and

61.1.2 all materiel which the Contractor acquires or allocates for incorporation in any of the Articles,

shall vest in and become the absolute property of the Authority, as from the time the construction of the Article begins or the materiel is acquired specifically for or is allocated for incorporation in any of the Articles and shall from that time be in the possession of the Contractor for the sole purpose of completing the Articles and delivering them when completed to the Authority, and shall not be within the control or disposition of the Contractor other than for that purpose.

61.2 Neither the Contractor, nor a sub-contractor, nor any other person shall have a lien on any Article or materiel which has vested in the Authority under Clause 61.1 (*Vesting*) for any sum due to the Contractor, sub-contractor or other person. The Contractor shall take all reasonable steps necessary to ensure that the provisions of this Clause are brought to the notice of all sub-contractors and other persons dealing with any such Articles or materiel.

61.3 Without prejudice to Clause 61.1 (*Vesting*), the Contractor shall ensure that from the time when the construction of any Article begins, or as soon as practicable thereafter, or when any materiel is acquired specifically for or is allocated for incorporation in any of the Articles, they are marked or recorded so that they are readily identifiable as the property of the Authority. The Contractor shall comply with any direction given by the Authority in this respect.

61.4 Any Article or materiel which is rejected by the Authority shall immediately re-vest in the Contractor.

61.5 If the Authority terminates the Contract otherwise than under Clause 79 and Clauses 80.6 to 80.9 (*Termination for Convenience*), any Article which has not been accepted in accordance with Clause 60 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*) and any materiel which has not been incorporated in any Article which has been accepted in accordance with Clause 60 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*) shall re-vest in the Contractor. Such re-vesting shall occur on the expiry of thirty (30) days from the date on which that termination shall take effect, unless the Authority has given the Contractor notice, prior to that expiry, that the Authority elects to retain the property in the Article or materiel.

61.6 Any payment made by the Authority in respect of any Article or materiel which re-vest in the Contractor under Clauses 61.4 or 61.5 (*Vesting*) shall be recoverable from the Contractor.

- 61.7 The Contractor shall hand over to the Authority any Article or materiel in which the Authority has elected to retain the property under Clause 61.5 (*Vesting*). If the Contractor fails to do so, the Authority shall have the right to enter the Contractor's premises and remove the Article or materiel and recover the cost of doing so from the Contractor.
- 61.8 The Authority shall pay a fair and reasonable price for any Article or materiel in which it has elected to retain the property under Clause 61.5 (*Vesting*) and which are handed over to it by the Contractor or otherwise come into his possession.
- 61.9 Where any Article or materiel in the Authority's possession or control has re-vested in the Contractor in accordance with Clause 61.4 or Clause 61.5 (*Vesting*), the Contractor shall bear the cost of resuming possession and control of them from the place of delivery in the UK as specified in the Contract. If the Article or materiel is on the premises of the Authority or the premises of any Government Department (including any agencies thereof), the Contractor shall remove them within fourteen (14) days of their re-vesting.

62 Counterfeit Materiel

- 62.1 For the purposes of this Clause 60.3, "**Counterfeit Materiel**" shall mean any Article or any part thereof whose origin, age, composition, configuration, certification status or other characteristic (including whether or not such Article or part has been used previously) has been falsely represented by:

- 62.1.1 misleading marking of the materiel, labelling or packaging;
- 62.1.2 misleading documentation; or
- 62.1.3 any other means, including failing to disclose information,

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

- 62.2 Without prejudice to the provisions of Schedule 4 (*Assurance and Acceptance Process*), where the Authority suspects that any Article or consignment of Articles contains Counterfeit Materiel, it shall:

- 62.2.1 notify the Contractor of its suspicion and reasons therefor;
- 62.2.2 where reasonably possible, and if requested by the Contractor within ten (10) Business Days of such notification, (at the Contractor's own risk and expense and subject to any reasonable controls specified by Authority) afford the Contractor the facility to
 - (i) inspect the Article or consignment and/or
 - (ii) obtain a sample thereof for validation or testing purposes;
- 62.2.3 give the Contractor a further twenty (20) Business Days or such other reasonable period agreed by the Authority, from the date of the inspection

at Clause 62.2.2(i) or the provision of a sample at Clause 62.2.2(ii), to comment on whether the Article or consignment meets the definition of Counterfeit Materiel; and

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

Without prejudice to the provisions of Schedule 4 (*Assurance and Acceptance Process Process*), where the Authority has determined that the Article, part or consignment of Articles contain Counterfeit Materiel then it may reject the Article, part or consignment under Clauses 60.5 to 60.11 (*Rejection*).

- 62.3 In addition to its rights under Clauses 60.5 to 60.11 (*Rejection*), where the Authority reasonably believes that any Article or consignment of Articles contains Counterfeit Materiel, it shall be entitled to:

62.3.1 retain any Counterfeit Materiel; and/or

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

and such retention shall not constitute acceptance under Clauses 60.12 to 60.16 (*Acceptance*).

- 62.4 Where the Authority intends to exercise its rights under Clause 62.3, it shall where reasonable permit the Contractor, within a period specified by the Authority, to arrange at its own risk and expense and subject to any reasonable controls specified by Authority, for:

62.4.1 the separation of Counterfeit Materiel from any Article or part of an Article; and/or

62.4.2 the removal of any Article or part of an Article that the Authority is satisfied does not contain Counterfeit Materiel.

- 62.5 In respect of any Article, consignment or part thereof that is retained in accordance with Clause 62.3, including where the Authority permits the Contractor to remove non-Counterfeit Materiel under Clause 62.4 but the Contractor fails to do so within the period specified by the Authority and subject to Clause 62.9, the Authority shall be entitled to exercise any, all, or any combination of, the following rights:

62.5.1 to dispose of it responsibly, and in a manner that does not permit its reintroduction into the supply chain or market;

62.5.2 to pass it to a relevant investigatory or regulatory authority;

62.5.3 to retain conduct or have conducted further testing including destructive testing, for further investigatory, regulatory or risk management purposes. Results from any such tests shall be shared with the Contractor; and/or

62.5.4 to recover the reasonable costs of testing, storage, access, and/or disposal of it from the Contractor.

Without prejudice to the provisions of Schedule 4 (*Assurance and Acceptance Process*), exercise of the rights granted at Clauses 62.5.1, 62.5.2 and 62.5.3 shall not constitute acceptance under Clauses 60.12 to 60.16 (*Acceptance*).

- 62.6 Any scrap or other disposal payment received by the Authority shall be off set against any amount due to the Authority under Clause 62.5.4. If the value of the scrap or other disposal payment exceeds the amount due to the Authority under Clause 62.5.4 then the balance shall accrue to the Contractor.
- 62.7 The Authority shall not use a retained Article or consignment other than as permitted in this Clause 62 (*Counterfeit Materiel*).
- 62.8 The Authority may without restriction report a discovery of Counterfeit Materiel and disclose information necessary for the identification of similar materiel and its possible sources.
- 62.9 Where the Contractor has objected in writing to the notification of the rejection by the Authority in accordance with Clause 60.11 (*Rejection*), the Authority shall not exercise its rights at Clause 62.5 unless and until the objection or dispute has been resolved in favour of the Authority. If no such written objection is received, then the Contractor shall be deemed to have waived any rights to object to the Authority exercising the rights granted at Clause 62.5.
- 62.10 The Contractor shall not be entitled to any payment or compensation from the Authority as a result of the Authority exercising the rights set out in this Clause 62 (*Counterfeit Materiel*) except where it has been determined by the Dispute Resolution Procedure that the Authority has made an incorrect determination under Clause 62.2.4. In such circumstances the Authority shall reimburse the Contractor's reasonable costs of complying with Clause 62.2.

63 Issued Property

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

Receipt

- 63.3 Subject to Clauses 63.4 and 63.7 (*Receipt*), within fourteen (14) Business Days of receipt of Issued Property, or such other longer period as may be specified in this Contract, the Contractor shall:

- 63.3.1 check the Issued Property to verify that it corresponds with the Issued Property specified in this Contract;
 - 63.3.2 conduct a reasonable visual inspection; and
 - 63.3.3 conduct any additional inspection and testing as may be necessary and practicable to check that the Issued Property is not defective or deficient for the purpose for which it has been provided,
- and notify the Authority of any defects, deficiencies or discrepancies discovered.
- 63.4 Where Issued Property is packaged it shall not be unpacked earlier than is necessary. The period identified at Clause 63.3 (*Receipt*) shall count from the date on which packages are opened.
 - 63.5 The Authority shall within a reasonable time after receipt of any notice under Clause 63.3 (*Receipt*) replace, re-issue or authorise repair of Issued Property agreed to be defective or deficient and the Contractor shall (having first taken all reasonable measures to mitigate the consequences of any such delay) consider whether such matter gives rise to a GFA Failure and, if so, shall consider initiating the procedures in Clause 27 (*Authority Performance Failures*) and shall also issue written instructions for the return or disposal of the defective or deficient Issued Property.
 - 63.6 In the event that the Authority fails to provide, replace or authorise repair of defective or deficient Issued Property within a reasonable time of receipt of a notice in accordance with Clause 63.3 (*Receipt*), the Contractor shall (having first taken all reasonable measures to mitigate the consequences of any such delay) consider whether such matter gives rise to a GFA Failure and, if so, shall consider initiating the procedures in Clause 27 (*Authority Performance Failures*) and if the Parties agree, fair and reasonable revisions of the Contract Price, delivery schedule and/or any other matter shall be considered and, if agreed, an Authority Change, to incorporate the agreed changes to this Contract, shall be initiated (such changes having due regard to any relief that may have been granted to the Contractor in accordance with Clause 27 (*Authority Performance Failures*)).
 - 63.7 Clauses 63.3 to 63.6 (inclusive) (*Receipt*) do not apply in the following circumstances:
 - 63.7.1 where Issued Property is issued for the purpose of repair, overhaul, conversion or other work to be performed on the Issued Property, inspection of such property shall be as specified in this Contract;
 - 63.7.2 where the Contractor can show that the Issued Property cannot be fully tested until it has been integrated with other items, inspection of such property shall be as specified in this Contract;
 - 63.7.3 where Special Jigs, Tools Etc. become Issued Property under Clause 69 (*Special Jigs, Tooling and Test Equipment*);
 - 63.7.4 where Issued Property is in the care, custody or control of the Contractor as at the Effective Date; and/or

- 63.7.5 subject to Clause 27.10.1 (*Discretionary GFA*) (in so far as such Clause 27.10.1 (*Discretionary GFA*) refers to Clause 63.4 (*Receipt*)), where such Issued Property is Discretionary GFA.

Custody

- 63.8 Subject to Clause 63.11 (*Custody*), the Contractor shall be responsible for the safe custody and due return of Issued Property, whether or not incorporated into any Articles, and shall be responsible for all Loss or damage thereto, until re-delivered in accordance with the Authority's instructions (as may be amended from time to time) or until the expiry of the period specified in Clause 63.15 (*Accounting and Return of Issued Property*).
- 63.9 The Contractor shall be responsible for such calibration and maintenance of the Issued Property as may be required for the purpose of the Contractor delivering the Contractor Deliverables and performing its other obligations in accordance with this Contract.
- 63.10 If requested, the Authority, within a reasonable time, and where practicable before delivery of the Issued Property, shall notify the Contractor of the value of the Issued Property, provided that the provisions of this Clause 63.10 (*Custody*) shall not apply to any Issued Property in the care, custody or control of the Contractor as at the Effective Date.
- 63.11 The Contractor shall not be liable in respect of:
- 63.11.1 defects or deficiencies notified to the Authority in accordance with Clause 63.3 (*Issued Property*) or latent defects which the Contractor can show could not reasonably have been discovered by means of the activities described at Clause 63.3 (*Issued Property*);
 - 63.11.2 fair wear and tear in Issued Property resulting from its normal and proper use in the execution of this Contract (except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance by the Contractor);
 - 63.11.3 Issued Property rendered unserviceable as a direct result of ordinary performance of this Contract; and
 - 63.11.4 any Loss or damage to Issued Property arising from:
 - (i) aircraft or other aerial devices or objects dropped from them, including pressure waves caused by aircraft or such devices whether travelling at sonic or supersonic speeds;
 - (ii) ionising radiation or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel;
 - (iii) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof; or

- (iv) riot, civil commotion, civil war, rebellion, revolution, insurrection, military or usurped power or acts of the Queen's enemies.

Accounting and return of Issued Property

63.12 The Contractor shall:

- 63.12.1 open and maintain a Public Store Account (“**PSA**”) in accordance with Def Stan 05-099;
- 63.12.2 ensure that all property of the Authority recorded in the PSA, including but not limited to Issued Property, is available for inspection by the Authority at any reasonable time; and
- 63.12.3 on being given two (2) months’ notice or such other period as has been stated in this Contract permit, and co-operate with, the Authority to conduct audits of the property of the Authority recorded in the PSA in a manner to be determined by the Authority and where the Authority has reasonable grounds to believe that the property of the Authority has not been used in accordance with the terms of issue, then these audits may be conducted without notice.

63.13 Once title in Special Jigs, Tools Etc. has passed to the Authority in accordance with Clause 69.4 (*Special Jigs, Tooling and Test Equipment: Passing of Property*), the Contractor shall record that equipment in the PSA in accordance with Def Stan 05-099.

63.14 The Contractor shall at least once in every two (2) Contract Months forward a list of Issued Property which is in its possession but which is no longer required by the Contractor for the provision of the Contractor Deliverables, to the Authority's Representative. The Authority's Representative shall, within two (2) Contract Months from receipt of the relevant list notify the Contractor of a place or places within the United Kingdom where the Contractor should deliver such Issued Property. Where the Authority has notified such delivery instructions, the Contractor shall comply with such instructions as soon as is reasonably practicable, ensuring that appropriate packaging (having due regard to the nature of the relevant Issued Property) is utilised. Where there is no such notification, the Contractor shall request (in writing) the Authority for delivery instructions and shall repeat such request at least once weekly thereafter until such delivery instructions are notified to the Contractor by the Authority. Following receipt of such delivery instructions the Contractor shall deliver the relevant Issued Property to the Authority (in each case ensuring appropriate packaging (having due regard to the nature of the relevant Issued Property) is utilised).

63.15 Without prejudice to Clause 63.14 (*Accounting and Return of Issued Property*), on completion or termination of this Contract, the Contractor shall forward a list of Issued Property still held to the Authority's Representative. Return or disposal of such Issued Property will be as specified in this Contract, or as instructed by the Authority on completion or termination of this Contract. If no disposal instructions are specified in this Contract the Authority shall provide such instructions within two (2) months of the Contractor's written request to do so.

64 Accounting for property of the Authority

64.1 The Contractor shall:

- 64.1.1 maintain a Public Store Account (PSA), as defined in Def Stan 05-099, which shall include a complete list of all property of the Authority, as defined in Clause 64.2 (*Accounting for property of the Authority*), and record for that property all transactions or other accounting information specified in Annex A to DEFCON 694 (*Accounting for property of the Authority*) (Edition 07/21);
- 64.1.2 supply to the Authority quarterly reports on the current PSA holdings. At least one (1) report in any twelve (12) month accounting period or part thereof shall be a reconciled report. This shall be submitted with the Annual Certificate Form AAC 32 as required in Def Stan 05-099. The other three (3) reports submitted in the period may be un-reconciled advisory reports. The submission by the Contractor and receipt by the Authority of these reports shall not prejudice any rights or obligations of the Authority or the Contractor under this Contract;
- 64.1.3 ensure that the PSA is available for inspection by the Authority at any reasonable time;
- 64.1.4 on being given two (2) months' notice permit, and co-operate with, the Authority to conduct audits of the PSA in a manner to be determined by the Authority provided that where the Authority is not satisfied of the proper use of property of the Authority, an audit may be conducted without notice;
- 64.1.5 retain the PSA for a period of three (3) years after disposal of the last item of the property of the Authority or for any other period as may be specified in this Contract;
- 64.1.6 if the Authority agrees that a Sub-Contractor at whatever level of sub-contracting shall have responsibility in the Sub-Contractor's PSA for property of the Authority issued in aid of this Contract, the Contractor shall include in any Sub-Contract with those Sub-Contractors the provisions corresponding to those set out in this Clause 64 (*Accounting for property of the Authority*) that apply to property of the Authority issued in aid of the Sub-Contract, in particular Clauses 64.1, 64.2, 64.4 and 64.7 (*Accounting for property of the Authority*); and
- 64.1.7 manage the GFA component of the PSA in accordance with the provisions of Def Stan 05-099 and implement any new edition of or amendment to Def Stan 05-099 subject to Clause 84 (*Change*) within three (3) months of the publication date of the new edition. These amendments shall not have retrospective effect.

64.2 For the purposes of this Clause 64 (*Accounting for property of the Authority*), "property of the Authority" means GFA and fixed assets, including property issued

under Clause 27.10 (*Discretionary GFA*), Clause 63 (*Issued Property*) and property of the Authority issued to the Contractor under any other authorising document.

- 64.3 For the avoidance of doubt, it is a condition of this Contract that this Clause 64 (*Accounting for property of the Authority*) shall apply to all property issued to the Contractor from the Effective Date, whether in aid of this Contract, any other contract or other agreement with the Authority. Property of the Authority issued prior to the Effective Date may be subject to separate contractual arrangements.
- 64.4 The obligations of the Contractor arising under this Clause 64 (*Accounting for property of the Authority*) in respect of property of the Authority issued in aid of this Contract shall survive completion of this Contract and shall not be completed until all such obligations are fulfilled including the provisions of Clause 64.1.5 (*Accounting for property of the Authority*).
- 64.5 The obligations of the Contractor arising under this Clause 64 (*Accounting for property of the Authority*) in respect of property of the Authority unconnected with this Contract shall survive completion of this Contract and shall not be completed until all those obligations are fulfilled including the provisions of Clause 64.1.5 (*Accounting for property of the Authority*) unless and until a subsequent contract containing DEFCON 694 (*Accounting for property of the Authority*) (Edition 07/21) is placed with the Contractor at which time obligations in respect of any remaining property of the Authority unconnected with this Contract shall be subsumed in the subsequent contract.
- 64.6 If, after completion of this Contract, no subsequent contract is placed containing DEFCON 694 (*Accounting for property of the Authority*) (Edition 07/21) within the period detailed at Clause 64.1.5 (*Accounting for property of the Authority*) then the obligations of the Contractor arising under this Clause 64 (*Accounting for property of the Authority*) in respect of property of the Authority unconnected with this Contract shall cease on expiry of the period detailed in Clause 64.1.5 (*Accounting for property of the Authority*).
- 64.7 The Authority reserves the right to amend Annex A to DEFCON 694 (*Accounting for Property of the Authority – Data & Format Requirements for PSA Records*) (Edition 07/21) without further consultation where the amendments arise from the Authority's proper and reasonable accounting requirements. For the purposes of this Clause 64 (*Accounting for property of the Authority*), Annex A to DEFCON 694 (*Accounting for Property of the Authority – Data & Format Requirements for PSA Records*) (Edition 07/21) shall be regarded as a specification which is subject to the provisions of Clause 84 (*Change*). If the Authority exercises this right:
- 64.7.1 the Contractor shall implement the amendment to Annex A to DEFCON 694 (*Accounting for Property of the Authority – Data & Format Requirements for PSA Records*) (Edition 07/21) at the commencement of the Authority's next accounting year provided that a notice of six (6) months or such other period as may expressly be agreed between the Authority and the Contractor is given to the Contractor. These amendments shall not have retrospective effect; and

- 64.7.2 the Contractor shall inform the Authority as soon as practicable, but in any event within three (3) months of notice having been given, if the Contractor cannot comply with the amendment to Annex A to DEFCON 694 (*Accounting for Property of the Authority – Data & Format Requirements for PSA Records*) (Edition 07/21).

65 Loss of or Damage to the Articles

- 65.1 Until delivery, the risk of loss of or damage to the Articles remains with the Contractor. Without prejudice to any other rights or remedies of the Authority, the Contractor shall make good any such loss or damage however caused or occasioned which occurs before delivery.
- 65.2 Clause 65.1 (*Loss of or Damage to the Articles*) shall apply notwithstanding:
- 65.2.1 that the Articles may have been inspected by the Authority; or
- 65.2.2 that the property therein may have passed earlier than upon delivery.
- 65.3 Unless otherwise agreed and save for the provisions of Clause 65.4 (*Loss of or Damage to the Articles*) the Contractor shall not after delivery be at risk in respect of the Articles, except where the Authority rejects any Article under Clause 60 (*Delivery, Acceptance, Rejection and transfer of Title and Risk*), in which case the risk in the rejected Article shall revert to the Contractor on the earlier of:
- 65.3.1 the removal of the Article by the Contractor in accordance with Clause 60.8 (*Rejection*); or
- 65.3.2 the close of business on the last day of the period in which the Contractor is required to remove the rejected Article in accordance with Clause 60.8 (*Rejection*); or
- 65.3.3 the return of the Article by the Authority in accordance with Clause 60.9 (*Rejection*).
- 65.4 Notwithstanding the provisions of Clause 65.3 (*Loss of or Damage to the Articles*), if the Contractor has given notice of objection under Clause 60.11 (*Rejection*), the Contractor shall not be at risk in respect of the rejected Article where a dispute between the Parties relating to the rejection remains unresolved and the Article remains in the possession of the Authority.
- 65.5 This Clause 65 (*Loss of or Damage to the Articles*) shall not apply to any Articles issued to the Contractor by or on behalf of the Authority in connection with which the Contractor is required to carry out any Service. Such Articles shall be subject to Clause 60.3 (*Vesting*).

66 Marking of Articles

- 66.1 Each Article shall be marked in accordance with the procedure laid out in this Contract. Where no procedure is stated, the Contractor shall mark each Article clearly and indelibly in accordance with the requirements of the relevant Def Stan 05-

132 as specified in this Contract or specification. In the absence of such requirements, the Articles shall be marked with the Authority stock reference, NATO Stock Number (“**NSN**”) or alternative reference number shown in this Contract. Any marking method used shall not have a detrimental effect on the strength, serviceability or corrosion resistance of the Articles.

66.2 The marking shall include any serial numbers allocated to the Article.

66.3 Where because of its size or nature it is not possible to mark an Article with the required particulars, the required information should be included on the package or carton in which the Article is packed in accordance with Clause 55 (*Packaging (for Articles other than Munitions)*).

67 Defect Investigation and Liability

67.1 The procedure for the reporting, investigation and rectification of all defects whether or not they relate to design, software or manufacturing shall be as agreed between the Contractor and the Authority.

67.2 Where it is established that, pursuant to this Contract or any other contract relating to the Contractor Deliverables, the Contractor bears the liability for any of the costs of investigating, repairing or rectifying a defect, the costs of any such work undertaken by the Contractor shall be borne by the Contractor.

67.3 If liability for the defect is in dispute, the Contractor shall separately identify and record all related costs.

67.4 Any Contractor Deliverable, and work thereon, which after examination is required to be rectified/repared at the Authority's or Contractor's expense, (or if liability is in dispute), is to be notified to the Integrated Project Team (IPT) Project Manager or Equipment Support Manager, prior to any work being put in hand, or transfer to any other contract placed by the Authority, e.g. for repair, overhaul and/or modification.

67.5 The Contractor shall submit to the Commercial Staff a tasks list, in duplicate, countersigned by the Project Manager/Equipment Support Manager, of the Contractor Deliverables or work which have been investigated/rectified. The list shall be submitted in accordance with the timescales laid down in the Contract and if none is specified within four (4) weeks of completion of all work. The list shall include:

67.5.1 the description, including, where appropriate, the Stores Reference Number and Serial Number of all Contractor Deliverables or work investigated;

67.5.2 the description of all other tasks (e.g. design of modification, amendments of drawings);

67.5.3 against each Item, whether liability has been accepted by the Authority or the Contractor, or is still to be determined, quoting dates and references of relevant correspondence;

67.5.4 against each Item, the Contract Number and Item Number against which repair, overhaul and/or modification of the Contractor Deliverables has been or will be carried out;

67.5.5 where liability rests with the Contractor or where overhaul, repair or modification has already been completed for any item, the Unique Order Identifier generated by the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.

68 Transport

68.1 Where this Contract states that the Authority is responsible for transport of items of Issued Property, the Authority shall only be responsible to transport such Issued Property to the Centre.

68.2 The Contractor shall be responsible for transporting the Articles supported under this Contract and returning the items of Issued Property (as the case may be) from the point of origin to the relevant locations within the United Kingdom as notified by the Authority to the Contractor from time to time. The Contractor shall also be responsible for all loading and unloading of the Articles and the items of Issued Property, including, where necessary, the provision of special handling equipment.

69 Special Jigs, Tooling and Test Equipment

69.1 The Contractor shall provide all jigs, tools, patterns, moulds, dies, manufacturing gauges and test equipment, together with associated fixtures, fittings and software necessary for the manufacture of the Articles or for the provision of the Contractor Deliverables, unless supplied by the Authority in accordance with Schedule 7 (*Authority Obligations*).¹⁸

Pricing

69.2 The Contract Price includes an appropriate amount to enable the Contractor to recover his expenditure on Special Jigs, Tools Etc., including the cost of maintenance and calibration under Clause 69.8 (*Accounting and Control*).

69.3 The Contractor shall not claim assistance from other Government funds (e.g. Regional Development Grants or selective financial assistance) or other third parties towards the costs of any Special Jigs, Tools Etc.

Passing of property

69.4 Except where otherwise specified in this Contract, the Special Jigs, Tools Etc. shall become the property of the Authority:

69.4.1 where the Special Jigs, Tools Etc. are delivered to the Authority before being utilised by the Contractor for any purpose, in accordance with Clause 60 (*Delivery, Acceptance, Rejection and Transfer of Title and Risk*) as if they were Articles; or

¹⁸ Relevance of Clause 69 (*Special Jigs etc.*) to be determined in line with the Tenderer's solution.

- 69.4.2 where the Authority authorises the Contractor to utilise the Special Jigs, Tools Etc. for the production of articles for a Third Party in advance of their being used for the production of Articles under this Contract, upon delivery of the first article so produced for the Third Party; or
- 69.4.3 where the Contractor is to utilise the Special Jigs, Tools Etc. in respect of the Contractor Deliverables before delivery of such Special Jigs, Tools Etc. to the Authority, the earlier to occur of when the Special Jigs, Tools Etc. are delivered to the Contractor or title to such Special Jigs, Tools Etc. is secured by the Contractor or any Contractor Related Party through any contractual arrangement to which the Contractor or any Contractor Related Party is a party; and
- 69.4.4 in all other cases upon acceptance of the first Article delivered under this Contract or upon expiry or termination of this Contract whichever is the earlier.
- 69.5 Where property in the Special Jigs, Tools Etc. passes to the Authority while they are still required to provide the Contractor Deliverables, they shall be treated thereafter as Issued Property for the purposes of Clauses 63 (*Issued Property*) and 64 (*Accounting for property of the Authority*).

Modifications

- 69.6 Notwithstanding the passing of property to the Authority pursuant to Clause 69.4 (*Passing of Property*), the Contractor shall be free to modify the Special Jigs, Tools Etc. as it may deem necessary in order to produce the Articles or to provide the Contractor Deliverables, and the Authority's approval of such modifications shall not be required.

Accounting and control

- 69.7 The Contractor shall account for and control the Special Jigs, Tools Etc. in accordance with the provisions of Clause 69.5 (*Passing of Property*). Pending the transfer to the Public Store Account, the Contractor shall:
- 69.7.1 maintain a list of Special Jigs, Tools Etc. procured or manufactured by the Contractor;
- 69.7.2 make the list available to the Authority for inspection by the Authority;
- 69.7.3 maintain the list for three (3) years after disposal of the Special Jigs, Tools Etc., where not transferred to the Public Store Account in accordance with Clause 63 (*Issued Property*);
- 69.7.4 forward the list to the Authority's Representative following first Article acceptance and prior to transfer of Special Jigs, Tools Etc. to the Public Store Account; and
- 69.7.5 remove from the list any Special Jigs, Tools Etc. transferred to the Public Store Account.

- 69.8 The Contractor shall be responsible for the safe custody, maintenance and calibration necessary to retain the relevant Special Jigs, Tools Etc. on any Contractor premises until delivered to the Authority in accordance with Clause 69.9 (*Availability*).

Availability

- 69.9 Once property in the Special Jigs, Tools Etc. has passed to the Authority in accordance with Clause 69.4 (*Passing of property*), the Contractor shall, if required, deliver the Special Jigs, Tools Etc. to such individual, company, factory or Government Establishment as may be named by the Authority. The Contractor shall not be entitled to any further payment for delivering the Special Jigs, Tools Etc. other than for the recovery of packing and carriage costs reasonably incurred. This Clause 69.9 (*Availability*) shall not, however, entitle the Authority to require the Contractor to dispose of the Special Jigs, Tools Etc. to the prejudice of this Contract or other contracts held by the Contractor with the Authority or with another customer, provided the Authority's approval for such use has been given in accordance with Clause 69.11 (*Use for other than the purposes of the Authority*). Where the Contractor holds no contracts for such articles, but having received the Authority's approval in accordance with Clause 69.11 (*Use for other than the purposes of the Authority*), has made a firm written offer to a Third Party to supply such articles, the Authority shall not be entitled to dispose of the Special Jigs, Tools Etc. until such time as the Contractor's offer has expired and no commitment to supply those articles or perform those services remains.

Delivery

- 69.10 The Special Jigs, Tools Etc. shall be delivered to the Authority by the Contractor as notified to the Contractor from time to time (at no additional cost to the Authority).

Use for other than the purposes of the Authority

- 69.11 The Contractor shall not use the Special Jigs, Tools Etc. for any other purposes other than those of the Authority without first obtaining the written approval of the Authority and in accordance with the terms, including payment, for such other use as stated in a commercial exploitation, or other agreement between the Contractor and the Authority. In Sub-Contracts, which include the provisions of this Clause 69 (*Special Jigs, Tooling and Test Equipment*), the Contractor shall require that such written approval be obtained direct from the Authority.

70 Special Procedure for Initial Spares

Definitions

- 70.1 Throughout this Clause 70 (*Special Procedures for Initial Spares*), the following definitions apply:
- 70.1.1 “**Peculiar**” parts are those designed specifically for the equipment concerned and having no other application;
- 70.1.2 “**Proprietary**” parts are those for which the design rights are not held or shared by the Authority. (For the purposes of this procedure, lists of

proprietary parts shall include the actual manufacturer's name address and part number, in addition to any reference allocated by the Contractor);

- 70.1.3 To distinguish this procedure from the several others referring to “**immediate initial**” or “**advance**” spares, it shall be referred to as “**Clause 70 Procedure**”.

Background and Scope of the Procedure

- 70.2 When a completely new equipment is provided to the Contractor Deliverables, or existing equipment modified, it is imperative that its operational efficiency is not impaired by lack of spare parts, should a functional failure occur. Suitable arrangements must, therefore, be made to ensure that a supply of spare parts is available before, or at least as soon as, the new or modified equipment is brought into use.
- 70.3 The administration of store required for the Armed Forces is a complex operation, including the technical assessment of precisely which spares will be required (“**Ranging**”), in what quantity, (“**Scaling**”), and with what identification (NATO Stock Nos, Descriptions, Special Packaging, etc.). These detailed assessments inevitably take time and interim arrangements are therefore necessary to ensure the timely supply of such spares as are considered necessary to maintain the new (or modified) equipment in full operational condition during the initial period of use.
- 70.4 The procedures detailed in Part A at Annex A and Part B at Annex B to DEFCON 82 (*Special Procedures for Initial Spares*), Edition 06/21 have the special purpose of providing such an initial supply of essential spare parts in order to maintain operational capability until the Authority's normal spares procurement procedure can produce the full range of spares which a more detailed examination of all the available information suggests will be needed. Part A covers action to be taken in order to provide initial spares concurrently with the main equipment, while Part B is designed to cover similar requirements arising from modification to equipment already in service. Parts A and B are dissimilar in that Part A deals comprehensively with requirements placed on the Contractor under the listing, authorising and purchasing of spares for new equipment, whereas Part B deals only with listing spares for modifications. For ease of reference, paragraph headings in the two Parts correspond as far as possible.
- 70.5 This Clause 70 Procedure requires the Contractor to draw up, at the earliest possible moment and in accordance with such technical information and assistance as may be provided by the Authority, a list of spare parts which it considers will be sufficient in type and quantity to maintain the operational efficiency of the new or modified equipment during an initial period of use (such period being two (2) years, unless otherwise stated in this Contract). Lists of spares required under Part A (*New Equipments*) should be submitted on DEFFORM 82A and those under Part B (*Modifications*) on DEFFORM 82B. Any further information or guidance which the Contractor may require concerning the assessment of spares, or completion of DEFFORM 82A or 82B, should be obtained from the Authority's Representative [Project Manager].

- 70.6 The Contractor shall comply with Annex A (*New Equipments*) and Annex B (*Notification of Spares Required as a Result of Equipment Modifications*) to DEFCON 82 (*Special Procedures for Initial Spares*), Edition 06/21, which Annexes shall be deemed to be incorporated into this Contract, save that references to the Project Manager in such Annexes shall be replaced by the Authority's Representative.

71 Redundant Materiel

- 71.1 "**Redundant Materiel**" shall mean materiel that is identified as surplus to the requirement of this Contract for whatever reason and for the purposes of this Clause 71 (*Redundant Materiel*), "materiel" shall be construed as a generic term meaning equipment (including fixed assets), stores, supplies and spares.

- 71.2 All Redundant Materiel resulting from work carried out under, or procured for the purposes of this Contract, the costs of which have been paid by the Authority under this Contract, or which is otherwise owned by the Authority, shall be disposed of as follows:

- 71.2.1 on the expiry or termination of this Contract, or earlier if appropriate, the Contractor shall prepare:

- (i) a list of those items of the materiel which are considered to be serviceable or repairable. The list shall record the condition of each item, its actual cost or estimated value and, in the case of repairable items, the estimated price of repair; and
- (ii) a list of those items of the materiel which are considered to be unserviceable and which cannot be economically repaired or are otherwise considered to be scrap.

- 71.2.2 The Contractor shall send the lists referred to in Clause 71.2.1(i) and 71.2.1(ii) above to the Authority's Representative.

- 71.2.3 Within three (3) months of the date of receipt of the lists, the Authority shall issue disposal instructions to the Contractor. Such disposal instructions shall require that the items of materiel are either:

- (i) transferred to other subsisting contracts; or
- (ii) subject to contract, retained by the Contractor for use in the performance of future contracts placed with the Contractor; or
- (iii) subject to contract, repaired by the Contractor; or
- (iv) at the direction of the Authority, sold by the Contractor, acting on behalf of the Authority, for the best price reasonably obtainable.

Materiel designated in accordance with Clause 71.2.1(ii) above shall be dismantled and disposed of in such a manner as to preclude the possibility of resale in its existing form.

- 71.3 The proceeds of the sale of items of materiel sold pursuant to Clause 71.2.3(iv) above shall be credited to the Authority in accordance with arrangements made between the Contractor and the Authority.
- 71.4 A list of the items sold by the Contractor shall be sent to the Authority's Representative together with a statement of the proceeds of sale.

72 Montreal Protocol Substances

- 72.1 Prior to Contract Award the Contractor has either confirmed in writing that no Montreal Protocol Substances are to be used in the performance of the Contract or provided a list to the Authority specifying:
- 72.1.1 any Montreal Protocol Substances to be used in the performance of the Contract;
 - 72.1.2 the quantity of any Montreal Protocol Substances; and
 - 72.1.3 where any Montreal Protocol Substances shall be used or contained.
- 72.2 The Contractor shall provide annually to the Authority a list (or a nil return where appropriate) setting out which of the substances listed in Regulation (EC) No. 1005/2009 (as amended by Regulation (EC) No. 744/2010 and as subsequently amended from time to time) have been used in the Contractor Deliverables and/or any Packaging specifying:
- 72.2.1 the quantity of such substances; and
 - 72.2.2 where in the Contractor Deliverables and/or Packaging such substances have been used.

73 Timber and Wood-Derived Products

Definitions

- 73.1 In this Clause 73 (*Timber and Wood-Derived Products*), the following words and expressions shall have the meanings set out respectively against them:
- 73.1.1 “**CPET**” means the UK Government’s Central Point of Expertise for Timber;
 - 73.1.2 “**FLEGT**” means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging;
 - 73.1.3 “**Evidence**” means either:
 - (i) an invoice or delivery note from the timber supplier or sub-contractor to the Contractor specifying that the product supplied to the Authority is Forest Stewardship Council FSC or Programme for the Endorsement of Forest Certification PEFC certified; or

- (ii) other robust evidence of sustainability or FLEGT licensed origin, as advised by CPET;
 - 73.1.4 **“Independent Verification”** means that an evaluation is undertaken and reported by an individual or body:
 - (i) whose organisation, systems and procedures conform to “ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems or equivalent”; and
 - (ii) who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to “ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent”;
 - 73.1.5 **“Timber and Wood-Derived Products”** means timber (including Recycled Timber and Virgin Timber but excluding Short-Rotation Coppice) and any products that contain wood or wood fibre derived from those timbers. Such products range from solid wood to those where the manufacturing processes obscure the wood element;
 - 73.1.6 **“Recycled Timber”** means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure.
- This Clause 73 (*Timber and Wood-Derived Products*) uses Recycled Timber to cover:
- (i) Pre consumer reclaimed wood and wood fibre and industrial by products but excluding sawmill co-products which fall within the category of Virgin Timber;
 - (ii) Post consumer reclaimed wood and wood fibre, and driftwood;
 - (iii) Reclaimed timber abandoned or confiscated at least ten years previously;
 - 73.1.7 **“Virgin Timber”** means Timber and Wood-Derived Products that do not include Recycled Timber;
 - 73.1.8 **“Short-Rotation Coppice”** means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK Government timber procurement policy. For avoidance of doubt, Short-Rotation Coppice is not conventional coppice, which is subject to the timber policy;
 - 73.1.9 **“Legal and Sustainable”** means production and process methods, also referred to as timber production standards, as defined by the document titled “UK Government Timber Production Policy: Definition of legal and

sustainable for timber procurement". The edition current on the day the Authority issued the contract documents shall apply.

Requirements for Timber

- 73.2 All Timber and Wood-Derived Products supplied by the Contractor under this Contract (including all Timber and Wood-Derived Products supplied by Sub-Contractors):
- 73.2.1 shall comply with Schedule 2 (*Scope*); and
 - 73.2.2 must originate either;
 - (i) from a Legal and Sustainable source; or
 - (ii) from a FLEGT-licensed or equivalent source.
- 73.3 In addition to the requirements of Clause 73.2 above, all Timber and Wood-Derived Products supplied by the Contractor under this Contract (including all Timber and Wood-Derived Products supplied by Sub-Contractors) shall originate from a forest source where management of the forest has full regard for:
- 73.3.1 identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
 - 73.3.2 mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
 - 73.3.3 safeguarding the basic labour rights and health and safety of forest workers.

Requirements for Proof of Timber Origin

- 73.4 If requested by the Authority, the Contractor shall provide to the Authority evidence that the Timber and Wood-Derived Products supplied to the Authority under this Contract complies with the requirements of Clause 73.2 or Clause 73.3, or both.
- 73.5 The Authority reserves the right at any time during the execution of this Contract and for a period of five (5) years from final delivery under this Contract to require the Contractor to produce the evidence required for the Authority's inspection within fourteen (14) days of the Authority's request.
- 73.6 If the Contractor has already provided the Authority with the evidence required under Clause 73.4, the Contractor may satisfy these requirements by giving details of the previous notification and confirming the evidence remains valid and satisfies the provisions of Clauses 73.2 and 73.3.
- 73.7 The Contractor shall maintain records of all Timber and Wood-Derived Products, delivered to and accepted by the Authority, in accordance with Clause 35 (*The Contractor's Records*).

Recycled Timber

73.8 Notwithstanding Clause 73.4, if exceptional circumstances render it strictly impractical for the Contractor to record evidence of proof of timber origin for previously used Recycled Timber, the Contractor shall support the use of this Recycled Timber with:

- 73.8.1 a record tracing the Recycled Timber to its previous end use as a standalone object or as part of a structure; and
- 73.8.2 an explanation of the circumstances that rendered it impractical to record evidence of proof of timber origin.

Independent Verification

73.9 The Authority reserves the right to decide, except where in the Authority's opinion the timber supplied is incidental to the requirement and from a low risk source, whether the evidence submitted to it demonstrates compliance with Clauses 73.2 and 73.3. In the event that the Authority is not satisfied, the Contractor shall commission and meet the costs of an "Independent Verification" and resulting report that will:

- 73.9.1 verify the forest source of the timber or wood; and
- 73.9.2 assess whether the source meets the relevant criteria of Clause 73.3.

Statistical Reporting

73.10 The statistical reporting requirement at Clause 73.11 applies to all Timber and Wood-Derived Products delivered under this Contract. The Authority reserves the right to amend the requirement for statistical reporting, in the event that the UK Government changes the requirement for reporting compliance with the Government Timber Procurement Policy. Amendments to the statistical reporting requirement will be made in accordance with Clause 85 (*Amendments to Contract*).

73.11 The Contractor shall provide to the Authority, using DEFFORM 691A, the data or information the Authority requires in respect of Timber and Wood-Derived Products delivered to the Authority under this Contract, or in respect of each Order in the case of a Framework Agreement, or at such other frequency as stated in this Contract. The Contractor shall send all completed DEFFORMs 691A, including Nil Returns where appropriate, to the Authority's Representative. [Commercial Officer]

73.12 DEFFORM 691A may be amended by the Authority from time to time, in accordance with Clause 85 (*Amendments to Contract*).

74 [Loss or damage caused by Authority Manpower]

74.1 If Authority Manpower causes loss or damage to Government property, Issued Property and/or Articles, the Contractor shall not be relieved from any obligations to perform the Contractor Deliverables.]¹⁹

¹⁹ To be developed in conjunction with Tenderers' proposed solution.

PART 12 - CONTRACT SPECIFIC PROVISIONS

75 Authority Obligations

75.1 The Parties shall comply with the provisions of Schedule 7 (*Authority Obligations*).

76 Management and Reporting

76.1 The Parties shall comply with the provisions of this Contract with regard to the provision of periodic reporting (including Schedule 2 (*Scope*), Schedule 8 (*Governance and Management*) and Schedule 6 (*Performance Management Regime*)).

76.2 The submission by the Contractor and receipt by the Authority of reports on the progress of this Contract shall not prejudice any rights or obligations of the Authority or the Contractor under this Contract.

77 Quality Assurance

77.1 The Contractor shall comply with the documents referred to in Schedule 15 (*Ancillary Documents*).

77.2 The Deliverable Quality Plan shall be up-dated by the Contractor in accordance with Schedule 5 (*Contract Data Deliverables*) and in accordance with Good Industry Practice, DID 003 of Schedule 2 (*Scope*) and AQAP 2105.

77.3 Notwithstanding that the Deliverable Quality Plan will have been seen and agreed by the Authority, the Contractor shall be solely responsible for the accuracy, suitability and applicability of the Deliverable Quality Plan.

Requirement for a Certificate of Conformity

77.4 The Contractor shall provide a Certificate of Conformity (CofC) in accordance with the Scope and any applicable Quality Plan. One copy of the CofC shall be sent to the Authority (Box 2 DEFFORM 111) upon delivery and one copy shall be provided with the Articles or to the recipient of the Contractor Deliverables.

77.5 Each CofC should include the wording "Certificate of Conformity" in the title of the document to allow for easy identification. One CofC is to be used per NSN/part number; a CofC must not cover multiple line items.

77.6 The CofC shall be considered by the Contractor as a record and Clause 35 (*The Contractor's Records*) shall apply.

77.7 The information provided on the CofC shall include:

77.7.1 Contractor name and address;

77.7.2 Contractor unique CofC reference number;

77.7.3 Contract number and where applicable Contract Amendment number;

- 77.7.4 Details of any approved concessions;
- 77.7.5 Acquirer name and organisation;
- 77.7.6 Delivery address;
- 77.7.7 Contract Item Number from the Scope;
- 77.7.8 Description of Article or Contractor Deliverable including part number, Specification and configuration status;
- 77.7.9 NATO Stock Number (NSN) (where allocated);
- 77.7.10 Identification marks, batch and serial number(s) in accordance with the Specification;
- 77.7.11 Quantities;
- 77.7.12 A signed and dated statement by the Contractor that Articles or Contractor Deliverables provided comply with the requirements of this Contract, and approved concessions.
- 77.7.13 Exceptions or additions to the above are to be documented.

77.8 Where the Scope and any applicable Quality Plan requires demonstration of traceability and design provenance through the supply chain, the Contractor shall include in any relevant Sub-contract the requirement for the information called for at Clause 77.7. The Contractor shall ensure that this information is available to the Authority through the supply chain, upon request in accordance with Clause 35 (*The Contractor's Records*).

PART 13 - TERMINATION

78 Termination for Contractor Default

Right to Terminate²⁰

- 78.1 If a Contractor Default has occurred, the Authority shall be entitled to terminate the whole or any part of this Contract in accordance with the provisions of Clause 78.2 (*Right to Terminate*) and subject to the provisions of Clauses 78.3 to 78.6 (inclusive) (*Rectification*).
- 78.2 If a Contractor Default has occurred (including a default as contemplated in Clause 78.13 (*Termination Following a Change of Ownership*)) and the Authority wishes to terminate the whole or any part of this Contract pursuant to this Clause 78 (*Termination for Contractor Default*), it must serve a notice (the “**Termination Notice**”) on the Contractor stating:

²⁰ The Authority reserves the right to include additional triggers for termination dependent on the Authority's opinion of the financial standing of the preferred Tenderer. This may include early warning provisions connected with credit rating, requirements for dialogue and remediation plans when financial distress is identified and termination rights (resulting in Contractor Default termination).

- 78.2.1 that the Authority is terminating this Contract or part thereof for Contractor Default;
- 78.2.2 where relevant, the part of this Contract that the Authority is terminating;
- 78.2.3 the type and nature of the Contractor Default that has occurred, giving reasonable details; and
- 78.2.4 that this Contract or part thereof shall (subject to the provisions of Clauses 78.3 to 78.6 (inclusive) (*Rectification*)) terminate on the day (the “**Contractor Default Termination Date**”) falling twenty (20) Business Days after the date the Contractor receives the Termination Notice.

Rectification

- 78.3 Where a Termination Notice cites a Contractor Default of the type and nature falling under limbs (a), (f) or (i) of the definition of "Contractor Default", the Contractor shall, in consultation with the Authority, have the opportunity to set out within ten (10) Business Days or such other period as agreed between the Parties before the end of such ten (10) Business Day period how it intends to remedy such Contractor Default.
- 78.4 Where the Authority agrees with such proposed remedy, and the remedy is implemented as agreed, the Termination Notice in question shall be deemed to be revoked.
- 78.5 Where the Authority agrees with such proposed remedy, and the remedy is not implemented as agreed, the Contractor Default Termination Date shall be the day falling twenty (20) Business Days after the date by which the remedy was agreed to be implemented.
- 78.6 If by the day falling twenty (20) Business Days after the date the Contractor receives the Termination Notice (or such later date as the Authority, acting reasonably, may agree) the Authority considers that such proposed remedy will not restore the provision of the Contractor Deliverables or any portion thereof in accordance with the terms of this Contract, and/or that such proposed remedy will not rectify the Contractor Default, the Authority may terminate the whole or the relevant part of this Contract forthwith (and the Contractor Default Termination Date shall be the day falling twenty (20) Business Days after the date the Contractor receives the Termination Notice (or such later date to be determined at the Authority’s discretion)).

Termination Date for Contractor Default

- 78.7 Following the issue of a Termination Notice pursuant to Clause 78.2 (*Right to Terminate*) and where the Authority is terminating the whole of this Contract, this Contract shall (subject to the provisions of Clauses 78.3 to 78.6 (inclusive) (*Rectification*)) terminate on the Contractor Default Termination Date.

Partial Termination

- 78.8 Where the Authority is terminating part of this Contract, the Parties shall, subject to Clause 82 (*Continuing Obligations*), owe each other no further obligations in respect

of such part of this Contract as is specified in the Termination Notice from the Contractor Default Termination Date.

- 78.9 For the avoidance of doubt, where Clause 78.8 (*Partial Termination*) applies, the Parties shall continue to fulfil their respective obligations in respect of those parts of this Contract that are not identified in the Termination Notice as being terminated.

Termination following a Prohibited Act

- 78.10 If the Contractor commits a Prohibited Act and/or breaches and/or is in default under Clauses 6.1.13, 6.1.14 and/or 6.1.15 (*Contractor Warranties*), the Authority may (without prejudice to its rights in Clauses 12.3 and 12.4 (*Sub-Contracting*)) and subject to the provisions of Clause 78.11 (*Termination following a Prohibited Act*)) by notice:

78.10.1 require the Contractor to remove from performance of this Contract any Contractor Related Party, and any of the Contractor's employees, consultants, or agents whose acts or omissions have caused the default; or

78.10.2 immediately terminate this Contract; and

78.10.3 any notice served by the Authority under this Clause 78.10 (*Termination Following a Prohibited Act*) shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Contract shall terminate).

- 78.11 In exercising its rights and remedies in respect of a Prohibited Act, the Authority shall:

78.11.1 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

78.11.2 give all due consideration, where appropriate, to action other than termination of this Contract, including without being limited to:

- (i) requiring the Contractor to procure the termination of a Sub-Contract where the Prohibited Act was undertaken by or on behalf of a Sub-Contractor or anyone acting on its or their behalf; or
- (ii) requiring the Contractor to procure the re-assignment of an employee, consultant or agent (whether its own or that of a Sub-Contractor or anyone acting on its behalf) from performing this Contract where the Prohibited Act is that of such employee, consultant or agent,

and the Contractor shall (and shall use all reasonable endeavours to procure that its Sub-Contractors shall) give all due consideration to the

Authority's proposal under this Clause 78.11.2 (*Termination Following a Prohibited Act*).

Termination following withholding of Hazard Data

- 78.12 As an alternative to terminating this Contract (or any part thereof) following a Contractor Default of the type described at limb (i) of the definition of that term, the Authority shall have the option to require the Contractor to rectify the relevant breach immediately at no additional cost to the Authority.

Termination following a Change of Ownership

- 78.13 If a Change of Ownership occurs in the circumstances described in Clause 88.3 (*Change of Ownership*), a Contractor Default shall be deemed to have occurred and the Authority shall be entitled to terminate the whole or any part of this Contract within twelve (12) months of the date the Authority became aware that the relevant Change of Ownership has occurred and such termination shall be subject to the provisions of Clause 78.2 (*Right to Terminate*) and shall not be subject to the provisions of Clauses 78.3 to 78.6 (inclusive) (*Rectification*).

79 Termination for Convenience

- 79.1 The Authority shall, in addition to its power under any other of the provisions of this Contract, have the power to determine this Contract at any time by giving to the Contractor at least twenty (20) Business Days written notice, and upon the expiration of such notice period this Contract shall terminate, without prejudice to the rights of the Parties already accrued as at the Termination Date, but subject to the operation of the following provisions of this Clause 79 (*Termination for Convenience*).
- 79.2 In the event of such notice being given, the Authority shall, at any time before the expiration of the notice, be entitled to exercise and shall, as soon as may be reasonably practicable within that period, exercise such of the following powers as it considers expedient:
- 79.2.1 to direct the Contractor, where provision of any element of the Contractor Deliverables has not been commenced, to refrain from commencing such provision;
 - 79.2.2 to direct the Contractor to complete the provision of any element of the Contractor Deliverables and/or to concentrate its efforts on the completion of any elements of the Contractor Deliverables where provision of the same (or any activities that are integral to such provision) has (or have) already commenced;
 - 79.2.3 to direct the Contractor to, as soon as may be reasonably practicable after the receipt of such notice, take such steps as will ensure that the rate of provision of the Contractor Deliverables (or the rate of performance of any activities that are integral to such provision) is reduced as rapidly as possible; and/or

79.2.4 to direct the Contractor to determine on the best possible terms such Sub-Contracts and orders for materials, parts, components and/or services as have not been completed, observing in connection with this any direction given under Clauses 79.2.1 to 79.2.3 (*Termination for Convenience*) as far as may be possible.

79.3 If in any particular case of hardship to the Contractor should arise from the operation of this Clause 79 (*Termination for Convenience*) it shall be open to the Contractor to refer the circumstances to the Authority who, on being satisfied that such hardship exists, shall make such allowance (having particular regard to the provisions of Clause 80 (*Financial consequences of Termination*)), if any, as in its opinion is reasonable, and the decision of the Authority on any matter or thing arising out of this Clause 79.3 (*Termination for Convenience*) shall be final and conclusive.

80 Financial consequences of Termination

Termination for Contractor Default

80.1 Where this Contract or any part thereof is terminated pursuant to Clause 78 (*Termination for Contractor Default*), the provisions of Clauses 80.2 to 80.5 (inclusive) (*Termination for Contractor Default*) shall apply provided always that where such termination is as a result of an Insolvency Event the Contractor shall not be entitled to any compensation or any further payment from the Authority.

80.2 Where Clause 80.1 (*Termination for Contractor Default*) applies, and the Authority makes alternative arrangements for the provision of the Contractor Deliverables (which may, for the avoidance of doubt, include the Authority carrying out the Contractor Deliverables itself and/or through any Third Party), the Authority shall be entitled to recover from the Contractor the cost of tendering for and/or making such alternative arrangements, together with any additional expenditure incurred by the Authority as a result of such alternative arrangements (i) throughout the remainder of what would have been (as at the date of the Termination Notice) the term of this Contract had it not been terminated pursuant to Clause 78 (*Termination for Contractor Default*); and (ii) during the period after the Termination Date in respect of which the exercise of any Option would have extended the term of this Contract (and assuming for the purposes of this Clause 80.2, that the Authority has exercised all of the Options referred to in Clause 5.4 (*Contract Period and Options*)).²¹

80.3 Where Clause 80.1 (*Termination for Contractor Default*) applies, the Contractor shall not be entitled to be paid any sums until the Authority has assessed the cost of the alternative arrangements referred to in Clause 80.2 (*Termination for Contractor Default*). If following such assessment, the amount of such Losses is less than the amount outstanding to the Contractor for any aspect of the Contractor Deliverables that it has, as at the Termination Date, delivered to the Authority in accordance with this Contract, then the Authority shall pay the difference to the Contractor. The Authority shall complete such assessment, and the Parties shall complete the reconciliation process, within three (3) months of the Termination Date and payment shall be made within twenty (20) Business Days of such completion.

²¹ The Authority requires the Contractor to meet any additional costs which the Authority incurs in making (and/or as a result of making) such arrangements to the extent that they relate to Options.

80.4 Where the Authority is entitled to terminate this Contract pursuant to Clause 78 (*Termination for Contractor Default*) as a result of the occurrence of a Prohibited Act (and/or the Contractor breaches and/or is in default under Clauses 6.1.13, 6.1.14 and/or 6.1.15 (*Contractor Warranties*)), the Authority shall, in addition to its rights set out in Clauses 80.2 and 80.3 (*Termination for Contractor Default*) (but without any double-counting) be entitled to:

80.4.1 recover from the Contractor the amount of any Losses resulting from such termination;

80.4.2 recover from the Contractor the amount or value of any gift, consideration or commission entailed by such Prohibited Act; and

80.4.3 where this Clause 80.4 (*Termination for Contractor Default*) applies but this Contract has not been terminated, to recover from the Contractor any other Losses sustained as a result of such Prohibited Act,

and any recovery action taken against any employee of the Authority shall be without prejudice to any recovery action taken against the Contractor pursuant to this Clause 80.4 (*Termination for Contractor Default*).

80.5 Where the Authority is entitled to terminate this Contract pursuant to Clause 94.5 (*Tax Compliance*), the Authority shall, subject to the provisions of Clause 94.7 (*Tax Compliance*) and in addition to the Authority's rights in Clauses 80.2 and 80.3 (*Termination for Contractor Default*) (but without double-counting), be entitled to recover from the Contractor:

80.5.1 the amount of any Losses resulting from such termination; and

80.5.2 where this Clause 80.5 (*Termination for Contractor Default*) applies but where this Contract has not been terminated, any other Losses sustained as a result of the breach by the Contractor giving rise to the Authority's rights in this Clause 80.5 (*Termination for Contractor Default*).

Termination for Convenience

80.6 Where this Contract is terminated pursuant to Clause 79 (*Termination for Convenience*), the provisions of Clauses 80.7 to 80.9 (*Termination for Convenience*) shall apply.

80.7 Where Clause 79 (*Termination for Convenience*) applies (subject always to the Contractor's compliance with any direction given by the Authority pursuant to Clause 79.2 (*Termination for Convenience*)):

80.7.1 the Authority shall take over from the Contractor at a fair and reasonable price (to the extent the Contractor has not already been paid) all unused and undamaged materiel and any Contractor Deliverables which consist of physical items and are in the course of manufacture, that are:

(i) in the possession of the Contractor at the Termination Date; and

- (ii) properly provided by or supplied to the Contractor for the performance of this Contract,

except such materiel and Contractor Deliverables that consist of physical items as the Contractor shall, with the agreement of the Authority, elect to retain;

80.7.2 without prejudice to any other obligations the Contractor may have in accordance with this Contract, the Contractor shall, at the Authority's request, grant a licence on the terms set out in Schedule 14 (*IPR*) at a fair and reasonable price (to the extent that the Contractor has not already been paid) to Use any Contractor Deliverable (or any elements thereof) that do not consist of physical items that have been provided or partially provided in accordance with this Contract at the Termination Date; and

80.7.3 the Contractor shall prepare and deliver to the Authority within an agreed period, or in default of agreement within such period as the Authority may specify, a list of:

- (i) all such unused and undamaged materiel; and
- (ii) the Contractor Deliverables that consist of physical items and are in the course of manufacture,

that are liable to be taken over by, licensed to or previously belonged to the Authority and shall deliver such materiel and the Contractor Deliverables in accordance with the directions of the Authority

and in assessing a fair and reasonable price in Clauses 80.7.1 and 80.7.2 (*Termination for Convenience*) the Parties shall have due regard to the provisions of Schedule 9 (*Pricing and Payment*) and the Parties shall carry out a reconciliation for that purpose in accordance with paragraph 4.3.2 of Part 1 of Schedule 9 (*Pricing and Payment*).

80.8 Where Clause 79 (*Termination for Convenience*) applies, the Authority shall (subject to Clause 80.9 (*Termination for Convenience*) and to the Contractor's compliance with any direction given by the Authority pursuant to Clause 79.2 (*Termination for Convenience*)) indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable Loss by the Contractor by reason of the termination of this Contract, subject to:

80.8.1 the Contractor taking all reasonable steps to mitigate such Loss; and

80.8.2 the Contractor submitting a fully itemised and costed list of such Loss, with supporting evidence of Losses reasonably and actually incurred by the Contractor as a result of termination of this Contract pursuant to Clause 79 (*Termination for Convenience*).

80.9 The Authority shall not be liable under Clause 80.8 (*Termination for Convenience*) to pay any sum which, when added to any sums already paid or due to the Contractor under this Contract, exceeds an amount equal to the Notional Contract Price.

Termination for Force Majeure

- 80.10 Where this Contract is terminated pursuant to Clause 31.4 (*Force Majeure*), the provisions of Clauses 80.11 and 80.12 (*Termination for Force Majeure*) shall apply.
- 80.11 Where this Clause 80.11 applies, the Contractor shall only be entitled to be paid (subject to any other provision of this Contract affecting the level of such payment, including any reduction for sums that the Authority is entitled to deduct under or in connection with this Contract (whether arising under any term of this Contract or under any Law or of equity)) for any aspect of the Contractor Deliverables that it has, as at the Termination Date, delivered to the Authority in accordance with this Contract and without prejudice to the foregoing the Authority may deduct from such payment any charges it has paid to the Contractor in advance in respect of Contractor Deliverables not provided as at the Termination Date. Neither Party shall have the right to claim damages as a result of such termination.
- 80.12 Where Clause 31.4 (*Force Majeure*) applies (subject always to the Contractor's compliance with Clause 31 (*Force Majeure*)):
- 80.12.1 the Authority shall take over from the Contractor at a fair and reasonable price (to the extent the Contractor has not already been paid) all unused and undamaged materiel and any Contractor Deliverables which consist of physical items and are in the course of manufacture, that are:
- (i) in the possession of the Contractor at the Termination Date; and
 - (ii) properly provided by or supplied to the Contractor for the performance of this Contract,
- except such materiel and Contractor Deliverables that consist of physical items as the Contractor shall, with the agreement of the Authority, elect to retain;
- 80.12.2 without prejudice to any other obligations the Contractor may have in accordance with this Contract, the Contractor shall, at the Authority's request, grant a licence on the terms set out in Schedule 14 (*IPR*) at a fair and reasonable price (to the extent that the Contractor has not already been paid) to Use any Contractor Deliverable (or any elements thereof) that do not consist of physical items that have been provided or partially provided in accordance with this Contract at the Termination Date; and
- 80.12.3 the Contractor shall prepare and deliver to the Authority within an agreed period, or in default of agreement within such period as the Authority may specify, a list of:
- (i) all such unused and undamaged materiel; and
 - (ii) the Contractor Deliverables that consist of physical items and are in the course of manufacture,

that are liable to be taken over by, licensed to or previously belonged to the Authority and shall deliver such materiel and the Contractor Deliverables in accordance with the directions of the Authority,

and in assessing a fair and reasonable price in Clauses 80.12.1 to 80.12.3 (*Termination for Force Majeure*) the Parties shall have due regard to the provisions of Schedule 9 (*Pricing and Payment*) and the Parties shall carry out a reconciliation for that purpose in accordance with paragraph 4.3.2 of Part 1 of Schedule 9 (*Pricing and Payment*).

Miscellaneous provisions

80.13 Where on the Termination Date or the Expiry Date (as the case may be) the Parties:

- 80.13.1 agree all amounts which are due to each other arising under this Contract, each Party shall (subject to the provisions of Clause 23 (*Recovery of Sums Due*)) pay to the other any amounts payable pursuant to this Clause 80 (*Financial Consequences of Termination*) within twenty (20) Business Days of the Termination Date or the Expiry Date (as the case may be) or such other period as agreed between the Parties before the end of the relevant twenty (20) Business Day period; or
- 80.13.2 do not agree what amounts are due to each other arising under this Contract, the Parties shall carry out a reconciliation as contemplated at paragraph 4.3.2 of Part 1 of Schedule 9 (*Pricing and Payment*) within ten (10) Business Days of the Termination Date or the Expiry Date (as the case may be) or such other period as agreed between the Parties before the end of the relevant twenty (20) Business Day period.

Exit Requirements

- 80.14 On the expiry or early termination of this Contract, the Contractor shall comply with the provisions of Clause 81 (*Exit Plan*), Schedule 17 (*Exit Plan*) and Clause 83 (*Continuing Assistance*).
- 80.15 If the Contractor fails to comply with Clause 81 (*Exit Plan*), Schedule 17 (*Exit Plan*) and/or Clause 83 (*Continuing Assistance*), the Authority reserves the right to withhold any outstanding payments due to the Contractor under this Contract until full compliance with Clause 81 (*Exit Plan*), Schedule 17 (*Exit Plan*) and/or Clause 83 (*Continuing Assistance*) has been achieved.

81 Exit Plan²²

81.1 The Parties have agreed that the matters which are likely to be required to be implemented on expiry or early termination of this Contract are set out in Schedule 17 (*Exit Plan*). The Parties have agreed that on the earlier to occur of:

- 81.1.1 six (6) calendar months from the Expiry Date; and

²² The concept of a transition plan may be included (to govern contractor to contractor interface).

81.1.2 ten (10) Business Days following receipt of a written notice from the Authority,

the Contractor shall review the Exit Plan in accordance with Good Industry Practice, having due regard to the status of the Contractor Deliverables and any other relevant factors at that time and issue to the Authority a proposed update and revision of the Exit Plan, giving full details of the rationale for any proposed changes. Following receipt by the Authority of the revised Exit Plan and rationale, the Contractor and the Authority shall meet (as soon as reasonably practicable and on such number of occasions as the Authority may reasonably require) to discuss and make any agreed amendments to the revised Exit Plan.

81.2 The Parties acknowledge that:

81.2.1 the preparation and development of the Exit Plan as contemplated in this Clause 81 (*Exit Plan*) forms part of this Contract and forms part of the Contract Price;

81.2.2 subject to Clauses 81.2.3 and 81.2.4 (*Exit Plan*), the Contract Price does not incorporate sums relating to the carrying out of all of the steps set out in the Exit Plan; and

81.2.3 notwithstanding the provisions of Clause 81.2.2 (*Exit Plan*), the Contractor shall be obliged to carry out those activities described in Clause 83 (*Continuing Assistance*) whether or not such activities are also incorporated or contemplated or referred to in the Exit Plan and the Contractor acknowledges that it has incorporated pricing for the performance of such activities in Clause 83 (*Continuing Assistance*), save for the obligations in Clause 83.3 (*Co-operation*), in the Contract Price; and

81.2.4 in the event that the Authority wishes to require the Contractor to perform:

- (i) any obligations identified in the Exit Plan (as may have been updated or revised) as at the date set out in Clause 81.1.1 or the Termination Date (as the case may be) in addition or alternative to those activities referred to in Clause 81.2.3 (*Exit Plan*); and/or
- (ii) those obligations set out in Clause 83.3 (*Co-operation*),

the Authority shall issue an Authority Change Notice and the Contractor shall not be permitted to object to such proposed Authority Change, notwithstanding any other provisions of this Contract and the price for such obligations as detailed in the Authority Change shall be fair and reasonable.

81.3 Except in respect of any transfer of staff pursuant to Schedule 16 (*Transfer Regulations*), the Contractor shall not (except with the prior written consent of the Authority) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the Authority any person employed or engaged by the Authority in the receipt of the Contractor Deliverables at any time during the Contract

Period or for a further period of twelve (12) months after the Expiry Date other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the Authority.

- 81.4 If the Contractor commits any breach of Clause 81.3, the Contractor shall, on demand, pay to the Authority a sum equal to one year's basic salary or the annual fee that was payable by the Contractor to that employee, worker or independent contractor plus the recruitment costs incurred by the Authority in replacing such person.

82 Continuing Obligations

- 82.1 Save as otherwise expressly provided in this Contract or as already taken into account in the calculation of any payment on termination pursuant to this Contract:²³

82.1.1 termination of this Contract shall be without prejudice to any accrued rights or obligations under this Contract prior to termination; and

82.1.2 termination of this Contract shall not affect the continuing rights and obligations of the Contractor and the Authority under:

- (i) Clause 3.2 (*The Contractor's Obligations*);
- (ii) Clause 6 (*Contractor Warranties and Undertakings*);
- (iii) Clause 17 (*Import and Export Licences*);
- (iv) Clause 28 (*Indemnity and Liabilities*);
- (v) Clause 35 (*The Contractor's Records*);
- (vi) Clause 37 (*Disclosure of Information*);
- (vii) Clause 41 (*Official-Sensitive Security Requirements*);
- (viii) Clause 42 (*Cyber*), to the extent contemplated in Clause 42.7.1 (*Cyber*);
- (ix) Clause 43 (*Intellectual Property Rights*);
- (x) Clause 45 (*Security – Secret Matters*);
- (xi) Clause 52 (*TUPE*);
- (xii) Clause 63 (*Issued Property*);
- (xiii) Clause 64 (*Accounting for property of the Authority*);
- (xiv) Clause 65 (*Loss of or Damage to the Articles*);

²³ To be reviewed as Contract develops to include any other relevant/additional Clauses.

- (xv) Clause 80 (*Financial consequences of Termination*);
- (xvi) Clause 81 (*Exit Plan*);
- (xvii) Clause 82 (*Continuing Obligations*);
- (xviii) Clause 83 (*Continuing Assistance*);
- (xix) Clause 94 (*Tax Compliance*);
- (xx) Clause 97 (*Dispute Resolution (English Law)*); and
- (xxi) any other provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

PART 14 - GENERAL CONTRACT PROVISIONS

83 Continuing Assistance

Co-operation

- 83.1 Without prejudice to the provisions of Clause 52 (*TUPE*) and Clause 81 (*Exit Plan*), during the last six (6) months before the Expiry Date or during the period that any Termination Notice is subsisting the Contractor shall co-operate as far as is reasonably practicable with the transfer of responsibility for the provision of the Contractor Deliverables (or part of the Contractor Deliverables) (including co-operation with one (1) or more Other Contractors with responsibility for providing deliverables to the Authority with which the whole or part of such Contractor Deliverables are intended to interface and/or integrate and/or be compatible with and/or in respect of which the performance of such deliverables by such Other Contractor is connected with and/or dependent upon and/or for which it is necessary to have an understanding of, in each case, such whole or part of the Contractor Deliverables) from the Contractor to any person (a "**Follow-On Contractor**") or to the Authority as so directed by the Authority, and for the purposes of this Clause 83 (*Continuing Assistance*) the meaning of the term co-operate shall include:
- 83.1.1 liaising with the Authority and/or any Follow-On Contractor, and providing reasonable assistance and advice concerning the provision of the whole or the relevant part of the Contractor Deliverables and their transfer to the Authority or such Follow-On Contractor;
 - 83.1.2 allowing any such Follow-On Contractor access (at reasonable times and on reasonable notice) to any assets applicable to the performance of this Contract, but not so as to interfere with or impede the provision of the Contractor Deliverables; and
 - 83.1.3 providing to the Authority and/or any Follow-On Contractor any relevant information concerning the Authority Sites and/or the JPO Facility (as applicable) and the provision of the Contractor Deliverables which is

reasonably required for the efficient transfer of responsibility for the performance of the Contractor's obligations under this Contract.

- 83.2 Without prejudice to Clause 63 (*Issued Property*), during the last six (6) months before the Expiry Date or during the period that any Termination Notice is subsisting, the Contractor shall protect and preserve material, Articles and Issued Property in its possession, custody or control in which the Authority has notified an interest, provided that the Contractor shall be entitled to use such material, Articles and Issued Property in accordance with the provisions of this Contract where it is agreed that the provision of the Contractor Deliverables requires the use of that material and/or those Articles and/or Issued Property in part or in its entirety.
- 83.3 For a period of six (6) months after the Expiry Date or, if earlier, the Termination Date, the Contractor shall, if requested to do so in writing by the Authority, provide all reasonable assistance, guidance and information to the Authority or any Follow-On Contractor (as the case may be) required by the Authority or any Follow-On Contractor.
- 83.4 Without prejudice to the provisions of Clauses 83.1, 83.2 and 83.3 (*Co-operation*), the Contractor shall use all reasonable endeavours to assist the Authority to facilitate the smooth transfer of responsibility for the provision of the Contractor Deliverables (or any part of the Contractor Deliverables) to the Authority or Follow-On Contractor, as the case may be, and the Contractor shall take no action at any time during the term of this Contract or thereafter which is calculated or intended to prejudice or frustrate or make more difficult any such transfer.
- 83.5 Following the Expiry Date or, if earlier, the Termination Date, the Contractor shall, with the Authority's consent (not to be unreasonably withheld or delayed) be allowed reasonable access to the Authority Sites by the Authority in order to carry out winding-down activities, provided that in exercising such right of access, the Contractor shall not interfere with or impede the delivery of goods and/or services equivalent to the Contractor Deliverables (and/or the provision of any other services and/or the carrying out of any other activities) by or on behalf of the Authority and/or any Follow-On Contractor.
- 83.6 On expiry or earlier termination of this Contract, the Contractor shall:
- 83.6.1 upon request by the Authority make arrangements, to be agreed between the Authority and the Contractor (acting reasonably and in good faith), for the Authority to take over at fair and reasonable prices, where payment has not already been made, the rights, title and interest in such Articles and/or material as are held by the Contractor and/or any Sub-Contractor and which the Authority requires to maintain continuity of the delivery of goods and services equivalent to the Contractor Deliverables following the Expiry Date or, if earlier, the Termination Date; and
 - 83.6.2 provide, procure the provision of, or provide access to, as the Authority may require, all such information, documents and data in the possession or control of the Contractor, together with a sufficient explanation of such information, documents and data, the full rights to use such information, documents and data, and a formal certificate confirming those rights, as is

required to put the Authority in the position it would have been had there been full and proper performance by the Contractor of the Contractor Deliverables.

- 83.7 The Contractor agrees that following the early termination of this Contract, the Authority shall be entitled to continue to purchase (and the Contractor shall continue to supply) on reasonable terms and conditions at fair and reasonable prices goods and services (which would, but for the expiry or early termination of this Contract, amount to Articles) which are required by the Authority to maintain continuity of the delivery of goods and services equivalent to the Contractor Deliverables following the Termination Date.
- 83.8 The Contractor shall not be obliged to co-operate with a Follow-On Contractor where this Contract is terminated under Clause 79 (*Termination for Convenience*).

84 Change

Changes

- 84.1 Without prejudice to the provisions of Schedule 10 (*Task Order Approval Process*), Changes (other than Minor Changes) shall be in accordance with the provisions of Schedule 11 (*Change Procedure*).

Minor Changes

- 84.2 The Contractor shall ensure that the Contractor Deliverables conform in all respects with the Scope.
- 84.3 The Contractor shall use a configuration control system to control Minor Changes. The configuration control system shall be compatible with ISO 9001 (latest published version).
- 84.4 Without prejudice to the provisions of Schedule 10 (*Task Order Approval Process*), the Authority's Representative may alter the Scope, provided always that any such alterations shall not alter the fit, form, function or characteristics of the Contractor Deliverables or otherwise give rise to any change of the nature referred to in Clause 84.6 ("**Minor Changes**").
- 84.5 The Minor Changes referred to in Clause 84.4 shall:
- 84.5.1 be notified by the Authority's Representative in writing;
 - 84.5.2 apply from the date specified by the Authority in the notice referred to in Clause 84.5.1; and
 - 84.5.3 be recorded as a formal amendment to this Contract pursuant to Clause 85.1 (*Amendments to Contract*),

and, following such notification, the Authority shall provide an updated Scope to reflect such Minor Changes and the Contractor shall ensure that the Contractor

Deliverables shall be delivered in accordance with such updated Scope from the date referred to in Clause 84.5.2.

84.6 Subject to the provisions of Schedule 10 (*Task Order Approval Process*), any proposed alterations to the Scope that cause a change to:

84.6.1 the fit, form, function or characteristics of the Contractor Deliverables;

84.6.2 the cost of the whole or part of the Contractor Deliverables;

84.6.3 the delivery dates for the whole or part of the Contractor Deliverables; or

84.6.4 the period required for the production or completion of the whole or part of the Contractor Deliverables,

shall be subject to the provisions of Schedule 11 (*Change Procedure*).

84.7 Subject to the provisions of Schedule 10 (*Task Order Approval Process*), any documentation provided by or on behalf of the Authority outside of this Clause 84 shall not alter the Scope.

85 Amendments to Contract

85.1 Other than the changes permitted in accordance with Schedule 10 (*Task Order Approval Process*), this Contract may only be amended by the written agreement of the Parties (or their duly authorised Representatives acting on their behalf) in accordance with Clause 84 (*Change*) and, where applicable, Schedule 11 (*Change Procedure*), provided always that any such amendments shall come into force only when the Contractor has issued:

85.1.1 in the case of a Change proposed in an Authority Change Notice, the Form set out in Appendix 2 to Schedule 11 (*Change Procedure*); and

85.1.2 in the case of a Change proposed in a Contractor Change Notice, the Form set out in Appendix 3 to Schedule 11 (*Change Procedure*),

as an unqualified Estimate and the Authority agrees to all the terms of such Estimate and, following such agreement, a memorandum to give effect to such Change has been duly executed by the Parties.

85.2 Subject to the provisions of Clause 85.1 (*Amendments to Contract*), any purported amendment to this Contract which does not satisfy the provisions of this Clause 85 (*Amendments to Contract*) shall be of no effect.

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

86 Transfer

- 86.1 Subject to Clause 87 (*Novation*), neither Party to this Contract shall give, bargain, sell, assign, or otherwise dispose of this Contract or any part thereof, or the benefit or advantage of this Contract or any part thereof, without the prior consent in writing of the other Party.
- 86.2 Subject to the Contractor obtaining the prior written consent of the Authority in accordance with Clause 86.1 (*Transfer*) above, the Contractor may assign to a Third Party (the “**Assignee**”) the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest incurred by the Authority in accordance with Clause 21 (*Disputed Amounts*)).
- 86.3 Any assignment of the right to receive payment of the Contract Price (or any part thereof) under Clause 86.2 (*Transfer*) above shall be subject to:
- 86.3.1 reduction of any sums in respect of which the Authority exercises its right of recovery under Clause 23 (*Recovery of Sums Due*) or under any other clause concerning recovery of sums due;
- 86.3.2 all related rights of the Authority under this Contract in relation to the recovery of sums due but unpaid; and
- 86.3.3 the Authority receiving notification under both Clause 86.4 and Clause 86.5.2 (*Transfer*) below.
- 86.4 In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under Clause 86.2 (*Transfer*) above, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- 86.5 The Contractor shall ensure that the Assignee:
- 86.5.1 is made aware of the Authority’s continuing rights under Clauses 86.3.1 and 86.3.2 (*Transfer*); and
- 86.5.2 notifies the Authority of the Assignee’s contact information and bank account details, to which the Authority shall make payment, subject to any reduction made by the Authority in accordance Clauses 86.3.1 and 86.3.2 (*Transfer*) above.
- 86.6 The provisions of this Contract, including any clauses concerning payment, shall continue to apply in all other respects after any assignment in accordance with this Clause 86 (*Transfer*) and shall not be amended without the prior approval of the Authority.

87 Novation

- 87.1 Subject to Clause 87.2, the rights and obligations of the Authority under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any law or any scheme pursuant to any law or otherwise) other than:

- 87.1.1 in respect of the whole of this Contract to any person who performs any of the functions that previously had been performed by the Authority; or
- 87.1.2 to any public body (being a single entity) acquiring the whole of this Contract and having the legal capacity, power and authority to become a Party to and to perform the obligations of the Authority under this Contract, being:
- (i) a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975; or
 - (ii) any other public body whose obligations under this Contract are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Contract.
- 87.2 The Contractor agrees that the Authority may at any time on written notice elect to appoint a Third Party to act as its agent to manage the whole or any part of this Contract on the Authority's behalf and/or to perform any or all of the obligations of the Authority under this Contract to the extent set out in such notice.

88 Change of Ownership

- 88.1 The Contractor acknowledges that the Authority has a legitimate interest in the ownership of the Contractor and that the Contractor is required to notify the Authority of any Change of Ownership in accordance with this Clause 88 (*Change of Ownership*).
- 88.2 The Contractor shall notify the Authority's Representative in writing (providing a copy to the Mergers & Acquisitions Section, Strategic Supplier Management Team, Spruce 3b #1301, MOD Abbey Wood, Bristol, BS34 8JH), so far as permitted by relevant law (relevant law for the purposes of this Clause 88 (*Change of Ownership*) being law in the United Kingdom and in all relevant jurisdictions where the Contractor would be subject to a legal sanction arising from issuing such notice), if any proposed Change of Ownership is contemplated, including details of the proposed new ownership structure (legal and beneficial) and/or details of the material asset (including shares held in any company by the Contractor or any of its Subsidiaries), business or undertaking proposed to be disposed or acquired (as the case may be).
- 88.3 Where:
- 88.3.1 the Authority is not informed of a proposed Change of Ownership for the reasons set out in Clause 88.2 (*Change of Ownership*) or for any other reason and a Change of Ownership occurs; and/or
 - 88.3.2 the Authority objects to the proposed (or actual) transferee to whom the sale, transfer, disposal or other arrangement is made and/or the Authority is concerned that the disposal or acquisition by the Contractor of the material asset, business or undertaking in question may have a material

effect on the ability of the Contractor to perform its obligations under this Contract, in either case, whether or not the Authority is informed of the proposed Change of Ownership pursuant to Clause 88.2 (*Change of Ownership*) and whether the Authority becomes aware of such Change of Ownership prior to or after such Change of Ownership occurring,

then the Authority may terminate this Contract at any time within twelve (12) months of the date the Authority becomes aware that the relevant Change of Ownership has occurred and the provisions of Clause 78.2 (*Termination for Contractor Default*) and Clause 78.13 (*Termination following a Change of Ownership*) shall apply.

89 Disruption

89.1 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under this Contract.

89.2 The Contractor shall have robust contingency plans in place, in accordance with the Business Continuity Plans, to ensure that the provision of the Contractor Deliverables is maintained in the event of any disruption (including disruption to information technology systems) to the operations of the Contractor and/or any Sub-Contractor. Such contingency plans shall be available for the Authority to:

89.2.1 inspect; and/or

89.2.2 (subject to the Authority giving the Contractor reasonable advance notice, and subject to the Authority exercising this right a maximum of three (3) times in any one (1) Year in respect of the same plan) practically test at any reasonable time,

and shall be updated and revised as necessary by the Contractor throughout the Contract Period.

90 Waiver

90.1 No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.

90.2 No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

91 Discrepancies, Errors and Omissions

91.1 If either Party identifies any discrepancy, error or omission between the provisions of this Contract, it shall notify the other Party in writing of such discrepancy, error or omission as soon as reasonably practical.

- 91.2 The Parties shall seek to agree such amendments to resolve such discrepancy, error or omission as soon as reasonably practical.
- 91.3 Where the Parties fail to reach agreement within ten (10) Business Days of the notice under Clause 91.1 (*Discrepancies, Errors and Omissions*) and either Party considers that the discrepancy, error or omission to be material to its rights and obligations under this Contract, then the matter will be referred to the Dispute Resolution Procedure.

92 Severability

- 92.1 If any provision of this Contract is held to be invalid, illegal or unenforceable to any extent then:
- 92.1.1 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 this Contract, but without invalidating any of the remaining provisions of this Contract; and
- 92.1.2 the parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

93 Whole Agreement

- 93.1 This Contract constitutes the entire agreement between the Parties relating to the subject matter of this Contract.
- 93.2 This Contract supersedes all prior negotiations, representations and undertakings (whether written or oral), except that this Clause 93 (*Whole Agreement*) shall not exclude liability in respect of any fraudulent misrepresentation.

94 Tax Compliance

- 94.1 The Contractor represents and warrants that at the date this Contract came into effect, it has notified the Authority in writing of any Occasion Of Tax Non-Compliance or any litigation that it is involved in that is in connection with any OOTNC.
- 94.2 If, at any point during the performance of this Contract, an OOTNC occurs, the Contractor shall:
- 94.2.1 notify the Authority in writing of such fact within twenty (20) Business Days of its occurrence; and
- 94.2.2 promptly provide to the Authority:
- (i) details of the steps which the Contractor is taking to address the OOTNC and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

- (ii) such other information in relation to the OOTNC as the Authority may reasonably require.
- 94.3 For the avoidance of doubt, the obligation at Clause 94.2 (*Tax Compliance*) also applies to OOTNC in non-UK jurisdictions. If the OOTNC occurred in non-UK jurisdictions, the notification must be accompanied by a full explanation of the OOTNC and any relevant tax laws and administrative provisions so the Authority can understand the nature and seriousness of the OOTNC.
- 94.4 The duty to notify does not substitute the Contractor's other reporting obligations under this Contract.
- 94.5 The Authority shall be entitled to terminate this Contract in the event that:
 - 94.5.1 the warranty given by the Contractor pursuant to Clause 94.1 (*Tax Compliance*) is materially untrue; or
 - 94.5.2 the Contractor commits a material breach of its obligation to notify the Authority of any OOTNC as required by Clause 94.2 (*Tax Compliance*); or
 - 94.5.3 the Contractor fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority, are acceptable.
- 94.6 In the event that the Authority is entitled to terminate this Contract under Clause 94.5 (*Tax Compliance*) the provisions of Clause 71.4A (*Termination for Contractor Default*) and Clause 94.7 (*Tax Compliance*) shall apply.
- 94.7 In exercising its rights or remedies under this Clause 94 (*Tax Compliance*), the Authority shall:
 - 94.7.1 act in a reasonable and proportionate manner taking into account, among other things:
 - (i) the gravity and duration of the OOTNC and any sanctions imposed by a court or tribunal; and
 - (ii) any remedial action taken by the Contractor to prevent reoccurrence of the OOTNC; and
 - 94.7.2 without prejudice to Clause 94 (*Tax Compliance*), seriously consider, where appropriate, action other than termination of this Contract to deal with the failure by the Contractor to comply with this Clause 94 (*Tax Compliance*).

95 Representatives

References to Authority and the Contractor

- 95.1 Except as provided otherwise under this Contract, any reference to the Authority and the Contractor in respect of:

- 95.1.1 the giving of consent;
- 95.1.2 the delivering of any notices; or
- 95.1.3 the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the relevant Party,

shall be deemed to be references to the Authority's Representatives and the Contractor's Representatives (respectively) in accordance with this Clause 95 (*Representatives*).

The Contractor's Representatives

- 95.2 The Contractor shall employ representatives (the "**Contractor's Representatives**") to act as the Contractor's representatives in connection with the provision of the Contractor Deliverables and generally in connection with this Contract. Such representatives are described in the table forming Part 2 to Schedule 8 (*Governance and Management*).²⁴

Authority of the Contractor's Representatives

- 95.3 The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes of this Contract.

Appointment of successor

- 95.4 The Contractor may terminate the appointment of any Contractor's Representative and shall appoint a successor, the identity of whom shall be made known to the Authority.

Authority's Representatives

- 95.5 The Authority shall employ representatives (the "**Authority's Representatives**") to act as the Authority's representatives in connection with the provision of the Contractor Deliverables and generally in connection with this Contract. Such representatives are described in the table forming Part 2 to Schedule 8 (*Governance and Management*).²⁵

Authority of Authority's Representatives

- 95.6 The Authority's Representative shall have the full authority to act on behalf of the Authority for all purposes of this Contract.

Appointment of Successor

- 95.7 The Authority may terminate the appointment of any Authority's Representative and shall appoint a successor, the identity of whom shall be made known to the Contractor.

²⁴ Subject to development of the Table to Part 2 of Schedule 8 (*Governance and Management*).

²⁵ Subject to development of the Table to Part 2 of Schedule 8 (*Governance and Management*).

96 Notices

- 96.1 All notices, orders, or other forms of communication required to be given in writing ("**Notices**") under or in connection with this Contract shall:
- 96.1.1 be in a form which can be read, copied and recorded;
 - 96.1.2 be authenticated by signature or by such other method as agreed between the Parties;
 - 96.1.3 be marked for the attention of the appropriate Authority's Representative or the Contractor's Representative; and
 - 96.1.4 be marked in a prominent position with the relevant Contract number.
- 96.2 Notices should be delivered by:
- 96.2.1 hand;
 - 96.2.2 prepaid post (or airmail, in the case of Notices to or from overseas); or
 - 96.2.3 electronic mail.
- 96.3 Notices shall be deemed to have been received:
- 96.3.1 if delivered by hand, on the day of delivery if it is a Business Day and otherwise on the first Business Day immediately following the day of delivery;
 - 96.3.2 if sent by prepaid post (or airmail, if appropriate), on the fifth Business Day (or on the tenth Business Day, in the case of airmail) after the day of posting; and
 - 96.3.3 if sent by electronic means:
 - (i) if transmitted between 09.00 and 17.00 hours on a Business Day (recipient's time), on completion of receipt by the sender of verification of the transmission from the receiving instrument; or
 - (ii) if transmitted at any other time, at 09.00 hours on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument.
- 96.4 The addresses (including electronic addresses) of each Party and their Representatives to which all Notices shall be sent are set out in DEFFORM 111, or such other address as either Party may by written Notice specify to the other for the purpose of this Clause 96 (*Notices*).
- 96.5 Where either Party requests written confirmation of any communication which does not constitute a Notice, such request shall not unreasonably be refused.

97 Dispute Resolution (English Law)

- 97.1 The Parties will attempt in good faith to resolve any Dispute through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any Alternative Dispute Resolution (“**ADR**”) procedure on which the Parties may agree.
- 97.2 In the event that the Dispute is not resolved by negotiation, or where the Parties have agreed to use an ADR procedure, by the use of such procedure, the Dispute shall be referred to arbitration.
- 97.3 The Party initiating the arbitration shall give a written notice (the “**Notice of Arbitration**”) to the other Party. The Notice of Arbitration shall specifically state:
- 97.3.1 that the Dispute is referred to arbitration; and
- 97.3.2 the particulars of the Contract out of or in relation to which the Dispute arises.
- 97.4 Unless otherwise agreed in writing by the Parties, the arbitration and this Clause 97 (*Dispute Resolution (English Law)*) shall be governed by the provisions of the Arbitration Act 1996.
- 97.5 It is agreed between the Parties that for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided for in Section 39 of the Arbitration Act 1996.
- 97.6 For the avoidance of doubt it is agreed between the Parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the Parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the Parties to the arbitration.

98 Contractor’s Status

- 98.1 Nothing in this Contract shall be construed as creating a partnership or joint venture or as a contract of employment between the Authority and Contractor.
- 98.2 Save as expressly provided otherwise in this Contract, the Contractor shall not be, nor be deemed to be, an agent of the Authority and the Contractor shall not hold itself out as having authority or power to bind the Authority in any way.
- 98.3 Neither Party shall place or cause to be placed any order with suppliers or otherwise incur liabilities in the name of the other Party or any representative of the other Party.

99 Rights of Third Parties

- 99.1 Except as provided in Clause 99.2 (*Rights of Third Parties*) and notwithstanding anything to the contrary elsewhere in this Contract, no right is granted to any person who is not a Party to enforce any term of this Contract in their own right and the Parties declare that they have no intention to grant any such right.
- 99.2 Each Party warrants to each other that entry into this Contract does not and performance thereof will not in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it; and that this Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.
- 99.3 Where, and only where, this Contract expressly states that a Third Party shall be entitled to enforce a term of this Contract:
- 99.3.1 the said Third Party shall be entitled to enforce that term in their own right;
- 99.3.2 the Contractor shall inform the said Third Party as soon as is reasonably practicable of the existence of the relevant right together with any other terms (including the terms of this Clause 99.2 (*Rights of Third Parties*)) relevant to the exercise of that right; and
- 99.3.3 the Third Party's rights shall be subject to:
- (i) the resolution of any Dispute pursuant to the Dispute Resolution Procedure; and
- (ii) Clause 100 (*Law (English)*).

100 Law (English)

- 100.1 The Contract shall be considered as a contract made in England and subject to English Law.
- 100.2 Subject to and without prejudice to the Dispute Resolution Procedure, each Party hereby irrevocably submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to this Contract or breach thereof.
- 100.3 Other jurisdictions may apply solely for the purpose of giving effect to this Clause 100 (*Law (English)*) and for the enforcement of any judgement, order or award given under English jurisdiction.
- 100.4 Each Party agrees with each other that the provisions of this Clause 100 (*Law (English)*) shall survive any termination of this Contract for any reason whatsoever and shall remain fully enforceable as between the Parties notwithstanding such a termination.

- 100.5 [The Contractor irrevocably appoints the Process Agent as its agent to accept on its behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any arbitration arising out of or relating to this Contract or any issue connected with this Contract. Copies of all such documents shall also be simultaneously sent to the Contractor's address referred to in Clause 96.4.
- 100.6 The Contractor agrees that failure by such Process Agent to notify it of the process will not invalidate the process concerned.]²⁶

²⁶ Clauses 100.5 and 100.6 may be included, depending on the domicile of the Contractor.

Schedule 1

Definitions and Acronyms

- 1.1 In this Part 2 of the Contract, the following words and expressions shall be deemed to have the following meanings:²⁷

“Acceptance” means the satisfaction of the Exit Criteria for the Relevant Deliverable and **“Accept”** and **“Accepted”** shall be construed accordingly;

“Acquisition and Safety and Environmental Management System” means DE&S mandated requirements for managing Acquisition Safety and Environmental Protection;

“Active Task Order” means a Task Order which adjusts the Core Contractor Deliverables or an Exercised Option, as approved in accordance with the procedures in Schedule 10 (*Task Order Approval Process*);

“Additional Contractor Deliverables” means the additional, revised and/or reduced services and/or Articles that the Contractor is to perform and which form part of the Contractor Deliverables following the approval of a Task Order Proposal pursuant to Schedule 10 (*Task Order Approval Process*) or an approved Change in accordance with Schedule 11 (*Change Procedure*);

“Adjoining Property” means any land and/or property adjoining the Authority Sites and/or any Other Contractor’s Premises (as the case may be) and each and every part of such land and/or property, including all conduits, roads, footpaths, walls, fences, buildings and other erections and all other apparatus on, under or within such land and/or property;

“Adjustment Firm Price” has the meaning given in paragraph 4 of Part 2 of Schedule 9 (*Pricing and Payment*);

“Adjustment Fixed Price” has the meaning given in paragraph 5 of Part 2 of Schedule 9 (*Pricing and Payment*);

“Affiliate” means in relation to any person, any Holding Company or Subsidiary of that person or any Subsidiary of such Holding Company;

“Articles” means:

- (a) for the purpose of Schedule 14 (*IPR*), part or whole of any article which the Contractor is required under the Contract to supply or in connection with which they are required under the Contract to carry out any service and any other article or part thereof to the same design as that article or any Modification of that design made in the exercise of rights granted under paragraph 3 of Schedule 14 (*IPR*); and

²⁷ Note: this Schedule will be fine-tuned as the Contract develops.

- (b) for all other purposes, all goods or services which the Contractor is required under this Contract to supply (including as part of any Exercised Option and/or as a result of the commencement of any Active Task Order);

“Assets” has the meaning given in paragraph 2.1.5 of Schedule 17 (*Exit Plan*);

“Assurance and Acceptance Process” means the assurance and acceptance process outlined in Schedule 4 (*Assurance and Acceptance Process*), as applicable to the relevant Contractor Deliverable;

“Authority Background IPR” means any IPR and/or Information (as the case may be) subsisting and owned by the Authority prior to the date of, or created or generated by or on behalf of the Authority outside the scope of, this Contract (other than any Authority Foreground IPR);

“Authority Change” means a change initiated by the Authority in accordance with Schedule 11 (*Change Procedure*);

“Authority Change Notice” means the notice issued in accordance with paragraph 3.1 of Schedule 11 (*Change Procedure*) and described in paragraph 4.1 of Schedule 11 (*Change Procedure*);

“Authority Data” has the meaning given in Clause 33.1 (*Authority Data*);

“Authority Foreground IPR” means IPR in any Intellectual Property:

- (a) created or generated by the Authority in the course of the performance of this Contract; or
- (b) in any modifications, updates or developments to Authority Background IPR, or Third Party IPR supplied by the Authority to the Contractor for the purpose of this Contract funded by the Authority or created or generated by the Contractor or any Sub-Contractor in the course of the performance of this Contract;

[**“Authority Manpower”** means the manpower provided by the Authority, (including civil servants, Servicemen and contractors Business on behalf of the Authority) in support of the Contractor’s obligations as specified in the tables contained in Part [2] of Schedule 7 (*Authority Obligations*);]²⁸

“Authority Related Party” means an officer, servant or agent of the Authority (other than the Contractor and/or any Contractor Related Party);

“Authority Respondents” has the meaning given in paragraph 5.1 of Schedule 6 (*Performance Management Regime*);

“Authority Sites” means those sites which are in the Authority's control or were in the Authority's control immediately prior to the Effective Date and which are to be

²⁸ Delete where no Authority Manpower (ie. MOD personnel under the direction of the Contractor) is envisaged in this Contract.

used by the Contractor for the purposes of providing the Contractor Deliverables, but not including any Other Contractor's Premises;

"Authority System" means the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Contractor in connection with this Contract which is owned by the Authority or licensed to it by a Third Party and which interfaces with the Contractor System or which is necessary for the Authority to receive the Contractor Deliverables;

"Authority's Anti-Slavery and Human Trafficking Policy" means the Authority's anti-slavery and human trafficking policy from time to time in force;

"Authority's Representatives" means the persons referred to in Clause 95.5 (*Authority's Representatives*);

"Availability" means when a system or piece of equipment is in a state to perform as required;

"British Standards" means the standards produced by the British Standards Institution;

"Business Day" means any day excluding:

- (a) Saturdays, Sundays and public and statutory holidays in the jurisdiction of either Party; and
- (b) privilege days notified in writing by the Authority to the Contractor at least ten (10) Business Days in advance;

"Central Government Body" means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (c) Government Department;
- (d) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (e) Non-Ministerial Department; or
- (f) Executive Agency;

"Centre" means Royal Air Force Centre of Aviation Medicine, Cranwell, Sleaford, Lincolnshire NG34 8HB that is designed, built and commissioned by the Contractor in accordance with Part 1 of this Contract;

"Change" means a change which the Authority or the Contractor shall be entitled to propose in accordance with paragraph 1.1 of Schedule 11 (*Change Procedure*);

“Change of Ownership” means:

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Contractor or a Sub-Contractor (as the case may be) (including the control over exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends):
 - (i) in the case of the Contractor, from that set out in Clause 6.1.5 (*Contractor Warranties and Undertakings*); and
 - (ii) in the case of a Sub-Contractor, from the relevant holdings at the time of the entry by the relevant Sub-Contractor into the relevant Sub-Contract²⁹; and/or
- (b) any other arrangements that have or may have or which result in the same effect as limb (a) above; and/or
- (c) any disposal or acquisition by the Contractor of a material asset (including shares held by the Contractor or any of its Subsidiaries in any company), business or undertaking;

“Child Labour Legislation” means those International Labour Law Conventions concerning economic exploitation of children through the performance of work which is likely to be hazardous or to interfere with a child's health or development, including but not limited to slavery, trafficking, debt bondage or forced labour, which are ratified and enacted into domestic law and directly applicable to the Contractor in the jurisdiction(s) in which it performs this Contract;

“Completion” has the meaning given in the Scope applicable to Part 1 of this Contract;

“Compliance Report” means a document presenting information that shows that the Contractor is adhering to all the requirements and applicable standards of the Contract;

“Configurable Items” means any service component, infrastructure element, or other item that needs to be managed to ensure the successful delivery of services;

“Configuration Management” a management activity that applies technical and administrative direction, focusing upon the product physical and functional characteristics to ensure conformance with requirements and to control the change of formally approved Configuration Baselines;

“Contract” means this contract (including its Schedules, Appendices and Annexes) as may be amended and/or extended from time to time as a result of the commencement of any Active Task Order and/or as a result of any Exercised Option;

“Contract Award” means the date of this Contract;

²⁹ Will require amendment where Contractor/Sub-Contractor not a limited company.

“Contract Month” means the period commencing on and including the Effective Date to the end of the calendar month in which the Effective Date occurs and thereafter each subsequent calendar month commencing on the first day of each calendar month, provided that the final Contract Month shall be such period as commences on the first day of the Contract Month in which the Expiry Date or the Termination Date (as the case may be) falls and ends on the Expiry Date or Termination Date (as the case may be);

“Contract Month n” has the meaning given in paragraph 1.1 of Part 1 of Schedule 9 (*Pricing and Payment*);

“Contract Notice” is the pre-qualification document relating to this Contract, dated 15 November 2021;

“Contract Period” for the purposes of this Part 2 of the Contract means the period commencing on and from the Effective Date and ending on the earlier of the Expiry Date and the Termination Date;

“Contract Price” means the sum of:

- (a) the Firm Price; and
- (b) the Fixed Price; and
- (c) the Option Fixed Price for each Exercised Option (during such period only as such Exercised Option is subsisting in accordance with this Contract);

in each case, as adjusted from time to time in accordance with this Contract and which is payable to the Contractor by the Authority under this Contract for the full and proper performance by the Contractor of its obligations under this Contract as determined under the provisions of Schedule 9 (*Pricing and Payment*) and any other relevant provisions of this Contract;

“Contractor Background IPR” means any IPR and/or Information (as the case may be) subsisting and owned by the Contractor the prior to the date of, or created or generated by or on behalf of the Contractor outside the scope of, this Contract (other than any Contractor Foreground IPR);

“Contractor Change” means a change initiated by the Contractor in accordance with Schedule 11 (*Change Procedure*);

“Contractor Change Notice” means the notice issued in accordance with paragraph 11.1 of Schedule 11 (*Change Procedure*);

“Contractor Commercially Sensitive Information” shall mean the information listed in DEFFORM 539A at Part 13 of Schedule 19 (*DEFFORMS*), being information notified by the Contractor to the Authority which is acknowledged by the Authority as being commercially sensitive information;

“Contractor Default” means any one or more of the following:

- (a) a breach by the Contractor of any of its obligations under this Contract which materially and adversely affects the provision of the Contractor Deliverables (except where such breach is of any obligation to which limb (b) relates);
- (b) the occurrence of any of the circumstances referred to in paragraphs 6.4.2, 6.5 and 9 of Schedule 6 (*Performance Management Regime*);
- (c) the occurrence of a Persistent Breach;
- (d) the occurrence of an Insolvency Event in relation to the Contractor and/or the Parent Company or any company that becomes the holding company or parent undertaking of the Contractor (as applicable);
- (e) the occurrence of a Prohibited Act and/or the Contractor breaches and/or is in default under Clauses 6.1.13, 6.1.14 and/or 6.1.15 (*Contractor Warranties*);
- (f) a breach by the Contractor of Clause 16 (*Competition in Sub-Contracts*);
- (g) a breach by the Contractor of Clause 86 (*Transfer*);
- (h) a breach by the Contractor and/or any Sub-Contractor (as the case may be) of Clause 88 (*Change of Ownership*);
- (i) any withholding of information concerning hazardous Articles, materials or substances as referred to in Clause 58.9 (*Supply of Hazard Data*);
- (j) the occurrence of any of the circumstances referred to in Clause 45.8 (*Termination*);
- (k) the occurrence of any of the circumstances referred to in Clause 94.5 (*Tax Compliance*);
- (l) the Contractor and/or any Sub-Contractor (as the case may be) commits a breach of this Contract which results in the criminal investigation, prosecution and conviction of the Contractor and/or any Sub-Contractor under health and safety legislation;
- (m) any of the Authority's rights under the Parent Company Guarantee ceasing to be in full force and effect; and/or
- (n) the occurrence of the circumstances referred to in Clause 17.17 (*Import and Export Licences*);

"Contractor Default Termination Date" has the meaning given in Clause 78.2.4 (*Right to Terminate*);

"Contractor Deliverables" means the services and/or Articles which the Contractor is required to provide under this Contract, including the Core Contractor Deliverables, the Contractor Deliverables relating to all of the Exercised Options and any Additional Contractor Deliverables;

“Contractor Equipment” means the hardware, computer and telecoms devices and equipment used by the Contractor or its Sub-Contractors (but not hired, leased or loaned from the Authority) for the provision of the Contractor Deliverables;

“Contractor Foreground IPR” means IPR in any Intellectual Property funded by the Authority or created or generated by the Contractor or any Sub-Contractor in the course of the performance of this Contract, including Intellectual Property arising in:

- (a) any Contractor Deliverable created by the Contractor and any Sub-Contractor under this Contract;
- (b) training material (including training syllabuses, lessons, records, course training plans and courseware);
- (c) records relating to Authority and Authority-sponsored personnel;
- (d) databases;
- (e) Information relating to the operation, repair and maintenance of GFA,

but excluding any modifications, updates or developments to Authority Background IPR, or Third Party IPR supplied by the Authority to the Contractor for the purpose of this Contract;

“Contractor Personnel” means the Contractor’s employees, agents and employees and agents of the Sub-Contractors;

“Contractor Related Party” means:

- (a) an officer, servant, agent or employee of the Contractor or any Affiliate of the Contractor;
- (b) any Sub-Contractor acting in connection with this Contract; and/or
- (c) any person on or at:
 - (i) any of the Authority Sites or other Government Establishment (as the case may be) at the express or implied invitation of the Contractor (other than an Authority Related Party); and/or
 - (ii) any Other Contractor’s Premises at the express or implied invitation of the Contractor,

save to the extent such person is acting under the instruction or control of the Authority or such Other Contractor; and/or

- (d) [Authority Manpower;]³⁰

³⁰ Delete where no Authority Manpower envisaged in this Contract.

“Contractor System” means the information and communications technology system used by the Contractor in implementing and performing the Contractor Deliverables including software, the Contractor Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System);

“Contractor’s Premises” means those premises or parts of premises which are not Authority Sites and/or Other Contractor’s Premises but which are used by the Contractor and/or Contractor Related Parties for the purpose of providing the Contractor Deliverables;

“Contractor’s Project Manager” means the person listed in Schedule 18 (*Key Personnel*) who is responsible for the project outcome to the Authority];

“Contractor’s Proposals” means the Contractor’s proposals set out in Schedule 3 (*Contractor’s Proposals*);

“Contractor’s Representatives” means the persons referred to in Clause 95.2 (*Contractor’s Representatives*);

“Controlled Information” means any information in any written or tangible form in any media which is disclosed to the Contractor by or on behalf of the Authority under or in connection with this Contract, and which is identified by the legend “Controlled Information” or any other approved legend notified to the Contractor, and which is subject to an export, transfer or transit obligation or any other related technology transfer or disclosure restriction that requires special handling measures or is deemed by the Authority to be especially sensitive commercial information that has been obtained from a Third Party, and the term “Controlled Information” shall exclude information provided by oral communication;

“Controller” has the meaning given in Clause 40.1 (*Protection of Personal Data*);

“Core Contractor Deliverables” means that part of the Contractor Deliverables set out in Schedule 2 (*Scope*) as adjusted following the commencement of an Active Task Order relevant to the Core Contractor Deliverables, the Contractor Deliverables to be performed during an Exercised Option and/or an approved Change pursuant to Schedule 11 (*Change Procedure*);

“Corrective Maintenance” means maintenance activity carried out after a fault was recognised to restore the equipment to perform as required;

“Cost Benefit Analysis” means a process used to measure the benefits of a decision or taking action, minus the costs associated with taking that action;

“CP&F” has the meaning given in Clause 18.2 (*Payment under CP&F*);

“Crisis Event” means any national or international event of significance where the Authority requires additional or revised Contract Deliverables, including such events as:

- (a) any material threat to national security, or defence;

- (b) any material adverse effect on the national interests of the United Kingdom;
- (c) the occurrence of a state of war, crisis, tension or other emergency (whether involving hostilities or otherwise);
- (d) a request from an authority of competent jurisdiction for assistance in relation to the occurrence of possible occurrence of a major incident, crisis or natural disaster;
- (e) a request from NATO, the EU or the United Nations for support or assistance in relation to international obligations; or
- (f) any other event of similar nature or cause;

“Customer Feedback Form” means the questionnaire at Appendix 4 to Schedule 6 (*Performance Management Regime*) to be circulated by the Contractor in accordance with the Monitoring Methodology for KPI 5 (*Customer Satisfaction and Feedback*);

“Data Item Deliverable” (“DID”) means data to be delivered as required by Schedule 2 (*Scope*), detailing the format and standard to which data should conform;

“Data Protection Legislation” means all applicable Law in force from time to time in the UK relating to the processing of personal data and privacy, including but not limited to:

- (i) UK GDPR;
- (ii) DPA 2018; and
- (iii) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) as amended,

each to the extent that it relates to the processing of personal data and privacy;

“Data Reporting, Analysis and Corrective, Action System” means a system that is used to report failures and track the corrective actions;

“Deduction” means the deduction from the Gross Monthly Payment calculated in accordance with the Authority’s right to make Deductions arising under paragraph 4 and Appendix 1 to Schedule 6 (*Performance Management Regime*);

“Default” means any breach of the obligations of the relevant Party (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or sub-contractors in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other. In no event shall a failure or delay in the delivery of an Authority responsibility or activity to be carried out by the Authority or its representatives in accordance with this Contract be considered as a Default;

“DEFFORM 68” means the DEFFORM 68 listed in Schedule 19 (*DEFFORMS*) as referred to in Clause 58 (*Supply of Hazard Data*);

“DEFFORM 82A” means the DEFFORM 82A listed in Schedule 19 (*DEFFORMS*) as referred to in Clause 70 (*List of Spares – New Equipment*);

“DEFFORM 82B” means the DEFFORM 82B (*List of Spares – Modifications*) listed in Schedule 19 (*DEFFORMS*) as referred to in Clause 70 (*List of Spares – Modifications*);

“DEFFORM 94” means the DEFFORM 94 listed in Schedule 19 (*DEFFORMS*) as referred to in Schedule 14 (*IPR*) (*Confidentiality Agreement*);

“DEFFORM 111” means the completed DEFFORM 111 listed in Schedule 19 (*DEFFORMS*) as referred to in Clauses 55.1.3, 55.11.1(i), 55.15 (*Packaging (for Articles other than Munitions)*), 77.4 (*Requirement for a Certificate of Conformity*) and Clause 96.4 (*Notices*);

“DEFFORM 129A” means the DEFFORM 129A listed in Schedule 19 (*DEFFORMS*) as referred to in Clause 55 (*Packaging (for Articles other than Munitions)*);

“DEFFORM 129B” means the DEFFORM 129B (*Packaging Designs Concerns*) listed in Schedule 19 (*DEFFORMS*) as referred to in Clause Clause 55 (*Packaging (for Articles other than Munitions)*);

“DEFFORM 129J” means the DEFFORM 129J listed in Schedule 19 (*DEFFORMS*) as referred to in Clause 20 (*Electronic Business Delivery Form*) and Clause 55 (*Packaging (for Articles other than Munitions)*);

“DEFFORM 139” means the DEFFORM 139 listed in Schedule 19 (*DEFFORMS*) as referred to in Clause 36 (*SME Spend Data Collection*);

“DEFFORM 315” means the DEFFORM 315 listed in Schedule 19 (*DEFFORMS*) as referred to in Schedule 14 (*IPR*) (*Contract Data Requirement*);

“DEFFORM 528” means the DEFFORM 528 listed in Schedule 19 (*DEFFORMS*) as referred to in Clause 17 (*Import and Export Licences*);

“DEFFORM 532” means the DEFFORM 532 listed in Schedule 19 (*DEFFORMS*) as referred to in Clause 40 (*Protection of Personal Data*);

“DEFFORM 539A” means the DEFFORM 539A listed in Schedule 19 (*DEFFORMS*) as referred to in Clause 38.1.1 (*Contractor’s Commercially Sensitive Information*);

“DEFFORM 539B” means the DEFFORM 539B listed in Schedule 19 (*DEFFORMS*) as referred to in Clause 38.1.2 (*Publishable Performance Information*);

“DEFFORM 691A” means the DEFFORM 691A listed in Schedule 19 (*DEFFORMS*) as referred to in Clause 73 (*Timber and Wood-Derived Products*);

“Deliverable Quality Plan” has the meaning given in AQAP2105;

“Discretionary GFA” means the provision by the Authority to the Contractor of items and/or information to assist the Contractor in delivery of the Contractor Deliverables as listed in the table at Part 3 (*Discretionary GFA*) to Schedule 7 (*Authority Obligations*) (as more particularly referred to in Clauses 27.7 to 27.13 (*Discretionary GFA*));

“Dispute” means any dispute, claim or difference of whatever nature arising out of, in connection with, or in relation to this Contract, including a claim based on contract, tort, equity or domestic or international statute;

“Disputed Amount” has the meaning given in Clause 21.1 (*Disputed Amounts*);

“Dispute Resolution Procedure” means the procedure set out in Clause 97 (*Dispute Resolution (English Law)*);

“DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to:

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

“Duty Holder” means authority representative who are responsible for air safety and ensuring that associated risk to life for the air systems within their area of responsibility is as low as reasonably practicable and tolerable;

“EBC” has the meaning given in limb (c) of the definition of “Unique Identifiers”;

“Effective Date” means for the purposes of this Part 2, the date on which Completion occurs;

“Employee” means any person who is an employee, officer or director of the Contractor and/or any person who is an employee, officer or director of any Sub-Contractor (as the case may be) or who occupies the position of an officer or director of the Contractor and/or any Sub-Contractor (as the case may be), by whatever title given;

“Entry Criteria” means the criteria specified in paragraph 1 of Part 2 of Schedule 4 (*Assurance and Acceptance Process*) applicable to the Review in question;

“Estimate” means the estimate prepared in accordance with paragraph 5 of Schedule 11 (*Change Procedure*);

“EUI” has the meaning given in limb (c) of the definition of “Unique Identifiers”;

“Exercised Option” means an Option which has been exercised in accordance with the provisions of Clause 5.8 (*Contract Period and Options*);

“Excess Monthly Payment” shall have the meaning given in paragraph 1.3 of Part 1 of Schedule 9 (*Pricing and Payment*);

“Exit Assistance” shall have the meaning set out in paragraph 6.5 of Schedule 17 (*Exit Plan*);

“Exit Criteria” means the criteria specified in paragraph 2 of Part 2 of Schedule 4 (*Assurance and Acceptance Process*) applicable to the Review in question;

“Exit Management” means services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Contractor Deliverables from the Contractor to the Authority and/or a Follow-On Contractor as referred to in Clauses 81 (*Exit Plan*) and 83 (*Continuing Assistance*);

“Exit Management Information” all information which may be relevant on the expiry or early termination of the Contract including any information which may be relevant to the Authority and/or any Follow-On Contractors, including information relating to time schedules, performance measures and staff transfers (and which information shall be updated and increased by the Contractor as it considers necessary and/or as requested by the Authority from time to time);

“Exit Manager” the person allocated by the Contractor for managing the Contractor’s obligations on exit as more particularly referred to in paragraph 5 of Schedule 17 (*Exit Plan*);

“Exit Period” the period during which exit management activities will be performed following Expiry or an early termination of the Contract, as more particularly described in paragraph 6 of Schedule 17 (*Exit Plan*);

“Exit Plan” means the plan referred to in Schedule 17 (*Exit Plan*) as may be developed and/or amended in accordance with Clause 81 (*Exit Plan*) and paragraph 4 of Schedule 17 (*Exit Plan*);

“Expenses” shall have the meaning given in paragraph 3.2 of Part 1 of Schedule 9 (*Pricing and Payment*);

“Expiry Date” means the end of five (5) years from the Effective Date, as such date may be extended in accordance with Clause 5.1.1 (*Contract Period*) and Clauses 5.2 to 5.9 (inclusive) (*Contract Period and Options*);

“Failure Modes, Effects and Criticality Analysis” means a quantitative analysis applied in order to determine the consequences of failure, as well as the probability of such failures;

"Firm Price" means the price described in paragraph 1 of Part 2 of Schedule 9 (*Pricing and Payment*) during the Firm Price Period, as adjusted as described in paragraph 1.3 of Part 2 of Schedule 9 (*Pricing and Payment*) and at the date of this Contract is the sum of [] pounds (£);

"Firm Price Period" means the period of three (3) Years starting at the beginning of Year 1 and ending on the earlier of the end of Year 3 and the Termination Date;

"Fixed Price" means the price described in paragraph 2 of Part 2 of Schedule 9 (*Pricing and Payment*) during the Fixed Price Period, as adjusted as described in paragraph 2.3 of Part 2 of Schedule 9 (*Pricing and Payment*) and at the date of this Contract is the sum of [] pounds (£);

"Fixed Price Period" means the period starting at the beginning of Year 4 and ending on the earlier of the end of Year 5 and the Termination Date (or, if Option 1 is an Exercised Option, ending on the earlier of the end of Year 6 and the Termination Date and if Option 2 is an Exercised Option, ending on the earlier of the end of Year 7 and the Termination Date);

"FOI Act" means the Freedom of Information Act 2000;

"Follow-On Contractor" has the meaning given in Clause 83 (*Continuing Assistance*);

"GB CLP" has the meaning given in Clause 58.1 (*Supply of Hazard Data*);

"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;

"General Assurance Review" means the assurance review to be carried out for all Relevant Deliverables in accordance with Schedule 4 (*Assurance and Acceptance Process*);

"GFA" means the items listed in the table forming Part 2 of Schedule 7 (*Authority Obligations*);

"GFA Failure" means the failure of the Authority to provide GFA (other than Discretionary GFA) as set out in Schedule 7 (*Authority Obligations*);

"GFA Business Day" means Monday to Friday and excluding bank holidays;

"Good Industry Practice" means that degree of skill, care, prudence and foresight and operating practice, which would reasonably and ordinarily be expected from time to time of a skilled and experienced contractor engaged in the same type of undertaking as that of the Contractor and/or any Sub-Contractor under the same or similar circumstances;

“Government Department” means any department of the central government of the United Kingdom whose powers have not been devolved to any other national or regional executive or body, including any central government department with powers to administrate in specific geographical areas only (such as in England and Wales only);

“Government Establishment” means any sites and/or real property owned and/or operated by the Government, including the Authority Sites, any of Her Majesty’s ships or vessels and any service stations;

“GovS 007: Security” has the meaning given in Clause 45.1.3 (*Security – Secret Matters*);

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

“Holding Company” has the meaning given in, and shall be construed in accordance with, section 1159 and section 1162 of the Companies Act 2006;

“Human Factors Integration” means A systematic process within Defence acquisition that supports the successful integration of people, processes and technology within capability;

“Independent Safety Auditor” means an individual or team, from an independent organisation, that undertakes audits and other assessment activities to provide assurance that safety activities comply with planned arrangements, are implemented effectively and are suitable to achieve objectives; and whether related outputs are correct, valid and fit for purpose;

“Information” means:

- (a) for the purpose of Schedule 14 (*IPR*), technical data or information relating to Articles, processes or materials whether in human readable form or in machine readable form, or in any other form (but excluding software subject to paragraph 6 (*Intellectual Property Rights in Software*) of Schedule 14 (*IPR*); or
- (b) for the purpose of Clause 37 (*Disclosure of Information*), information as defined in Clause 37.1; or
- (c) for any other purpose, information in any form, whether written, oral, electronic, or in a tangible form disclosed to one Party by or on behalf of the other Party under or in connection with this Contract that is identified as being of a confidential or proprietary nature or which ought reasonably to be considered to be confidential, including information provided in the tender or negotiations which preceded Contract Award;

“Insolvency Event” occurs in relation to any person (which for the avoidance of doubt shall include an individual, a partnership, whether unlimited, limited, or limited liability, or any other type of entity as applicable and for this purpose “it” or “its” shall

refer to such individual or partnership or other entity) when any one or more of the following events occurs to that person:

- (a) a meeting of its partners, shareholders, directors or other officers is convened for the purpose of considering any resolution, to petition, to apply, or to file documents with a court or any registrar, for its winding-up, administration or dissolution, or for it to enter the moratorium procedure under Part A1 of the Insolvency Act 1986 (the “**Moratorium Procedure**”), or any such resolution is passed;
- (b) its partners, shareholders, directors or other officers request the appointment of, or give notice of their intention to appoint, a liquidator, compulsory manager, receiver, administrative receiver, administrator, monitor or similar officer, or a qualifying floating charge holder gives notice of their intention to appoint an administrator;
- (c) any person presents a petition, or makes an application, or files documents with a court or any registrar: for its winding-up, bankruptcy, sequestration, administration or dissolution; or for it to enter the Moratorium Procedure; or, without limitation to the foregoing, in the case of a partnership other than a limited liability partnership, for the individual bankruptcy or sequestration of any one or more partners in the partnership, other than any winding-up, bankruptcy or sequestration petition which is contested in good faith and/or shown as frivolous or vexatious and discharged or dismissed within 3 Business Days after presentation;
- (d) any Security Interest is enforced by a judicial decision over a part or all of its assets;
- (e) an order for its winding-up, bankruptcy, sequestration, provisional liquidation, administration, or dissolution is made, or an order that it is subject to the Moratorium Procedure is made, or it enters winding-up, bankruptcy, sequestration, provisional liquidation, administration, or the Moratorium Procedure, or is dissolved, or, without limitation to the foregoing, in the case of a partnership other than a limited liability partnership, any one or more of the partners is made bankrupt or an order for their sequestration is made;
- (f) any liquidator, provisional liquidator, trustee in bankruptcy, compulsory manager, receiver, administrative receiver, administrator, monitor under the Moratorium Procedure, or similar officer is appointed in respect of it or a part of its assets, or, without limitation to the foregoing, in the case of a partnership other than a limited liability partnership, a trustee in bankruptcy, compulsory manager, receiver or other similar officer is appointed in respect of any one or more of the partners or a part of their assets;
- (g) it commences negotiations for, a formal proposal is made for, any formal step is taken in relation to (including filing documents with the court for or applying for a moratorium under Schedule A1 to the Insolvency Act 1986 or an interim order pursuant to section 252 of the Insolvency Act 1986), or it enters or implements a voluntary arrangement under Part I or Part VIII of the Insolvency Act 1986, a scheme of arrangement under Part 26 of the

Companies Act 2006, or a composition, arrangement or reconstruction under Part 26A of the Companies Act 2006, but excluding a scheme of arrangement under Part 26 of the Companies Act 2006 which is a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction;

- (h) without limitation to the foregoing, in the case of a partnership other than a limited liability partnership, any one or more of the partners commences negotiations for, a formal proposal is made for, any formal step is taken in relation to (including filing documents with the court for or applying for an interim order pursuant to section 252 of the Insolvency Act 1986), or that partner or partners enters or implements a voluntary arrangement under Part VIII of the Insolvency Act 1986;
- (i) any one or more persons has become entitled to appoint a receiver, including without limitation an administrative receiver, over all or any of its assets, or has become entitled to appoint an administrator to it;
- (j) any creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within three (3) Business Days;
- (k) it suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due, or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership other than a limited liability partnership) has any partner to whom any of the foregoing apply;
- (l) it commences negotiations for, a formal proposal is made for, any formal step is taken in relation to, or it enters into an agreement for the rescheduling, reduction and/or a moratorium of any debts owed by it with all or any one or more of its creditors;
- (m) it commences negotiations for, a formal proposal is made for, any formal step is taken in relation to, or it enters into a composition, scheme or arrangement with or in respect of its creditors or any one or more of them, other than an arrangement as a solvent company for the purposes of amalgamation or reconstruction;
- (n) without limitation to the foregoing, in the case of a partnership other than a limited liability partnership, any one or more of the partners commences negotiations for, a formal proposal is made for, any formal step is taken in relation to, or that partner or partners enter into a composition, scheme or arrangement with or in respect of their creditors or any one or more of their creditors;

- (o) it ceases, suspends or threatens to cease or suspend carrying on its business;
- (p) an “insolvency event” as defined in sections 121(2) to 121(5) inclusive of the Pensions Act 2004 occurs to it; and/or
- (q) any other step, process, procedure and/or event occurs in England and Wales or any other jurisdiction in relation to it that is equivalent, similar and/or analogous to any one or more of those set out in (a) to (p) inclusive above;

“Intellectual Property Rights” or **“IPR”** means patents, utility models, rights (registered and unregistered) in any designs, applications for any of the foregoing, topography rights, database rights, copyright, inventions, confidential Information and trade secrets, and all rights and forms of protection of a similar nature to these or having equivalent effect anywhere in the world;

“Invoice Date” has the meaning given in paragraph 2.6 of Schedule 6 (*Performance Management Regime*);

“Issued Property” means any item, including any physical items which the Contractor requires under this Contract in order to provide the Contractor Deliverables (or any element thereof), issued or otherwise furnished to the Contractor in connection with this Contract by or on behalf of the Authority (which, for the avoidance of doubt, shall not include any item of existing equipment that is re-located to the Centre pursuant to Part 1 of this Contract, in respect of which the remaining provisions of this Part 2 of the Contract shall apply);

“IT Environment” means the Authority System and the Contractor System;

“Key Performance Indicator” or **“KPI”** means the criteria against which the Contractor’s performance of certain of its obligations under this Contract is measured and which are set out in Appendix 1 to Schedule 6 (*Performance Management Regime*);

“Key Personnel” means those persons appointed by the Contractor to fulfil the Key Roles, being the persons listed in:

- (a) Schedule 18 (*Key Personnel*) against each Key Role as at the Effective Date or as amended from time to time in accordance with Clauses 10.4 to 10.6 (inclusive) (*Contractor Related Parties*); or
- (b) the relevant Task Order Proposal or as amended from time to time in accordance with Clauses 10.4 to 10.6 (inclusive) (*Contractor Related Parties*);

“Key Role” means a role listed in the first column of the Table in Schedule 18 (*Key Personnel*) or identified in any Active Task Order and any additional roles added from time to time in accordance with Clause 10.5 (*Contractor Related Parties*);

“KPI Report” means the report to be created by the Contractor pursuant to and in accordance with paragraph 2.4 of Schedule 6 (*Performance Management Regime*);

“KPI Reporting Period” means in respect of KPI 1, KPI 2, KPI 3 and KPI 4, each Contract Month and, in respect of KPI 5, every six (6) Contract Months;

“Law” means any applicable law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body;

“Level Of Repair Analysis” means an analytical methodology used to determine where an item will be replaced, repaired, or discarded based on cost considerations and operational readiness requirements;

“Losses” means all damage, losses, liabilities, claims, actions, costs, expenses (including legal expenses on a standard basis), proceedings, demands and charges whether arising under statute, contract or at common law (and **“Loss”** or **“loss”** shall have the same meaning as **“Losses”**);

“Maintainability” means the ability to be retained in, or restored to a state to perform as required, under given conditions of use and maintenance;

“Malicious Software” means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

“Maximum Time To Restoration” means maximum time period allowed to re-establish an item with the ability to perform as required after a failure;

“Minor Changes” has the meaning given in Clause 84.4 (*Change*);

“Monthly Payment” means the amount calculated in accordance with paragraph 1.1 of Part 1 of Schedule 9 (*Pricing and Payment*);

“NATO Stock Number” or **“NSN”** means a unique item identifier of 13 digits in length, composed of a 4 digit NATO supply classification code and a 9 digit NATO item identification number (NIIN);

“Necessary Consents” means all permits, licences (including licences required under the USA International Traffic in Arms Regulations (ITAR) and US Export Administration Regulations (EAR)), permissions, clearances, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required:

- (a) for the performance of any of the Contractor’s obligations under this Contract, including Clause 26 (*Technical Assistance to the Authority*);
- (b) to enable the Authority and/or any person or organisation set out in Schedule 12 (*Technical Assistance*) and any person or organisation notified by the Authority to the Contractor from time to time as a person or organisation with whom the Authority wishes to liaise and/or communicate with from time to time

time in relation to the Contract or the wider aims of the Authority in connection with the Contractor Deliverables, to assist the Authority and/or such person or organisation to carry out their respective aims, functions and/or duties or obligations in connection with the Contractor Deliverables,

in all cases, whether required in order to comply with Law, as a result of the rights of any Third Party and/or the requirements of any foreign government or organisation;

“Notices” has the meaning given in Clause 96.1 (*Notices*);

“Occasion Of Tax Non-Compliance” or “OOTNC” means:

- (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
 - (i) 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; or
 - (ii) 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; or
- (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at Contract Award or to a civil penalty for fraud or evasion;

“Options” means Option 1 and Option 2, as the case may be;

“Option 1” means the Option to extend the Expiry Date by one (1) Year to the end of Year 6, (this being the first one (1) Year extension of the provision of the Contractor Deliverables relating to equipment maintenance and support);

“Option 2” means, subject to Option 1 becoming an Exercised Option, the Option to extend the Expiry Date by one (1) further Year to the end of Year 7, (this being the second one (1) Year extension of the provision of the Contractor Deliverables relating to equipment maintenance and support);

“Option Notice” has the meaning given in Clause 5.4 (*Contract Period and Options*);

“Original Equipment Manufacturer” means the company/organisation who manufactured a component in a system, or the system itself;

“Original Expiry Date” means the Expiry Date as at the Effective Date (and prior to any extension in accordance with Clauses 5.2 to 5.9 (inclusive) (*Contract Period and Options*));

“Other Contractor” means any contractor to the Authority (other than the Contractor) which is notified to the Contractor from time to time and/or of which the Contractor ought reasonably to have been aware;

“Other Contractor’s Premises” means any premises which are in the control of any Other Contractor and at which the Contractor and/or any Contractor Related Party is required to attend (whether or not at the invitation of the Authority) in connection with the performance of this Contract and/or the provision of the Contractor Deliverables, but excluding any Authority Site and/or the Contractor’s Premises;

“Packaging” shall have the meaning given in Clause 55.1 (*Packaging (for Articles other than Munitions)*);

“Parties” means the Contractor and the Authority unless expressly stated differently;

“Persistent Breach” means three (3) or more breaches (the **“Subsequent Breaches”**) by the Contractor of one of its obligations under this Contract, provided:

- (a) that the Authority has previously served on the Contractor a notice (**“Warning Notice”**) correctly stating that the Contractor has, in any Contract Months prior to the service of such Warning Notice, breached such obligation under this Contract on one (1) or more occasions;
- (b) that the Contractor's Subsequent Breaches of such obligation take place during the eighteen (18) month period following the service of such Warning Notice; and
- (c) no service of a Warning Notice may be based on any breaches of such obligation that have already been the subject of a Warning Notice,

provided that Persistent Breach will not include breaches which count towards limb (b) of the definition of Contractor Default;

“Personal Data” has the meaning given in the Data Protection Legislation;

“Prescribed Rate” means two percent (2%) above the base rate from time to time of the Bank of England;

“Preventative Maintenance” means the regular and routine maintenance of equipment and assets in order to keep them running and prevent any costly unplanned downtime from unexpected equipment failure;

“Price List” means the price list contained in Appendix 2 to Schedule 9 (*Pricing and Payment*), as amended from time to time in accordance with paragraphs 6 and 7 of Part 2 of Schedule 9 (*Pricing and Payment*);

“Prices” means the prices for the provision of the Contractor Deliverables calculated in accordance with Schedule 9 (*Pricing and Payment*);

["**Process Agent**"] means [•];³¹

"Programmed Contractor Deliverables" are the Contract Data Deliverables which are identified in Part 3 of Schedule 4 (*Assurance and Acceptance Process*) on the Effective Date and/or following the approval of a Task Order Proposal or a Change pursuant to Schedule 11 (*Change Procedure*) for which there is a Review Date and Submission Date (in each case set out in the Contract Programme);

"Prohibited Act" means any instance of the Contractor or any of its employees, agents or Sub-Contractors (or anyone acting on behalf of such persons), with or without the knowledge or authority of the Contractor:

- (a) directly or indirectly offering, promising, giving or agreeing to give to any Crown servant any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Crown;
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Crown; or
 - (iii) for improper performance of a relevant function or activity;
- (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 such contract is entered into, particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority;
- (c) committing any offence:
 - (i) under the Prevention of Corruption Acts 1889-1916 or under sub-sections 108 to 109 of the Anti-Terrorism, Crime and Security Act 2001 (before those Acts or sub-sections are revoked);
 - (ii) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (iii) under Law creating offences in respect of fraudulent acts;
 - (iv) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Crown; or
 - (v) any activity, practice or conduct which would constitute one or more of the offences listed in limbs (i) to (iv) inclusive, if such activity, practice or conduct had been carried out in the United Kingdom; or

³¹ Delete if the Contractor is UK registered.

(d) defrauding, attempting to defraud or conspiring to defraud the Crown;

“Project” means this Contract, Parts 1 and 2;

“Project Safety & Environmental Committee” means the committee that agrees the safety and environmental management policy and strategy for the RAFCAM equipment;

“Proposed Additional Contractor Deliverables” means the Additional Contractor Deliverables that the Authority is requesting the Contractor to perform at the relevant time in relation to the Core Contractor Deliverables and/or Exercised Options;

“Public Store Account” or **“PSA”** has the meaning given in Clause 64.1.1 (*Accounting for property of the Authority*);

“Publishable Performance Information” has the meaning given in clause 38.1.2 (*Transparency*);

“Quality Assurance” means part of quality management focused on providing confidence that quality requirements will be fulfilled;

“Quarter Month” means the Contract Month which is the third (3rd) [full] Contract Month after the Effective Date and each three (3) month anniversary of such Contract Month and **“Quarter”** and **“Quarterly”** shall be construed accordingly;

“Quality Performance Indicators” (**“QPIs”**) means the quality performance indicators set out in Schedule 12 (*Quality Performance Indicators*);

“QPI Scores” means the QPI scores awarded by the Contractor in accordance with Schedule 12 (*Quality Performance Indicators*);

“Quarterly Performance Meeting” means the Quarterly meeting referred to in Appendix 2 to the Scope and described in more detail at paragraph 3 of Schedule 8 (*Governance and Management*);

“Quarterly Progress Report” means the report on the performance and delivery of this Contract to be created by the Contractor pursuant to and in accordance with paragraph 3.5 of Schedule 8 (*Governance and Management*);

“Records” has the meaning given in Clause 35 (*The Contractor’s Records*);

“Rectification Plan” means the rectification plan referred to in paragraph 6.1 of Schedule 6 (*Performance Management Regime*);

“Relevant Authority” means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;

“Relevant Deliverable” has the meaning given in paragraph 1.4 of Part 1 of Schedule 4 (*Assurance and Acceptance Process*);

“Relevant Requirements” means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

“Relevant Tax Authority” means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established;

“Reliability” means The ability to perform as required, without failure, for a given time interval, under given conditions;

“Reliability Centred Maintenance” means a process that ensures maintenance tasks are performed in an efficient, cost-effective, reliable, and safe manner;

“Replacement Contractor Deliverables” means any deliverables which are the same as, or substantially similar to, any of the Contractor Deliverables and which the Authority receives in substitution for any of the Contractor Deliverables following the expiry or termination or partial termination of this Contract (including any Additional Contractor Deliverables which would have been provided as a result of the exercise of any Option had the Contract not been terminated early pursuant to Clauses 78 (*Termination for Contractor Default*) or 79 (*Termination for Convenience*)) whether those deliverables are provided by the Authority internally and/or by any Follow-On Contractor;

“Representatives” means the Authority’s Representatives or the Contractor’s Representatives (as appropriate);

“Required Action” has the meaning given in Clause 32.3 (*Procedure for Authority Step-In*);

“Required Insurances” has the meaning given in Clause 29.1 (*Insurances*);

“Review” means a review by the Authority of a Programmed Contractor Deliverable or an Unprogrammed Contractor Deliverable in accordance with Schedule 4 (*Assurance and Acceptance Process*);

“Review Date” means, subject to paragraphs 1.6 and 3.2 of Part 1 of Schedule 4 (*Assurance and Acceptance Process*):

- (a) in respect of a Programmed Contractor Deliverable the last date of the relevant Review Period as identified in the Contract Programme; and
- (b) in respect of an Unprogrammed Contractor Deliverable the date notified by the Authority to the Contractor in accordance with paragraph 1.4.2 of Schedule 4 (*Assurance and Acceptance Process*);

“Review Period” means, subject to paragraphs 1.4 and 3.2 of Part 1 of Schedule 4 (*Assurance and Acceptance Process*), the period for review of the relevant Relevant Deliverable applicable to the Review in question, being the period commencing on the date the Entry Criteria for the relevant review have been satisfied;

“Risk Report” means the top ten risks to the Project and any additional risks the Authority notifies the Contractor that should be reported on and/or the Contractor considers should be reported on in the Quarterly Performance Report;

“Safety and Environment Meeting” means the meeting referred to in Appendix 2 (*Meetings*) to Schedule 2 (*Scope*) and paragraph 4 of Schedule 8 (*Governance and Management*) to discuss the safety/environmental activities of the Project;

“Safety Case” means a structured argument, supported by a body of evidence, that provides a compelling, comprehensible, and valid case that a system is safe for a given application in a given environment;

“Safety Data Sheet” or **“SDS”** has the meaning given in Clause 58.1.1 (*Supply of Hazard Data*);

“Safety Management System” means a systematic and proactive approach to managing safety risks;

“Secret Matter” has the meaning given in Clause 45.1.1 (*Security – Secret Matters*);

“Security Interest” means a mortgage, charge, pledge, lien, assignment, hypothecation or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

“Security Working Group Meeting” means the meeting referred to in Appendix 2 (*Meetings*) to Schedule 2 (*Scope*) and paragraph 4 of Schedule 8 (*Governance and Management*) to discuss security aspects of this Contract;

“Sensitive Information” has the meaning given in clause 38.1.1 (*Transparency*);

[**“Servicemen”** means military manpower (and **“Serviceman”** shall be construed accordingly);]³²

“SME” means a small or medium sized enterprise being an establishment or service employing less than two hundred and fifty (250) people and with a turnover of less than fifty million pounds sterling (£50,000,000) per annum;

“Special Jigs, Tools Etc.” means all special jigs, tools, patterns, moulds, dies, manufacturing gauges and test equipment, together with any associated fixtures, fittings and software necessary for the manufacture of the Articles or for the performance of the Contractor Deliverables, which are not tools of the trade, as used by the Contractor in the performance of this Contract;

“Staff” means any Employee who is employed in the performance of the Contractor Deliverables (or who may be employed in the performance of any Proposed Additional Contractor Deliverables) and having the job titles and/or roles identified in the Price List;

³² This term will not be needed where no Authority Manpower is being provided. To be reviewed generally alongside paragraph 5 and 7 of Part 1 of Schedule 7 (*Authority Obligations*).

“Stakeholder” means individuals or groups who have an interest or role in the project, programme or portfolio, or are impacted by it;

“Standard” means a level of quality or attainment;

“Scope” means Schedule 2 (*Scope*), as amended from time to time in accordance with this Contract;

“Step-In Notice” has the meaning given in Clause 32.3 (*Procedure for Authority Step-In*);

“Step-Out” has the meaning given in Clause 32.6 (*Authority Step-Out*);

“Step-Out Plan” has the meaning given in Clause 32.7.2 (*Authority Step-Out*);

“Sub-Contractor Management Plan” has the meaning given in Clause 16.1 (*Competition in Sub-Contracts*);

“Sub-Contractor” means any sub-contractor to the Contractor under this Contract, a sub-contractor of a sub-contractor to the Contractor and any other sub-contractor (of whatever tier) engaged by the Contractor or any sub-contractor from time to time as may be permitted by this Contract to provide the Contractor Deliverables (or any part of the Contractor Deliverables);

“Sub-Contracts” means the contracts entered into between the Contractor and the Sub-Contractors and the contracts entered into between any Sub-Contractor and any other Sub-Contractor in respect of the provision of the Contractor Deliverables and **“Sub-Contracting”** shall be construed accordingly;

“Submission Date” means, subject to paragraphs 1.4.1 and 3 of Part 1 of Schedule 4 (*Assurance and Acceptance Process*):

- (a) in respect of a Programmed Contractor Deliverable, the programmed date for the relevant Review Period to commence, on or before which the relevant Entry Criteria is to be satisfied, as identified in the Contract Programme; and
- (b) in respect of an Unprogrammed Contractor Deliverable, the programmed date for the relevant Review Period to commence as notified by the Authority to the Contractor in accordance with paragraph 1.4.1 of Schedule 4 (*Assurance and Acceptance Process*);

“Subsequent Review” has the meaning given in paragraph 3.2 of Part 1 of Schedule 4 (*Assurance and Acceptance Process*);

“Subsidiary” has the meaning given in, and shall be construed in accordance with, sections 1159 and 1162 of the Companies Act 2006;

“Supply Chain” means the activities required by the organisation to deliver goods or services as required;

“Supportability Analysis” means a structured process for optimally defining the requirements for and reducing the cost of providing support for a system;

“Supportability Case” means a reasoned, auditable argument created to support the contention that a defined system will satisfy the support requirements of a Project;

“Task Order” means an order issued by the Authority’s Representative confirming that the Contractor is required to perform the Proposed Additional Contractor Deliverables in accordance with an approved Task Order Proposal;

“Task Order Payment” means the amount that is agreed or determined to be payable by the Authority to the Contractor in the relevant Contract Month in respect of work completed in performing an Active Task Order;

“Task Order Price” means the price that is agreed by the Authority to be payable in respect of a Task Order Proposal in accordance with the procedures set out in Schedule 10 (*Task Order Approval Process*);

“Task Order Proposal” means a proposal to be issued by the Contractor to the Authority in response to the issue by the Authority of a Task Order Request, as more particularly defined in Schedule 10 (*Task Order Approval Process*);

“Task Order Proposal Template” means the form of document set out in Appendix 1 of Schedule 10 (*Task Order Approval Process*);

“Task Order Request” means a request by the Authority for the Contractor to develop a Task Order Proposal in respect of the applicable Proposed Additional Contractor Deliverables;

“Tax” means any kind of tax, duty, levy or other charge (other than VAT) whether or not similar to any in force at Contract Award and whether imposed by a local, governmental or other Relevant Authority in the United Kingdom or elsewhere;

“Technical Documentation” means all documentation/information which enables the user to safely: operate, maintain, repair, support and dispose of a system throughout its life;

“Tender Documentation” means any documents issued to prospective tenderers and tenderers relating to the opportunity to bid to enter into a contract to provide the Contractor Deliverables;

“Tender Requirement” has the meaning given in Clause 16.3 (*Competition in Sub-Contracts*);

“Termination Date” means the date of any early termination of the whole or part of this Contract pursuant to Clauses 78 (*Termination for Contractor Default*) or 79 (*Termination for Convenience*);

“Termination Notice” has the meaning given in Clause 78.2 (*Termination for Contractor Default*), or as relevant, means any notice to terminate this Contract pursuant to Clause 79 (*Termination for Convenience*);

“Terms Of Reference” means define the purpose and structures of a project, committee, meeting, negotiation, or any similar collection of people who have agreed to work together to accomplish a shared goal;

“Time to restoration” means the time taken from the point the Contractor is notified of equipment becoming unserviceable which requires Corrective Maintenance to the time the equipment has been restored to perform as required as defined in Def Stan 00-049;

“Third Party” means any person other than the Parties;

“Third Party IPR” means any IPR owned by a Third Party;

“Training Memorandums” means defines the training requirements for an activity;

“Training Needs Analysis” means the process of identifying the gap in employee training and related training needs;

“Tranches” has the meaning given in:

- (a) paragraph 1.2 of Part 2 of Schedule 9 (*Pricing and Payment*) in relation to Tranches relevant to the Firm Price; and
- (b) paragraph 2.2 of Part 2 of Schedule 9 (*Pricing and Payment*) in relation to Tranches relevant to the Fixed Price;

“Tranche Payment Amount” means the amount set out as the Gross Monthly Payment in respect of each of Month 1 to Month 12 in Year 1 to Year 7 inclusive;

“Tranche Payments Schedule” means the schedule set out in Appendix 1 to Schedule 9 (*Pricing and Payment*), as adjusted in accordance with paragraphs 1.3 and/or 2.3 of Part 2 of Schedule 9 (*Pricing and Payment*);

“Transferring Contracts” has the meaning given in paragraph 8.2.2 of Schedule 17 (*Exit Plan*);

“Transparency Information” has the meaning given in clause 38.1.3 (*Transparency*);

“UK REACH” has the meaning given in Clause 58.2 (*Supply of Hazard Data*);

“Unexpected Transferring Employee” has the meaning given in paragraph 2.3.1 of Schedule 16 (*Transfer Regulations*);

“Unique Identifiers” comprise the following:

- (a) Unique Order Identifier (**“UOI”**) generated by the Contracting, Purchasing & Finance (CP&F) electronic procurement tool for non inventory purchase orders;

- (b) Unique Receipt Reference Identifier (“**URRI**”), generated by CP&F for inventory purchase orders; or
- (c) Electronic Business Capability (“**EBC**”) Unique Package Identifier (“**EUPI**”) generated for EBC contractor logistic support contracts. EUPIs comprise two parts, the first part being the identifier allocated by the Authority and the second part being the identifier generated by the Contractor;

“**Unique Order Identifier**” or “**UOI**” has the meaning given in limb (a) of the definition “Unique Identifiers” in Schedule 1 (*Definitions and Acronyms*);

“**Unique Receipt Reference Identifier**” or “**URRI**” has the meaning given in limb (b) of the definition “Unique Identifiers” in Schedule 1 (*Definitions and Acronyms*);

“**Unit Rate**” means the agreed maximum rates for Staff (as may be amended from time to time in accordance with paragraphs 5, 6 and/or 7 of Part 2 of Schedule 9 (*Pricing and Payment*)) as set out in the Price List, which are used to calculate the Firm Price, the Fixed Price, the Adjustment Firm Price, the Adjustment Fixed Price and the Task Order Price in respect of the Contractor Deliverables and Proposed Additional Contractor Deliverables (in accordance with paragraphs 4, 5, 6 and 7 of Part 2 of Schedule 9 (*Pricing and Payment*));

“**Unprogrammed Contractor Deliverable**” are items or documents which are referred to in paragraphs 1.3.2 and 1.3.3 Part 1 of Schedule 4 (*Assurance and Acceptance Process*);

“**User Centred Design**” means an iterative design process in which designers focus on the users and their needs in each phase of the design process;

“**VAT**” means value added tax and is the tax charged on supplies of goods and services in the UK pursuant to the Value Added Tax Act 1994;

“**Warning Notice**” has the meaning given in limb (a) of the definition of Persistent Breach;

“**Year**” means the twelve (12) month period from and including the day falling immediately before the day bearing the same number in the same month of the following year (or, in the case of a period commencing on 29 February, ending on the next following 28 February);

“**Year 1**” means [] to [];³³

“**Year 2**” means [] to [];

“**Year 3**” means [] to [];

“**Year 4**” means [] to [];

“**Year 5**” means [] to [];

³³ Note: Year 1 is expected to start in November 2025.

“Year 6” means [] to [];

“Year 7” means [] to [];

“Zonal Plan” means identifies areas where maintenance tasks should be carried out.

Glossary of Acronyms

Acronym	Definition
AD	Air Domain
ADATS DT	Air Defence and Air Traffic Systems Delivery Team
AEA	Aircrew Equipment Assembly
AEIG	Aircrew Equipment Integration Group
AESO	Aviation Engineering Standing Orders
AIHF	Accident Investigation and Human Factors
ALARP	As Low As Reasonably Practicable
AMES	Aviation Medicine Engineering Section
AMCS	Aviation Medicine Clinical Service
AMTM	Aviation Medicine Training Memorandum
APS	Aviation Physiology Section
ARM	Active Risk Manager
ARM	Availability, Reliability and Maintainability
ARMP	Availability, Reliability and Maintainability Plan
AQAP	Allied Quality Assurance Publications
ASEMS	Acquisition and Safety and Environmental Management System
A Tech AV	Aircraft Maintenance Avionic
A Tech M	Aircraft Maintenance Mechanic
AvMed	Aviation Medicine
CAD	Computer Aided Design

CASEVAC	Casualty Evacuation
CBRN	Chemical, Biological Radiological and Nuclear
CCB	Configuration Control Board
CDD	Contract Data Deliverables
CDR	Critical Design Review
CFMO	Command Flight Medical Officer
CI	Configurable Items
CM	Configuration Management
CMP	Configuration Management Plan
CoC	Certificate of Conformity
COTS	Commercial Of The Shelf
Cpl	Corporal
CPO	Chief Petty Officer
CSA	Configuration Status Accounting
CSR	Configuration Status Record
CT	Chief Technician
DA	Design Authority
DACOS	Deputy Assistant Chief Of Staff
DE&S	Defence Equipment & Support
DESA	Defence Equipment and Sales Authority
DID	Data Item Deliverable
DipAvMed	Diploma in Aviation Medicine
DISO	Disorientation Trainer
DLF	Defence Logistics Framework
DLOD	Defence Line of Development

DPQQ	Dynamic Pre-Qualification Questionnaire
DO	Design Organisation
DRACAS	Data Reporting, Analysis and Corrective Action System
DSA	Defence Safety Authority
DT	Delivery Team
ECA	Early Comparability Analysis
ECG	Electrocardiograms
ECGMS	Electrocardiograph Management Service
EH	Environmental Health
EHFA	Early Human Factors Analysis
EMS	Environmental Management System
EOH	Environmental and Occupational Health
FCA	Functional Configuration Audit
Fg Off	Flying Officer
FLAP	Fuel, Lubricants and Associated Products
FMECA	Failure Modes, Effects and Criticality Analysis
FOC	Full Operating Capability
FS	Flight Sergeant
FsAST PT	Flight simulators And Synthetic Trainers Project Team
GDMO	General Duties Medical Officer
GEAR	Guidance for Engineering Activities and Review
GFA	Government Furnished Asset
GQA	Government Quality Assurance

GRP	Glass Reinforced Fibre
GSE	Ground Support Equipment
H&S	Health & Safety
HCOC	Human Component of Capability
HF	Human Factors
HFE	Human Factors Engineering
HFI	Human Factors Integration
HFIP	Human Factors Integration Plan
HFIWG	HFI Working Group
HFPR	Human Factors Process Requirement
HFSR	Human Factors System Requirement
HFUR	Human Factors User Requirement
HGTTF	High G Test and Training Facility
HTA	Hierarchical Task Analysis
HuFIMS	Human Factors Information Management System
I/C	In Command
ICT	Information and Communications Technology
IAW	In Accordance With
ILS	Integrated Logistic Support
ILSP	Integrated Logistic Support Plan
IPR	Intellectual Property Rights
ISA	Independent Safety Auditor
ISO	International Standards Organization
IT	Information Technology

ITEAP	Integrated Test, Evaluation and Acceptance Plan
ITN	Invitation To Negotiate
JNCO	Junior Non-Commissioned Officer
JSC	Joint Supply Chain
JSP	Joint Service Publication
KPI	Key Performance Indicator
LEV	Local Exhaust Ventilation
LoL	Limit of Liability
LORA	Level of Repair Analysis
LR	Legislation Register
LSA	Logistic Supportability Analysis
LSSR	Land Systems Safety Regulator
Lt Cdr	Lieutenant Commander
Lt Col	Lieutenant Colonel
MA	Medical Assistant
MACR	Major Accident Control Regulations
MAM-P	Manual of Airworthiness Maintenance – Processes
MOD	Ministry Of Defence
MODCERT	Ministry Of Defence Computer Emergency Response Team
MPPBR	Multi-Point Pressure Breathing Rig
MSO	Medical Support Officer
NVD	Noise and Vibration Division
NVD	Night Vision Device
NVG	Night Vision Goggles

OC	Officer Commanding
OEM	Original Equipment Manufacturers
OH	Occupational Hygiene
OJT	On the Job Training
OM	Occupational Medicine
OMP	Obsolescence Management Plan
PAT	Portable Appliance Testing
PCA	Physical Configuration Audits
PCO	Pressure Chamber Operator
PDR	Preliminary Design Review
PESC	Project Safety & Environmental Committee
PHS&T	Package, Handling, Storage and Transportation
PLC	Programmable Logic Control
PMP	Project Management Plan
POEMS	Project Oriented Environmental Management System
POSMS	Project Orientated Safety Management System
PSS	Products, Services and/or Systems
PSSR	Pressure Systems Safety Regulations
QA	Quality Assurance
QMP	Quality Management Plan
QPI	Quality Performance Indicators
QPR	Quality Progress Report
RAF	Royal Air Force
RAFC	Royal Air Force College

RAF CAM	Royal Air Force Centre of Aviation Medicine
RAFMB	Royal Air Force Medical Board
RAIDO	Risks, Assumptions, Issues, Dependencies, and Opportunities
RCM	Reliability-Centred Maintenance
RCMP	Reliability-Centred Maintenance Plan
RD	Rapid Decompression
ROBD	Reduced Oxygen Breathing Device
S&E	Safety and Environmental
S&TE	Support and Test Equipment
SA	Supportability Analysis
SAC	Senior Aircraftman or Aircraftwoman
SAC(T)	Senior Aircraftman or Aircraftwoman Technician
SAP	Supportability Analysis Plan
SBHT	Scenario Based Hypoxia Trainer
SC	Safety Case
SC	Supportability Case
SDT	Spatial Disorientation Trainer
SE	Survival Equipment
SEMB	Survival Equipment Maintenance Bay
SEMP	Safety and Environmental Management Plan
SEMS	Safety & Environmental Management System
SEngO	Senior Engineering Officer
Sgt	Sergeant
SNCO	Senior Non-Commissioned Officer

SME	Subject Matter Expert
SMO	Senior Medical Officer
SMP	Supply Management Plan
SMS	Safety Management System
SO	Staff Officer
SOP	Standard Operating Procedures
SOW	Statement Of Work
SPPBR	Single Point Pressure Breathing Rig
Sqn Ldr	Squadron Leader
SSP	Software Support Plan
SPQP	Software Project Quality Plan
SQEP	Suitably Qualified and Experienced Personnel
SRD	System Requirements Document
TA	Task Analysis
TAD	Target Audience Description
TD	Technical Documentation
TEAP	Test, Evaluation and Acceptance Plan
TM	Training Memorandum
TM&TEP	Training Management and Training Equipment Plan
TNA	Training Needs Analysis
TOR	Terms Of Reference
TRS	Tissue Reference Service
TTLS	Technical Through Life Support
U/S	Unserviceable

UCD	User Centred Design
UK	United Kingdom
UMC	Under Ministry Control
UPS	Uninterruptable Power Supply
URD	User Requirements Document
USAF	United States Air Force
UTC	Undertaking Unit Tool Control
VAT	Value Added Tax
VVRM	Verification and Validation Requirements Matrix
Wg Cdr	Wing Commander
WO	Warrant Officer

Schedule 2

Scope

[Please see Schedule 2 (Scope) of the document entitled “Schedules 1 to 19 relating to Royal Air Force Centre of Aviation Medicine Relocation, Contract Number 701577386”]

Schedule 3

Contractor's Proposals

[Please see Schedule 3 (Contractor's Proposals) of the document entitled "Schedules 1 to 19 relating to Royal Air Force Centre of Aviation Medicine Relocation, Contract Number 701577386"]

Schedule 4

Assurance and Acceptance Process

[Please see Schedule 4 (Assurance and Acceptance Process) of the document entitled “Schedules 1 to 19 relating to Royal Air Force Centre of Aviation Medicine Relocation, Contract Number 701577386”]

Schedule 5

Contract Data Deliverables

[Please see Schedule 5 (Contract Data Deliverables) of the document entitled “Schedules 1 to 19 relating to Royal Air Force Centre of Aviation Medicine Relocation, Contract Number 701577386”]

Schedule 6

Performance Management Regime

[Please see Schedule 6 (Performance Management Regime) of the document entitled “Schedules 1 to 19 relating to Royal Air Force Centre of Aviation Medicine Relocation, Contract Number 701577386”]

Schedule 7

Authority Obligations

[Please see Schedule 7 (Authority Obligations) of the document entitled “Schedules 1 to 19 relating to Royal Air Force Centre of Aviation Medicine Relocation, Contract Number 701577386”]

Schedule 8

Governance and Management

[Please see Schedule 8 (Governance and Management) of the document entitled “Schedules 1 to 19 relating to Royal Air Force Centre of Aviation Medicine Relocation, Contract Number 701577386”]

Schedule 9

Pricing and Payment

[Please see Schedule 9 (Pricing and Payment) of the document entitled “Schedules 1 to 19 relating to Royal Air Force Centre of Aviation Medicine Relocation, Contract Number 701577386”]

Schedule 10

Task Order Approval Process

[Please see Schedule 10 (Task Order Approval Process) of the document entitled “Schedules 1 to 19 relating to Royal Air Force Centre of Aviation Medicine Relocation, Contract Number 701577386”]

Schedule 11

Change Procedure

[Please see Schedule 11 (Change Procedure) of the document entitled “Schedules 1 to 19 relating to Royal Air Force Centre of Aviation Medicine Relocation, Contract Number 701577386”]

Schedule 12

Quality Performance Indicators

[Please see Schedule 12 (Quality Performance Indicators) of the document entitled “Schedules 1 to 19 relating to Royal Air Force Centre of Aviation Medicine Relocation, Contract Number 701577386”]

Schedule 13

Required Insurances

[Please see Schedule 13 (Required Insurances) of the document entitled “Schedules 1 to 19 relating to Royal Air Force Centre of Aviation Medicine Relocation, Contract Number 701577386”]

Schedule 14

IPR

[Please see Schedule 14 (IPR) of the document entitled “Schedules 1 to 19 relating to Royal Air Force Centre of Aviation Medicine Relocation, Contract Number 701577386”]

Schedule 15

Ancillary Documents

[Please see Schedule 15 (Ancillary Documents) of the document entitled “Schedules 1 to 19 relating to Royal Air Force Centre of Aviation Medicine Relocation, Contract Number 701577386”]

Schedule 16

Transfer Regulations

[Please see Schedule 16 (Transfer Regulations) of the document entitled “Schedules 1 to 19 relating to Royal Air Force Centre of Aviation Medicine Relocation, Contract Number 701577386”]

Schedule 17

Exit Plan

[Please see Schedule 17 (Exit Plan) of the document entitled “Schedules 1 to 19 relating to Royal Air Force Centre of Aviation Medicine Relocation, Contract Number 701577386”]

Schedule 18

Key Personnel

[Please see Schedule 18 (Key Personnel) of the document entitled “Schedules 1 to 19 relating to Royal Air Force Centre of Aviation Medicine Relocation, Contract Number 701577386]”

Schedule 19

DEFFORMS

[Please see Schedule 19 (DEFFORMS) of the document entitled “Schedules 1 to 19 relating to Royal Air Force Centre of Aviation Medicine Relocation, Contract Number 701577386

