Ministry of Defence

Contract Number: DGM/1880

Schedule 21: Flow-Down Provisions

For:

Next Generation Munitions Solution (NGMS) Programme

November 2020

Part A

Absolute Obligations

1 Flow-Down Process for Relevant Sub-Contracts

1.1 Subject to the terms of this Paragraph **{** REF _Ref49202027 \r \h * MERGEFORMAT **}**, the Contractor shall include in each Relevant Sub-Contract the applicable provisions set out in Paragraph **{** REF _Ref49202340 \r \h **}** (the "**Relevant Flow-Down Provisions**").

1.2 Where the Contractor intends to enter into a Relevant Sub-Contract and the Relevant Sub-Contractor is unable or unwilling to accept the inclusion of any of the Relevant Flow-Down Provisions, the Contractor shall notify the Authority as soon as reasonably practicable and in any event prior to entering into the Relevant Sub-Contract. Such notification shall include:

(a) details of the goods and/or services to be supplied under the proposed Sub-Contract;

(b) identification of the Relevant Flow-Down Provision(s) that the Relevant Sub-Contractor is unable or unwilling to accept and the reasons given by the Relevant Sub-Contractor for its refusal;

(c) the Contractor's assessment of the materiality of the issue and the risk and/or impact on the Contractor's ability to comply with its obligations under the Contract;

(d) where possible, a summary of any proposed mitigations, including identification of any alternative provisions of the proposed Relevant Sub-Contract which address the same or similar issues that the refused Relevant Flow-Down Provisions seek to address.

1.3 Within 20 (twenty) Business Days (or such other period as the Parties may agree) of receiving the Contractor's notification pursuant to Paragraph **{** REF _Ref49202176 \r \h * MERGEFORMAT **}**, the Authority shall notify the Contractor in writing to confirm whether the Contractor is permitted to enter into the Relevant Sub-Contract. During such 20 (twenty) Business Day period, the Contractor shall use its reasonable endeavours to provide any further information or documentation reasonably requested by the Authority to assist with the Authority's assessment of the risk and/or impact of entry into the proposed Relevant Sub-Contract.

1.4 If the Authority:

(a) notifies the Contractor that it may enter into the Relevant Sub-Contract, the Contractor shall be entitled to enter into the Relevant Sub-Contract without the Relevant Flow-Down Provision(s);

(b) notifies the Contractor that it is not permitted to enter into the Relevant Sub-Contract, Paragraph 1.5 below shall apply; or

(c) does not issue a notification to the Contractor within the timescale set out in Paragraph **{** REF _Ref49202634 \r \h * MERGEFORMAT **}**, the Contractor shall be entitled to a Delay Event in accordance with Clause 65 (Delay Events) in respect of the Article(s) to which the applicable Relevant Sub-Contract relates only until such time as the Authority notifies the Contractor of its decision.

1.5 Following receipt of the Authority's notification pursuant to Paragraph 1.4(b) that the Contractor is not permitted to enter into the Relevant Sub-Contract:

(a) the Contractor shall within 60 (sixty) Business Days:

(i) identify any alternative Approved Sub-Contractor that will supply the relevant goods and/or services and will accept the Relevant Flow-Down Provisions; and

(ii) notify the Authority via the JRCC of any such alternative Approved Sub-Contractor(s) identified. Where the alternative Approved Sub-Contractor will supply the relevant goods and/or services on different terms to the initial proposed Relevant Sub-Contract, such notification shall include:

(A) identification of any Change required to the Contract to allow the Contractor to enter into the alternative Sub-Contract (a "**Change of Supply**"); and

(B) a fully costed proposal for such Change of Supply, including identification of any validation activities required to be carried out to allow the Contractor to sub-contract with the alternative Approved Sub-Contractor;

(b) where no Change of Supply is required, the Contractor shall promptly enter into the Relevant Sub-Contract;

(c) where a Change of Supply is required:

(i) the Authority shall respond within 6 (six) calendar months to confirm whether the Change of Supply is approved;

(ii) the Contractor shall co-operate with the Authority and shall use its reasonable endeavours to provide any further information or documentation reasonably requested by the Authority to assist with the Authority's assessment of the proposed Change of Supply;

(iii) if the Change of Supply is approved, the Authority shall issue a Task to the Contractor pursuant to Schedule 10 (Tasking) to instruct the Contractor to undertake any required validation activities for the alternative Approved Sub-Contractor; and

(iv) following completion of the validation activity the required Change shall be implemented in accordance with the Change Procedure and the Contractor shall promptly enter into the Relevant Sub-Contract; or

(d) where either:

(i) the Contractor, having complied with its obligations under this Paragraph 1, is unable to identify and/or enter into a Sub-Contract with an alternative Approved Sub-Contractor; or

(ii) the Authority does not approve a proposed Change of Supply,

the Parties shall seek to agree any appropriate Change to the Contract, which may include a Change to the Statement of Requirements, and, subject to Paragraph 1.6 below, this shall be a Delay Event in accordance with Clause 65 (Delay Events) in respect of the Article(s) to which the applicable Relevant Sub-Contract relates only.

1.6 If the Parties are unable to agree an appropriate Change pursuant to Paragraph 1.5(d) by the date falling on the later of 6 (six) calendar months of the Authority's notification pursuant to Paragraph 1.4(b) that the Contractor is not permitted to enter into the Relevant Sub-Contract or 2 (two) calendar months from the start of the discussions pursuant to Paragraph 1.5(d) (or such longer time period as may be agreed between the Parties), the Authority may:

(a) issue a Notice of Change pursuant to Clause 57.2 (Change); or

(b) terminate this Contract with immediate effect.

In exercising its rights under this Paragraph 1.6, the Authority shall have due regard to the nature of the Relevant Sub-Contract and Relevant Flow-Down Provisions at issue and their impact on the Contractor's ability to perform its obligations under the Contract.

1.7 In the event of termination pursuant to Paragraph 1.6, for the purposes of Clause 82 (Compensation on Termination):

(a) where the Contractor has complied with all of its obligations under this Paragraph 1, the Contractor shall be entitled to payment of Rationalisation Costs in accordance with Clause 82.2(d)(i) (Compensation on Termination); or

(b) where the Contractor has failed to comply with its obligations under this Paragraph 1, such termination be treated as termination for Material Breach and Clause 82.4 (Compensation on Termination) shall apply.

2 Provisions to be included in Relevant Sub-Contracts

2.1 Subject to the terms of Paragraph 1 above, the Contractor shall include the terms specified below in each Relevant Sub-Contract:

Clause / Schedule Reference	Relevant Sub-Contract	Flow-Down Requirement
Clause 8.6 (Quality Standards and Assurance)	Any Sub-Contract where the Statement of Requirements and any applicable Deliverable Quality Plan requires demonstration of traceability and design provenance through the supply chain	The Contractor shall include in any relevant Sub-Contract the requirement for the following information: (a) Contractor name and address; (b) Contractor unique CofC reference number. It is noted that in the case of commercial off the shelf (COTS) product this may not be available, but in such case the sub-contractor shall be required to produce evidence of any legislative required certification, markings (such as CE or ATEX), evidence source of supply provenance on request, pursuant to the sub-contractor's record management policy, as part of the requirement of limb (k) herein. (c) Contract number and where applicable Contract amendment number; (d) Details of any approved Major Concessions (e) Acquirer name and organisation; (f) Delivery address; (g) Contract Line Item Number from the Schedule of Requirements;

		(h) Description of Article or Service including part number, Specification and configuration status; (i) Identification marks, batch and serial number(s) in accordance with the Specifications, where appropriate, noting that these may not be included on COTS product beyond any statutory requirements; (j) Quantities; (k) A signed and dated statement by the Contractor that Articles or Services provided comply with the requirements of the Contract, and approved concessions. (l) Exceptions or additions to the above are to be documented.
Clause 14.17 (Special Jigs, Tooling and Test Equipment)	Any Sub-Contracts which include the provisions of Clause 14 (Special Jigs, Tooling and Test Equipment)	The Contractor shall require that written approval for use of the Special Jigs, Tools Etc. for any purposes other than those of the Authority be obtained direct from the Authority by the Sub-Contractor.
Clause 15.1(f) (Accounting for Property of the Authority)	Any Sub-Contract at whatever level of sub-contracting where the Sub-Contractor has responsibility for property of the Authority issued in aid of the Contract	The Contractor shall include the provisions corresponding to those set out in Clause 15 that apply to property of the Authority issued in aid of the Sub-Contract, in particular Clauses 15.1, 15.2, 15.4 and 15.6.

Clause 32 (Contractor's Records)	All Sub-Contracts	The Contractor shall ensure that its Sub-Contractors maintain all records specified in and connected with the Contract (expressly or otherwise) for the period specified in Clause 32.4, and shall permit access to relevant records in accordant with Clauses 32.2 and 32.3.
Clause 39.2 (Official Sensitive Security Requirements)	Any Sub-Contract which requires disclosure of OFFICIAL-SENSITIVE Information to the Sub-Contractor or under which any Information relative to aspects designated as OFFICIAL-SENSITIVE is created by the Sub-Contractor	The Contractor shall include the requirements and obligations set out in Clause 39.1 (requiring protection of all Information relating to the aspects designated OFFICIAL-SENSITIVE as identified in the Security Aspects Letter, in accordance with the official security conditions contained in the Contract or annexed to the Security Aspects Letter) in any sub-contract placed in connection with or for the purposes of the 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 Clause 39 to its sub-contractors and through all levels of the supply chain to the lowest level where any OFFICIAL-SENSITIVE Information is handled.
Clause 40 (Cyber)	Any sub-contract awarded directly by the Contractor or by any Associated Company, which is entered into in relation to the provision of Contractor Deliverables in connection with this Contract and involves the processing, storage or	The Contractor shall (i) procure that its direct Material Sub-Contractors and (ii) require that its Sub-Contractors shall comply with the requirements and obligations set out in Clause 40.4 and shall include provisions equivalent to those set out in Paragraph 3 of this Part A in all relevant Sub-Contracts (inserting or amending relevant party names and / or definitions where appropriate).

	transmission of MOD Identifiable Information	
Clause 46.11 (Sub-Contracting)	All Sub-Contracts	The Contractor shall obtain Sub-Contract terms that enable the Contractor to terminate any Sub-Contract at the minimum cost to the Contractor and/or the Authority that is reasonably possible, having due regard to the duration and value of the Sub-Contract.
Clause 47.2 (Sub-Contracting and Prompt Payment)	Any Sub-Contract at any level of sub-contracting where the Sub-Contractor is an SME	The Contractor shall include a term in such Sub-Contract: (i) providing that where the Sub-Contractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion; (ii) providing that the Contractor shall pay the Sub-Contractor any sums due under such an invoice no later than a period of 30 (thirty) days from the date on which the Contractor has determined that the invoice is valid and undisputed; (iii) providing that where the Contractor fails to comply with paragraph **{** REF _Ref_ContractCompanion_9kb9Ur149 \w \n \h \t * MERGEFORMAT **}** above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of paragraph **{** REF _Ref_ContractCompanion_9kb9Ur14B \w \n \h \t * MERGEFORMAT **}** after a reasonable time has passed; and (iv) requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards to any Sub-Contractor, provisions having the same effect as

		paragraphs { REF _Ref_ContractCompanion_9kb9Ur149 \n \h * MERGEFORMAT } to { REF _Ref36041278 \n \h * MERGEFORMAT }.
Clause 50.5 (Authority Data)	Any Sub-Contract where the Sub-Contractor holds Authority Data on its IT systems	The Contractor shall procure (as reasonably required by the Authority) that the Sub-Contractors perform secure backups 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 upon reasonable request, provided that the Authority has the right to request copies of the Authority Data contained on such back-ups.
Schedule 22 (IPR)	Any Sub-Contracts in furtherance of work under Section 1 – DEFCONS of Schedule 22 (IPR)	Unless otherwise agreed by the Authority, the Contractor shall not place any sub-contract in furtherance of work under Section 1 – DEFCONS without securing for the Authority rights in relation to that work consistent with those under Section 1a – DEFCONS or Section 1b – DEFCONS as is appropriate.
Schedule 26 (TUPE)	All Sub-Contracts	Provisions satisfying the requirements of Paragraphs 1.1(e), 1.1(g) and Paragraph 4 of Appendix 1 to Schedule 26.
Schedule 26 (TUPE)	All sub-contracts with Employing Sub-Contractors	Provisions satisfying the requirements of Paragraphs 1.1(a), 1.1(f), 1.2 and 1.3(a)(i) of Schedule 26.

3 Provisions to be included in Relevant Sub-Contracts for the purposes of Clause 40 (Cyber)

3.1 Definitions

In this Paragraph 3 the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

"**Associated Company**" means:

(a) any associated company of the Sub-Contractor from time to time within the meaning of Section 449 of the Corporate Tax Act 2010 or any subordinate legislation; and

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

"**Contractor Deliverables**" means the works, goods and / or the services, including packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Prime Contractor is required to provide under the Prime Contract;;

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

"**Cyber Implementation Plan**" means the plan referred to in Paragraph 3.2 including but not limited to any risk-balance case and mitigation measures required by the MOD;

"**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 on which MOD Identifiable Information resides;

(d) unauthorised and 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,

in each case only in respect of information systems or electronic communications networks that are controlled or managed by the Sub-Contractor or its Associated Companies and on which MOD Identifiable Information under or in connection with the Prime Contract is stored, processed or transited;

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

"**Cyber Security Model**" or "**CSM**" means the process by which the MOD ensures that MOD Identifiable Information is adequately protected from Cyber Security Incident and includes the CSM Risk Assessment Process, DEFSTAN 05-138 and the CSM Supplier Assurance Questionnaire;

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

"**CSM Supplier Assurance Questionnaire**" means the supplier assessment questionnaire which forms part of the Cyber Security Model and is to be used by the Sub-Contractor to demonstrate compliance with this Paragraph 3;

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

"**DEFSTAN 05-138**"means the Defence Standard 05-138 as amended or replaced from time to time;

"**Electronic Information**" means all information generated, processed, transferred or otherwise dealt with under or in connection with this Sub-Contract, including but not limited to Data, recorded or preserved on any information system or electronic communications network;

"**Good Industry Practice**" means in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgment and the making of any

expenditure that would reasonably be expected from a skilled person in the same type of undertaking under the same or similar circumstances;

"**ISN**" means Industry Security Notices issued by the MOD to the Prime Contractor whether directly or by issue on the gov.uk website at: https://www.gov.uk/government/publications/industry-security-notices-isns;

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

"MOD" means the UK Ministry of Defence of 1 Horseguards, London acting by the NGMS project team at MOD Abbey Wood, Bristol BS34 8JH;

"**MOD Identifiable Information**" means all Electronic Information contained in or issued under or in connection with:

(a) [the Security Aspects Letter;

(b) Schedule 5 (Engineering Requirements);

(c) Schedule 7 (Munitions List);

(d) Schedule 8 (Manufacturing and Supply);

(e) Schedule 10 (Tasking), including any Tasks;

(f) Schedule 11 (Government Furnished Assets);

(g) Schedule 12 (Pricing);

(h) Schedule 17 (Governance and Contract Management), including any outputs, review, reports and/or other processes set out therein;][1]

which is attributed to or could identify an existing or proposed MOD capability, defence activities or personnel.

"Prime Contract" means contract reference DGM/1880 made between MOD and the Prime Contractor;

"Prime Contractor" means the Contractor named in the Prime Contract with MOD;

"**NSA/DSA**" means, as appropriate, the National or Designated Security Authority of the Prime or Sub-Contractor that is responsible for the oversight of the security requirements

[1] The Contractor shall be required to identify the location of any MOD Identifiable Information within each relevant Sub-Contract and update the definition of MOD Identifiable Information for the purposes of that Sub-Contract accordingly.

to be applied by the Prime Contractor or Sub-Contractor and for ensuring compliance with applicable national security regulations;

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

"**Sub-Contract**" means any sub-contract at any level of the supply chain, whether this Sub-Contract which is awarded by the Prime Contractor or any related sub-contract which is awarded by the Sub-Contractor or any lower tier sub-contractor or Associated Company, which is entered into as a consequence of or in connection with this Sub-Contract and which involves the processing, storage or transmission of MOD Identifiable Information;

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

"**Supplier Cyber Protection Service**" means the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire;

3.2 Sub-Contractor Obligations

The Sub-Contractor shall, and shall procure that its lower tier Sub-Contractors shall:

(a) comply with DEFSTAN 05-138 or, where applicable, the Cyber Implementation Plan attached to this Sub-Contract;

(b) complete the CSM Risk Assessment Process in accordance with the MOD and the Prime Contractor's instructions, ensuring that any change in the Cyber Risk Profile is notified to the MOD, the Sub-Contractor and any affected lower tier Sub-Contractor, and complete a further CSM Risk Assessment or CSM Supplier Assurance Questionnaire where a change is proposed to the supply chain which has or may have an impact on the Cyber Risk Profile of the Prime Contract, this Sub-Contract, or on receipt of any reasonable request by the MOD;

(c) carry out the CSM Supplier Assurance Questionnaire no less than once in each year of this Sub-Contract commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire;

(d) having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge its obligations under this Paragraph 3 in accordance with Good Industry Practice *provided always that* where there is a conflict between the Sub-Contractor's obligations under Paragraph 3.2(a) above and this Paragraph 3.2(d) the Sub-Contractor shall notify the Prime Contractor and the MOD in accordance with the notification provisions in DEFSTAN 05-138 as soon as it becomes aware of the conflict and the MOD shall determine which standard or measure shall take precedence;

(e) comply with all Cyber Security Instructions notified to it by the Prime Contractor and/or MOD as soon as reasonably practicable;

(f) notify the JSyCC WARP in accordance with ISN 2017/03 as amended or updated from time to time, the Contractor and the Sub-Contractor's NSA/DSA immediately in writing as soon as they know or believe that a Cyber Security Incident has or may have taken place providing initial details of the circumstances of the incident and any mitigation measures already taken or intended to be taken, and providing further information in phases, as full details become available;

(g) in coordination with its NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the MOD 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 MOD or the relevant Prime and/or Sub-Contractor's NSA/DSA in the circumstances and taking into account the Cyber Risk Profile; and

(h) consent to the MOD recording and using information obtained in relation to the Sub-Contract for the purposes of the Cyber Security Model whether on the Supplier Cyber Protection Service known as Octavian or elsewhere. For the avoidance of doubt such information shall include the cyber security accreditation of the Sub-Contractor and / or lower tier Sub-Contractor as appropriate; and

(i) include provisions equivalent to Paragraph 3.4(a) in all lower tier Sub-Contracts imposing provisions equivalent to this Paragraph 3.2 (the "**equivalent provisions**") and, where a lower tier Sub-Contractor breaches terms implementing this Paragraph 3 in a Sub-Contract, the Sub-Contractor shall, and shall procure that its lower tier Sub-Contractors shall, in exercising their rights or remedies under the relevant Sub-Contract:

(i) notify the Prime Contractor and the MOD of any such breach and consult with the Contractor and the MOD regarding any remedial or other measures which are proposed as a consequence of such breach, taking the MOD's views into consideration; and

(ii) have regard to the equivalent provisions.

3.3 Records

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

(i) details of all MOD Identifiable Information relating to the Contractor Deliverables provided under this Sub-Contract; and

(ii) all documents required to demonstrate compliance with DEFSTAN 05-138 and this Paragraph 3.2, including but not limited to any information used to inform the CSM Risk Assessment Process and to carry out the CSM Supplier Assurance Questionnaire, together with any certificates issued to the Sub-Contractor and/or any lower tier Sub-Contractor.

(b) The Sub-Contractor shall, and shall ensure that any lower tier Sub-Contractor shall on request provide the MOD, the MOD's representatives and/or the relevant Prime or Sub-Contractor's NSA/DSA such access to those records as may be required in connection with this Sub-Contract.

3.4 Audit

(a) Except where an audit is imposed on the MOD by a regulatory body or there is a Cyber Security Incident in which case the Sub-Contractor agrees, and shall procure that its lower tier Sub-Contractors agree, that the MOD and its representatives, in coordination with the relevant Prime or Sub-Contractor's NSA/DSA, may conduct such audits as it considers in its absolute opinion necessary, the Sub-Contractor agree that the MOD, its representatives and/or the relevant Prime or Sub-Contractor's NSA/DSA may, not more than twice in any calendar year and for a period of 6 (six) years following the termination or expiry of this Sub-Contract, whichever is the later, conduct an audit for the following purposes:

(i) to review and verify the integrity, confidentiality and security of any MOD Identifiable Information;

(ii) to review the Sub-Contractor's and any lower tier Sub-Contractor's compliance with its obligations under this Paragraph 3.2; 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 Paragraphs 3.4(a)(i) and (ii) above.

(b) The MOD and the Prime Contractor shall use their reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Sub-Contractor and/or lower tier Sub-Contractor or delay the provision of the Contractor Deliverables and supplier information received in connection with the audit shall be treated as confidential information.

(c) The Sub-Contractor shall, and shall ensure that any lower tier Sub-Contractor shall on demand provide the MOD and any relevant regulatory body, including the relevant Prime or Sub-Contractor's NSA/DSA, (and/or their agents or representatives), together "the Auditors", with all reasonable co-operation and assistance in relation to each audit, including but not limited to:

(i) all information requested by the MOD within the permitted scope of the audit;

(ii) reasonable access to any Sites controlled or operated by the Sub-Contractor or any Associated Company and any lower tier Sub-Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Sub-Contract and, where such Sites and/or equipment are outwith the control of the Sub-Contractor, shall use reasonable endeavours to 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.

(d) Where the Prime Contractor is provided with notice of the audit by the MOD and/or the relevant NSA/DSA, the Prime Contractor shall endeavour to (but is not obliged to) provide at least 15 (fifteen) calendar days' notice to the Sub-Contractor of the intention to conduct an audit.

(e) The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 3.2, unless the audit identifies a material breach of the terms of this Paragraph 3.2 by the Sub-Contractor and/or a lower tier Sub-Contractor in which case the Sub-

Contractor shall reimburse the Prime Contractor and the MOD as appropriate for all the reasonable costs incurred in the course of the audit.

3.5 General

(a) On termination or expiry of this Sub-Contract the provisions of this Paragraph 3 shall continue in force so long as the Sub-Contractor and/or any lower tier Sub-Contractor holds any MOD Identifiable Information relating to this Sub-Contract.

(b) Termination or expiry of this Sub-Contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Paragraph 3 that have accrued up to the date of termination or expiry, including but not limited to the right to claim damages in respect of any breach of this Sub-Contract which existed at or before the date of termination or expiry.

Part B

Reasonable Endeavours Obligations

1 Provisions to be included in Relevant Sub-Contracts

In accordance with the relevant terms of the Contract as set out below, the Contractor shall use reasonable endeavours to include the terms specified below in each Relevant Sub-Contract. For the avoidance of doubt, the provisions set out in Part A above do not apply to these reasonable endeavours obligations.

Clause / Schedule Reference	**Relevant Sub-Contract**	**Flow-Down Requirement**
Clause 17.8 (Import and Export Licences)	Any Sub-Contracts relating to work which is likely to be subject to foreign export control, import control or both	Where the Contractor Sub-Contracts work under the 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 Clause 17. Where it is not possible to include equivalent terms to those set out in this Clause 17, the Contractor shall report that fact and the circumstances to the Authority.
Clause 22.2 (Access and Facilities to be provided by the Contractor)	All Sub-Contracts	As far as reasonably practical, the Contractor shall ensure that the provisions of Clause 22.1 are included in their Sub-Contracts with those suppliers identified in the Contract. The Authority, through the Contractor, shall arrange access to such Sub-Contractors.

Clause 31 (Open Book on Sub-Contracts that are not Qualifying Sub-Contracts)	Any Material Single Source Sub-Contract (Non-Qualifying)	Except where the Authority expressly agrees otherwise in writing, the Contractor shall use reasonable endeavours to include in any Material Single Source Sub-Contract (Non-Qualifying) the terms specified in Paragraph 2 of this Part B (inserting relevant party names and / or definitions where appropriate). Before entering into a Material Single Source Sub-Contract (Non-Qualifying) the Contractor shall promptly notify the Authority where it is unable to include the terms specified in Paragraph 2 of this Part B, or where it believes that the inclusion of those terms will prevent the achievement of a fair and reasonable price for that Sub-Contract.
Clause 46.3 (Sub-Contracting)	Material Sub-Contracts	The Contractor shall use reasonable endeavours to include in all Material Sub-Contracts provisions which allow the Contractor to provide a copy of the full Material Sub-Contract to the Authority.
Clause 46.11 and 46.12 (Sub-Contracting)	All Sub-Contracts	The Contractor shall use reasonable endeavours to include in its Sub-Contracts appropriate termination provisions which reflect the termination provisions agreed under Clauses 63 (Force Majeure Events), 79 (Voluntary Termination), 80.1(a) (Termination) and 98 (Change of Control of Contractor). The Contractor shall use its reasonable endeavours to include in all Sub-Contracts in relation to this Contract: (a) a requirement that either party to the Sub-Contract may release to the Authority any of those parts of the sub-contract documentation as are necessary to demonstrate the Contractor's compliance with the provisions of the Contract and

		that any such release shall not amount to a breach of any provision of confidentiality contained within the Sub-Contract; and (b) provisions that the Authority's rights, which are otherwise enforceable under the Contracts (Rights of Third Parties) Act 1999, are not rendered unenforceable.
Clause 47.2 (Sub-Contracting and Prompt Payment)	Any Sub-Contract at any level of sub-contracting where the Sub-Contractor is not an SME	The Contractor shall use reasonable endeavours to include a term in such Sub-Contract: (i) providing that where the Sub-Contractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion; (ii) providing that the Contractor shall pay the Sub-Contractor any sums due under such an invoice no later than a period of 30 (thirty) days from the date on which the Contractor has determined that the invoice is valid and undisputed; (iii) providing that where the Contractor fails to comply with paragraph **{** REF _Ref_ContractCompanion_9kb9Ur149 \w \n \h \t * MERGEFORMAT **}** above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of paragraph **{** REF _Ref_ContractCompanion_9kb9Ur14B \w \n \h \t * MERGEFORMAT **}** after a reasonable time has passed; and (iv) requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards to any Sub-Contractor, provisions having the same effect as

		paragraphs { REF _Ref_ContractCompanion_9kb9Ur149 \n \h * MERGEFORMAT } to { REF _Ref36041278 \n \h * MERGEFORMAT }.
Clause 52.3 (Supply of Information for NATO Codification and Defence Inventory Introduction)	All Sub-Contracts	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 Sub-Contract DCA or by the Contractor. The Contractor shall, where appropriate, consider including the terms of Clause 52, or equivalent text, in any Sub-Contract(s), to ensure delivery of the cataloguing information.
Clause 54.3 (Public Relations and Publicity)	All Sub-Contracts	As far as is reasonably practicable the Contractor shall ensure that the provisions in Clauses 54.1 and 54.2 are included in any Sub-Contracts.
Clause 90.4 (Equality)	All Sub-Contracts	The Contractor agrees to take reasonable efforts to reflect Clause 90 in any Sub-Contract that it enters into to satisfy the requirements of the Contract and to require its Sub-Contractors to reflect Clause 90 in their Sub-Contracts that they enter into to satisfy the requirements of the Contract.
Clause 91.2 (Child Labour and	All Sub-Contracts	The Contractor agrees to take reasonable efforts to reflect Clause 91 in any Sub-Contract that it enters into to satisfy the requirements of the Contract and to require its Sub-

Employment Law)		Contractors to reflect Clause 91 in their Sub-Contracts that they enter into to satisfy the requirements of the Contract.
Paragraph 1.3 of Schedule 6 (Technical Requirements and Quality Standards)	All Sub-Contracts	Where the Contractor sub-contracts any work in connection with this Contract: (a) where practical the Contractor shall use reasonable endeavours to contract with Sub-Contractors that hold and maintain a Quality Management System (as defined by BS EN ISO 9001:2015) certified as conforming to a recognised national or international standard by a third-party organisation recognised by the UK Accreditation Service (**UKAS**); or (b) where it is not possible or it is impracticable for the Contractor to use a Sub-Contractor having a Quality Management System (as defined by BS EN ISO 9001:2015) to a UKAS recognised national or international standard, the Contractor shall use reasonable endeavours to ensure that the contract between the Contractor and its Sub-Contractor contains appropriate quality provisions in respect of the work to be performed under that sub-contract.

2 Provisions to be included in Material Single Source Sub-Contracts (Non-Qualifying)

2.1 The following words and expressions shall have the following meaning given to them, except where the context requires a different meaning:

(a) "**Group undertaking**" has the meaning given by section 1161 of the Companies Act 2006.

(b) "**Material Single Source Sub-Contract**" means a sub-contract entered into by the Sub-Contractor where:

(i) the sub-contract is entered into at the same time as, or after, the date on which this sub-contract was entered into;

(ii) the sub-contract is entered into for the purposes of the Sub-Contract;

(iii) the award of the sub-contract is not the result of a "competitive process" as defined in the Single Source Contract Regulations 2014 (SSCR) for Qualifying Sub-Contracts (QSC);

(iv) at least 50% (fifty percent) of the sub-contract (by value) is required either to enable performance of the Sub-Contract or to enable the combined performance of the Sub-Contract and any other Qualifying Defence Contract (QDC) or QSC, or prospective QDC or QSC, to which the Sub-Contractor or any group undertaking of the Sub-Contractor is a party, or might become a party;

(v) the value of the sub-contract is of or above £1,000,000 (one million pounds sterling); and

(vi) the sub-contract is not a QSC.

(c) "**Relevant records**" means accounting and other records:

(i) which the Sub-Contractor may reasonably be expected to keep; and

(ii) which are sufficiently up-to-date and accurate for use by the Authority for any of the purposes listed in Paragraph **{** REF _Ref_ContractCompanion_9kb9Ur08I \r \h **}** below.

(d) "**Representatives**" means employees, agents, officers, advisers and other representatives of the Authority.

(e) "**Sub-Contract completion date**" means:

(i) the date described in the sub-contract as the contract completion date; or

(ii) if no such date is described in the sub-contract, the date on which the sub-contractor completes all obligations which entitle it to final payment under the contract;

(iii) if the sub-contract is terminated before the date described in Paragraph 2.1(e)**{** REF _Ref_ContractCompanion_9kb9Ur08E \r \h **}** and **{** REF _Ref_ContractCompanion_9kb9Ur08G \r \h **}**, the date on which the sub-contract is terminated.

2.2 The Sub-Contractor shall maintain relevant records from the date on which the Sub-Contract was entered into for the period ending on the 6th (sixth) anniversary of the end of the accounting period to which those relevant records relate or 2 (two) years after the Sub-Contract completion date, whichever is the sooner.

2.3 The Authority, or its Representatives, may examine relevant records maintained by the Sub-Contractor where reasonably required for one or more of the following purposes:

(a) verifying whether a cost of the Sub-Contractor is an Allowable Cost;

(b) verifying the reason for any difference between an estimated and actual Allowable Cost;

(c) verifying any other matter relating to the price payable under the Sub-Contract; and

(d) monitoring the Sub-Contractor's performance of its obligations under the Sub-Contract.

2.4 The Authority must give to the Sub-Contractor at least 20 (twenty) working days written notice of its intention to examine the relevant records and the purposes for which the examination is required.

2.5 The Authority may only examine the records on any working day between the hours of 09:00 and 17:00.

2.6 Where required by the Authority, the Sub-Contractor shall make copies available (in hard or electronic form) for the purposes of enabling those records to be examined.

2.7 Where required by the Authority, the Sub-Contractor shall provide further information or explanation relating to the relevant records, whether after the examination of the relevant records or otherwise.

2.8 The Authority agrees that, where exercise of the rights granted at Paragraphs **{** REF _Ref_ContractCompanion_9kb9Ur08I \r \h **}** and **{** REF _Ref_ContractCompanion_9kb9Ur08C \r \h **}** would cause significant time and effort to be

incurred by the Sub-Contractor, and / or other significant disruption to the Sub-Contractor, the Authority's exercise of that right shall be proportionate. When determining what is proportionate for that purpose, the Authority shall consider the benefit which may be achieved through the exercise of the rights and the disruption caused to the Sub-Contractor. This shall include but not be limited to the impact on the Sub-Contractor's provision of the subject matter of the Sub-Contract.

2.9 Except where the Authority notifies the Sub-Contractor in writing that it is not required, the Sub-Contractor shall use reasonable endeavours to include in any Material Single Source Sub-Contract equivalent terms to those specified in this Paragraph **{** REF _Ref49179739 \r \h **}** (inserting relevant party names where appropriate).

2.10 Before entering into a Material Single Source Sub-Contract (Non-Qualifying), the Sub-Contractor shall promptly notify the Authority where it is unable to include equivalent terms to those specified in this Paragraph **{** REF _Ref49179739 \r \h **}**, or where it believes that the inclusion of those terms will prevent the achievement of a fair and reasonable price for that Sub-Contract.

2.11 The Contractor and Sub-Contractor agree that terms have been included in this Paragraph **{** REF _Ref49179739 \r \h **}** which are for the benefit of the Authority. Notwithstanding any contrary provisions in this Sub-Contract, the Contractor and Sub-Contractor agree that the Authority shall be able to enforce those terms which confer a benefit on the Authority in accordance with the terms of the Sub-Contract.