

Contract Number: [***]

DATED

MINISTRY OF DEFENCE (1)

and

MCLAUGHLIN & HARVEY (2)
CONSTRUCTION LIMITED

**NEC3 ENGINEERING AND
CONSTRUCTION
CONTRACT OPTION A**

(this contract relates to a Lot 4.1 (*General Construction Works (f.30M-f.80M)*) Project
procured under the CCS Construction Works and Associated Services Framework Alliance
Contract)

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THIS contract is made on []

BETWEEN:

- (1) **MINISTRY OF DEFENCE** whose principal offices are at Whitehall, London, SW1A 2HB, United Kingdom ("**Employer**" which expression shall include its successors in title and assigns); and
- (2) **MCLAUGHLIN & HARVEY CONSTRUCTION LIMITED** [(company number SC150486)] whose principal office is at Heathfield House, Phoenix Crescent, Strathclyde Business Park, ML4 3NJ ("**Contractor**").

WHEREAS:

- (A) The *Employer* wishes the *Contractor* to Provide the Works on the terms set out in this contract.
- (B) The *Contractor* has examined the *Employer's* requirements identified in the Works Information and is satisfied that it can meet those requirements.

NOW IT IS AGREED THAT:

1 Introduction

In this document, the following words and expressions have the following meanings unless the context requires otherwise:

"contract" means the contract concluded between the Client and the Contractor, including all specifications, plans, drawings, schedules and other documentation, expressly made part of the contract.

2 Works

2.1 The *Contractor* Provides the Works in accordance with:

- 2.1.1 this contract as amended by Part 4;
- 2.1.2 the Schedules specified in Part 5 as listed below:
 - (i) Schedule 1 –Insurance Provisions;
 - (ii) Schedule 2 – Annex N JSP 440;
 - (iii) Schedule 3 – GDPR Schedule;
 - (iv) Schedule 4 – Annexes A and–B - Minimum Requirement - Financial Management Reports to be Provided by Suppliers;
 - (v) Schedule 5 – Accounting for Property of the Employer – Data & Format Requirements for PSA Records;

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- (vi) Schedule 6 – Security Measures; and
- (vii) Schedule 7 – BIM Guidance;

2.1.3 the DEFFORMS specified in Part 6 as listed below:

- (i) DEFFORM 10B;
- (ii) DEFFORM 111;
- (iii) DEFFORM 129J;
- (iv) DFFORM 136;
- (v) DEFFORM 139;
- (vi) DEFFORM 528;
- (vii) DEFFORM 532;
- (viii) DEFFORM 539A;
- (ix) DEFFORM 701;
- (x) DEFFORM 8;
- (xi) DEFFORM 47; and

2.1.4 any X Secondary clauses referred to in Part 3, as applicable.

2.2 The *Contractor* does not do anything to put the *Employer* in breach of the Framework and shall indemnify the *Employer* in respect of any breach of its obligations under this Clause.

3 Price

3.1 The *Employer* pays the *Contractor* the amount due under the contract.

4 Clauses

4.1 The terms and Clauses of the NEC3 Contract (April 2013 edition) have effect as modified by this contract (including the Core Clauses specified in Part 1, the Main Option A Clauses specified in Part 2, the Z Clauses specified in Part 4, the Schedules specified in Part 5, the forms specified in Part 6 and any X Secondary clauses in Part 3 as applicable).

4.2 Where a reference is made to a Clause of the NEC3 Contract it shall be read and construed to be a reference to that Clause as amended by this contract.

4.3 In accordance with the provisions of Part 2 of Schedule 4 (Direct Award Procedure and Competitive Award Procedure) of the Framework Alliance Contract, the Client has, in respect of the works, (i) invited Tenders from the

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Lot 4.1 Supplier Alliance Members and conducted a Competitive Award Procedure in accordance with the Framework Alliance Contract and (ii), following its evaluation of the Tenders submitted to it, selected the Contractor to perform the works and to enter into a Project Contract with the Employer in the terms appearing hereinafter.

4.4 If there is any ambiguity or inconsistency between the documents comprising the contract, the priority of documents is in accordance with the following sequence:

- 4.4.1 this contract (as amended);
- 4.4.2 the completed Contract Data;
- 4.4.3 the Works Information; and
- 4.4.4 the tender documents, including DEFFORMS 8 and 47 attached to this contract at Part 6, Schedules 10 and 11; and
- 4.4.5 any other document forming part of the contract.

5 The Public Contract Regulations 2015 (“PCR 2015”)

- 5.1 Without prejudice to Clause 90 of the NEC3 Contract, the Employer may terminate the Contractor’s obligation to Provide the Works if any of the provisions of paragraph 73(1) of the PCR 2015 apply.
- 5.2 If the Employer terminates under the provisions of paragraph 73(1)(b) of the PCR 2015 as a result of information not disclosed by the Contractor at the Contract Date, the procedure and amounts due on termination are the same as if the Contractor has substantially failed to comply with his obligations.
- 5.3 If the Employer otherwise terminates under the provisions of paragraph 73(1) of the PCR 2015, the procedures and amounts due on termination are the same as if the Parties had been released under the law from further performance of the whole of this contract.
- 5.4 The Contractor does not appoint a Subcontractor or supplier if there are compulsory grounds for excluding the Subcontractor or supplier under regulation 57 of the PCR 2015.
- 5.5 The Contractor includes in any Sub-contract awarded by him provisions requiring that:
 - 5.5.1 Payment due to the Subcontractor or supplier under the Sub-contract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the Contractor to make earlier payment to the Subcontractor or supplier;
 - 5.5.2 Invoices for payment submitted by the Subcontractor or supplier are considered and verified by the Contractor in 30 days from the date when the invoice was received;

- 5.5.3 Undue delay in considering and verifying invoices is not a sufficient justification for failing to regard an invoice as valid and undisputed; and
- 5.5.4 Any contract awarded by the Subcontractor or supplier for work included in this contract includes provisions to the same effect as this Clause 5.

6 Modern Slavery Act 2015

- 6.1 "Supply Chain" means the Contractor, any Subcontractor or supplier engaged to Provide (or contribute to Providing) the Works (or any part of the Works) together with any employee, officer, partner or agent the Contractor, Subcontractor or supplier.
- 6.2 When asked, the Contractor promptly gives the Employer such information and documentation about the Contractor and the Supply Chain as the Employer reasonably requires to show the steps the Contractor and the Supply Chain have taken to ensure that the neither the Contractor nor the Supply Chain has engaged in slavery or human trafficking as defined in section 54(12) of the Modern Slavery Act 2015. The Contractor warrants that any information and documentation supplied in response to such a request is materially accurate and complete.
- 6.3 The Contractor warrants that, when Providing the Works, neither it nor any other member of the Supply Chain has committed or will commit any act, or make any omission, that, if it took place in England, would be an offence under English law at the relevant time.

7 Complete agreement

- 7.1 The contract is the complete and entire agreement between the Employer and the Contractor in relation to the design, construction and commissioning of the Works, and supersedes all other oral and/or written communications. The parties are not bound, or liable for, any statement, representation, promise, inducement or understanding not contained in the contract. No amendments or modifications of the contract are valid unless recorded in writing and executed as a deed by both parties, save for instructions and any other changes permitted by the contract.
- 7.2 Without prejudice to the generality of clause 7.1, the Contractor acknowledges and agrees that:
 - 7.2.1 this Contract supersedes the pre-construction services agreement between the Contractor and the Employer dated [INSERT DATE] (the "Pre-Construction Services Agreement") to the extent relevant to the works, and any works carried out under the Pre-Construction

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Services Agreement that are applicable to the works shall be deemed to be subsumed into this Contract;

- 7.2.2 the terms and conditions of this Contract shall be deemed to apply, to the exclusion of the terms and conditions of the Pre-Construction Services Agreement which shall continue to apply to the Contractor's obligations under the Pre-Construction Services Agreement and the Contractor's performance of the same), to any and all works and/or services undertaken (at whatever time) by the Contractor under the Pre-Construction Services Agreement;
 - 7.2.3 all payments from the Employer to the Contractor under the Pre-Construction Services Agreement that are relevant to the works shall be included within and treated as paid on account of the Prices under this Contract (and for the avoidance of doubt the Employer shall not be required to make any further payments under the Pre-Construction Services Agreement after the date of this Contract);
 - 7.2.4 this Contract constitutes a full and final settlement of any compensation events under the Pre-Construction Services Agreement, including claims for interest and costs and whether or not such compensation events have been expressly claimed for or intimated and whether or not such compensation events are known to or are in the present contemplation of the Employer and/or the Contractor; and
 - 7.2.5 as at the date of this Contract there are no outstanding compensation events under the Pre-Construction Services Agreement.
- 7.3 The Parties respectively acknowledge and agree that:
- 7.3.1 this contract constitutes a Project Contract for the purposes of the Framework Alliance Contract;
 - 7.3.2 nothing in this contract constitutes or gives rise to a Variation under the Framework Alliance Contract; and
 - 7.3.3 the terms of the Framework Alliance Contract supplement and complement the terms of this contract, provided that, in the event of any conflict or discrepancy existing between any terms of this contract and any terms of the Framework Alliance Contract, the conflicting or discrepant terms of this contract will prevail over the conflicting or discrepant terms of the Framework Alliance Contract.

8 Contracts (Rights of Third Parties) Act

- 8.1 The Contracts (Rights of Third Parties) Act 1999 is excluded from applying to the contract and nothing in it, save as expressly stated, confers or purports to confer on any third party, any benefit or right to enforce any of its terms and or Clauses.

9 Governing law

- 9.1 The contract is governed by, and construed and interpreted in accordance with, English law.

10 Dispute resolution procedure

- 10.1 Subject always to the right of either Party to refer any dispute to adjudication in accordance with Clause 10 (*Adjudication*), the Parties shall attempt in good faith to resolve any dispute or claim arising out of or relating to this contract through negotiations between the respective representatives of the Parties having authority to settle the matter, which attempts may include the use of any Alternative Dispute Resolution ("**ADR**") procedure on which the Parties may agree.
- 10.2 In the event that the dispute or claim is not resolved by negotiation, or where the Parties have agreed to use an ADR procedure, by the use of such procedure, the dispute shall be referred to arbitration.
- 10.3 The Party initiating the arbitration shall give a written notice of arbitration to the other Party. The notice of arbitration shall specifically state:
- 10.3.1 that the dispute is referred to arbitration; and
- 10.3.2 the particulars of this contract out of or in relation to which the dispute arises.
- 10.4 Unless otherwise agreed in writing by the Parties, the arbitration and this Clause 9 (Dispute resolution procedure) shall be governed by the provisions of the Arbitration Act 1996.
- 10.5 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.
- 10.6 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.

11 Adjudication

- 11.1 Either Party may (insofar as the Housing Grants, Construction and Regeneration Act 1996 (as amended by the Local Democracy, Economic Development and Construction Act 2009) ("**the Act**") applies) at any time refer any dispute arising under this contract to adjudication in accordance with Clause 19J (*Adjudication*) notwithstanding that any legal proceedings have been commenced in respect of such dispute.

12 Execution as a deed

12.1 The contract is executed as a deed and was delivered when it was dated.

[The common seal of **THE SECRETARY OF STATE FOR DEFENCE** was affixed to this deed in the presence of:)

.....]

[Executed as a deed by affixing the official seal of **THE SECRETARY OF STATE FOR DEFENCE** authenticated by:)

)

.....]¹

[EITHER]

[Executed as a deed by **MCLAUGHLIN & HARVEY CONSTRUCTION LIMITED** acting by either two directors or one director and the company secretary:

.....
Director's name (CAPITAL LETTERS)	Director's signature

.....
Director's/Company secretary's name	Director's/Company secretary's signature]
(CAPITAL LETTERS)	

¹ Use the applicable execution block.

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[OR]

[Executed as a deed by **MCLAUGHLIN & HARVEY CONSTRUCTION LIMITED** acting
by a director in the presence of a witness:

.....
Director's name (CAPITAL LETTERS)	Director's signature

.....
Witness' name (CAPITAL LETTERS)	Witness' signature

Witness' address

.....

.....

.....]

[OR]

[The [common] seal of **MCLAUGHLIN & HARVEY CONSTRUCTION LIMITED** was
affixed to this deed in the presence of one or
more authorised signatories:

.....
Authorised signatory's name (CAPITAL LETTERS)	Authorised signatory's signature

.....
Authorised signatory's name (CAPITAL LETTERS)	Authorised signatory's signature

.....]
Authorised signatory's name (CAPITAL LETTERS)	Authorised signatory's signature

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PART 1 - CORE CLAUSES

1 General

- 10 Actions
- 11 Identified and defined terms
- 12 Interpretation and the law
- 13 Communications
- 14 *The Project Manager and the Supervisor*
- 15 Adding to the Working Areas
- 16 Early warning
- 17 Ambiguities and inconsistencies
- 18 Illegal and impossible requirements
- 19 Prevention

2 The Contractor's main responsibilities

- 20 Providing the Works
- 21 The *Contractor's* design
- 22 Using the *Contractor's* design
- 23 Design of Equipment
- 24 People
- 25 Working with the *Employer* and Others
- 26 Sub-contracting
- 27 Other responsibilities

3 Time

- 30 Starting, Completion and Key Dates
- 31 The programme
- 32 Revising the programme
- 33 Access to and use of the Site
- 34 Instructions to stop or not to start work
- 35 Take over
- 36 Acceleration

4 Testing and Defects

- 40 Tests and inspections
- 41 Testing and inspection before delivery
- 42 Searching for and notifying Defects
- 43 Correcting Defects
- 44 Accepting Defects
- 45 Uncorrected Defects

5 Payment

- 50 Assessing the amount due
- 51 Payment
- 52 Defined Cost

6 Compensation events

- 60 Compensation events
- 61 Notifying compensation events
- 62 Quotations for compensation events

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- 63 Assessing compensation events
- 64 The *Project Manager's* assessments
- 65 Implementing compensation events
- 7 Title**
 - 70 The *Employer's* title to Plant and Materials
 - 71 Marking Equipment, Plant and Materials outside the Working Areas
 - 72 Removing Equipment
 - 73 Objects and materials within the Site
- 8 Risks and insurance**
 - 80 *Employer's* risks
 - 81 The *Contractor's* risks
 - 82 Repairs
 - 83 Indemnity
 - 84 Insurance cover
 - 85 Insurance policies
 - 86 If the *Contractor* does not insure
 - 87 Insurance by the *Employer*
- 9 Termination**
 - 90 Termination
 - 91 Reasons for termination
 - 92 Procedures on termination
 - 93 Payment on termination

PART 3 - MAIN OPTION CLAUSES

Option A: Priced contract with activity schedule

- 11 Identified and defined terms
- 31 The programme
- 36 Acceleration
- 54 The Activity Schedule
- 63 Assessing compensation events
- 65 Implementing compensation events
- 93 Payment on termination

As amended by Z clauses.

PART 4 - SECONDARY CLAUSES

- X.4 The *Contractor* is required to provide a Parent Company Guarantee from a parent company approved by the *Employer* in the form set out in Part 5 of this contract.
- X7.1 *Contractor* pays delay damages at the rate stated in the Contract Data from the Completion Date until Completion.
- X7.2 If the Completion Date is changed to a later date after delay damages have been paid, the *Employer* repays the overpayment of damages with interest.

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Interest is assessed from the date of payment to the date of repayment and the date of repayment is an assessment date.

- X7.3 If the *Employer* takes over a part of the works before Completion, the delay damages are reduced from the date on which the part is taken over. The Project Manager assesses the benefit to the *Employer* of taking over the part of the works as a proportion of the benefit to the *Employer* of taking over the whole of the works not previously taken over. The delay damages are reduced in this proportion.
- X13.1 If so stated in the Contract Data, the *Contractor* gives the *Employer* a performance bond, provided by a bank or insurer which the Project Manager has accepted, for the amount stated in the Contract Data and in the form set out in Part 4, Schedule 1 of this contract. A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond. If the bond was not given by the Contract Date, it is given to the *Employer* within four (4) weeks of the Contract Date. Notwithstanding any other provision of this contract no payments shall become due to the *Contractor* under this contract while the *Contractor* remains in default of his obligations under this Clause X13.1.
- X15 ***[DN: though X15 shall not apply to the contract, bidders should take note of clause 20.5 of the contract]***
- X16 ***[DN: a 3% retention shall apply, though bidders may provide a retention bond in place of a retention].***
- X18 ***[DN: Clause X18 does not apply to the Contract, but please see clause Z100 for the cap on liability]***

1 Schedule 1 - PERFORMANCE BOND ²

BOND GIVEN BY A BANK AS A DEED IN RESPECT OF A PROJECT CONTRACT

Name of Issuing Bank:

Address:

To: The Secretary of State for Defence

We refer to Project Contract [*insert Ref. Number*] for [*insert title of Project Contract*] to be awarded on [*insert Project Contract date*] to [*insert Contractor's full corporate name*] whose registered number is [*insert Co. reg number*] (the '*Contractor*') following the *Contractor's* tender for the above requirement dated [*insert Tender date*] and we hereby irrevocably and unconditionally agree:

- 1 to pay you any amount or amounts not exceeding in aggregate the sum of £[*insert sum*] upon receipt by us at [*insert address*] of your first demand in writing certifying that any one or more of the following has occurred:
 - (a) the Contractor has failed in any respect duly to perform and observe, or is otherwise in breach of any of its obligations in and arising from the Project Contract; or
 - (b) any of the Contractor's obligations in and arising from the Project Contract are or become void, voidable, unenforceable or otherwise ineffective; or
 - (c) the Project Contract has been terminated owing to a breach or an event of default on the part of the Contractor; or
 - (d) a receiver, administrative receiver, administrator, liquidator or similar officer is appointed over any or all of the Contractor's undertaking or assets;
- 2 that this bond shall not be affected by any insolvency (including, without limitation, winding up, administration, receivership or administrative receivership), amalgamation, reconstruction, change of name, ownership, control or status or any legal limitation relating to, by or of the *Contractor* or any other person or, where the *Contractor* is a partnership, by any change in the partners;
- 3 that we shall not be discharged or released from our obligations under this bond by any arrangement or agreement made between you and the *Contractor* or a receiver, administrative receiver, administrator, liquidator or similar officer of the *Contractor*, or by any renegotiation, substitution, alteration, amendment or variation (however

for the purposes of this bond any such demand and certification(s) shall be conclusive evidence (and admissible as such) of the statements and the amounts claimed therein;

² Consideration that Performance Bond cannot be an on-demand bond. Provisionally agreed it won't be on-demand but final agreement on the form to be agreed during the PCSA period.

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fundamental) and whether or not to our disadvantage, to or of, the obligations imposed upon the *Contractor* or any other person or by any forbearance granted by you to the *Contractor* or any other person as to payment, time, performance or otherwise or by any release or variation (however fundamental) of, any invalidity in, or any failure to take, perfect or enforce any other indemnity, guarantee or security in respect of the obligations to which this bond relates or by any other matter or thing which but for this provision might exonerate us and this notwithstanding that such arrangement, agreement, renegotiation, substitution, alteration, amendment, variation, forbearance, matter or thing may have been made, granted or happened without our knowledge or assent;

- 4 that no failure to exercise or any delay in exercising on your part any right or remedy under this bond or under the Project Contract or any other agreement shall operate as a waiver of such right or remedy;
- 5 that no settlement or discharge between you and us or the *Contractor* shall be effective if any payment to you in respect of the Contractor's or our obligations to you is avoided or reduced by virtue of any provisions or enactments relating to bankruptcy, insolvency, liquidation or similar laws of general application from time to time and if such payment is so avoided or reduced, you shall be entitled to recover from us the amount of such payment as if such settlement or discharge had not occurred;
- 6 that you shall not be obliged, before exercising any of your rights under this bond, to take any action against, or make any demand from, the *Contractor* or any other person;
- 7 that our obligations under this bond are continuing obligations and shall not be considered satisfied, settled or terminated by your giving of any approvals, or taking delivery of any goods, or accepting any performance under the contract and no single, cumulative or partial exercise by you of any right or remedy under or arising from this bond shall prevent any further exercise;
- 8 that any demand(s) complying with all the requirements hereof must be received by us on or before [insert date];
- 9 that all payments under this bond shall be made without set-off, counter claim or other deduction; and
- 10 that this bond shall be governed by and construed in accordance with English law. The Parties irrevocably submit to English jurisdiction to the exclusion of all foreign jurisdiction, save that foreign jurisdictions may apply solely for the purposes of giving effect to this paragraph and for the enforcement of any judgement, order or award given under English jurisdiction.

[The following Clause should only be used where the bank is outside of England and Wales)

We irrevocably appoint Messrs .. *insert name and address of firm of Solicitors in England or Wales.*, Solicitors as our agents to accept on our behalf service of all process and other documents of whatever description to be served on us in connection with this bond or any related matter.]

Dated this day of 20x.

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Executed as a deed by:

(Name)..... as Attorney and on behalf of..... *bank*.....

(Signature) (Attorney)

in the presence of

(Name)..... (Witness)

(Signature)..... (Bank Official)

PART 5 - OPTION Z: ADDITIONAL CLAUSES OF CONTRACT

1 General

11.2.31 Insert new definitions:

“Articles” means all goods (excluding Services) which the *Contractor* is required under the contract to supply.

“Associated Company” means 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
- 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.

“Best Environmental Practice” means the practice generally as followed by contractors skilled and experienced in the remediation and redevelopment of contaminated sites and shall be deemed to include (as a minimum) compliance with all Environmental Laws.

“BIM” means Building Information Modelling.

“BIM Documents” means the following *Employer* supplied documents are to include:

- Employers Information Requirement (EIR)
- Project Information Delivery Plan (IDP)
- BEP Evaluation Assessment Criteria
- BIM Information Manager Roles & Responsibilities
- MOD Government Soft Landings Guidance

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- DIO Project BMAT
- Supporting Guidance Documentation,
- BIM Process Compliance Document

“BIM Maturity Assessment” means the measurement of capability and understanding of BIM requirements.

“BIM Maturity Assessment Tool” means the mechanism by way of which the capability and understanding of BIM requirements is assessed.

“Built Asset Security Information Requirements” (BASIR) means the information provided by the Client in relation to security information for specific built assets.

“Business day” means any day excluding:

- Saturdays, Sundays and public and statutory holidays in the jurisdiction of either party;
- privilege days notified in writing by the *Employer* to the *Contractor* at least 10 Business Days in advance; and
- such periods of holiday closure of the Contractor's premises of which the *Employer* is given written notice by the *Contractor* at least 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:

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

“Commercially Sensitive Information” is the information agreed between the parties (if any) comprising the information of a commercially sensitive nature relating to the *Contractor*, the charges for the works, its IPR or its business or which the *Contractor* has indicated to the *Employer* that, if disclosed by the *Employer*, would cause the *Contractor* significant commercial disadvantage or material financial loss.

“Commercial Officer” means the authority so designated in the contract.

“Confidential Information” is the Employer's Confidential Information and/or the Contractor's Confidential Information.

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“Construction Works and Associated Services Framework Specification” means the technical requirements for the works and services that the *Contractor* will be required to comply with for all Project Contracts awarded.

“Contract Period” means the term of the contract commencing on the commencement date of the Contract (the ‘Commencement Date’) and terminating on the earlier of (a) the date on which the contract terminates early in accordance with its terms and (b) its expiry date.

“Contract Price” means the price exclusive of Value Added Tax, payable to the *Contractor* by the *Employer* under the contract for the full and proper performance by the *Contractor* of his part of the contract as determined under the provisions of the contract.

“Contracting Body” is any Contracting Body as defined in Regulation 5(2) of the Public Contracts (Works, Service and Supply) (Amendment) Regulations 2000 other than the *Employer*.

“*Contractor*” means the person who, by the contract, undertakes to supply the Articles, or perform the Service, or both for the *Employer* as is provided by the contract. Where the *Contractor* is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the contract may be assigned by the *Contractor* with the consent of the *Employer*.

“*Contractor* Commercially Sensitive Information” (in Clause 19J) shall mean the information listed in the DEFFORM 539A (Part 6, Schedule 8 of this contract); Schedule to the contract, being information notified by the *Contractor* to the *Employer* which is acknowledged by the *Employer* as being commercially sensitive information.

“*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 *Contractor* is required to provide under the contract.

“*Contractor's* Confidential Information” is any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and contractors of the *Contractor*, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information.

“*Contractor* Personnel” means all directors, officers, employees, agents, consultants and contractors of the *Contractor* and/or of any Subcontractor engaged in the performance of its obligations under the contract.

“*Contractor's* Representative(s)” shall be deemed to include the *Contractor's* employees, agents and Subcontractors.

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“CPET” means the UK Government’s Central Point of Expertise for Timber.

“Crown Body” is any department, office or agency of the Crown.

“Crown Use” in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949.

“CSM Risk Assessment Process” means the risk assessment process that forms part of the Cyber Security Model and is used to measure the Cyber Risk Level 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.

“Cyber Risk Level” means the level of Cyber Risk relating to this contract or any Sub-contract assessed in accordance with the Cyber Security Model.

“Cyber Security Implementation Plan” means the plan referred to in Clause 3 of this Clause including but not limited to any risk-balance case and mitigation measures required by the *Employer*.

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

- unauthorized access to an information system or electronic communications network;
- disruption or change of the operation (including but not limited to takeover of control) of an information system or electronic communications network;
- destruction, damage, deletion or the change of MOD Identifiable Information residing in an information system or electronic communications network;
- removal or limiting the possibility to use MOD Identifiable Information residing in an information system or electronic communications network; or
- the appropriation, publication, dissemination or any other use of non-public MOD Identifiable Information by persons unauthorised to do so.

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

“Cyber Security Model” and (CSM) mean the process by which the *Employer* ensures that MOD Identifiable Information is adequately protected from Cyber

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Incident and includes the CSM Risk Assessment Process, DEFSTAN 05-138 and the CSM Supplier Assurance Questionnaire.

“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.

“Data Controller” has the meaning given to it in the Data Protection Act 2018.

“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 the contract, including any Personal Data Breach.

“Data Protection Legislation” means

- the GDPR and any applicable national implementing Laws as amended from time to time;
- the DPA 2018 to the extent that it relates to processing of personal data and privacy; and
- all applicable Law about the processing of personal data and privacy;

“Data Protection Impact Assessment” means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

“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;

“DPA 2018” means the Data Protection Act 2018;

“DREAM Requirements” means the *Client’s* requirement to attain a DREAM rating of excellent, as more particularly detailed in the *Client’s* Requirements.

“GDPR” means the General Data Protection Regulation (Regulation (EU) 2016/679);

The following expressions shall have the same meanings as in Article 4 of the GDPR:

- Controller;
- Processor;
- Data Subject;
- Personal Data;
- Personal Data Breach; and
- Data Protection Officer

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“Defence Contracts Online” means Defence Contracts Online accessible at <https://www.contracts.mod.uk/> or any replacement thereof for government procurement opportunities in the defence sector.

“Defence Reform Act” (DRA) 2014 means the primary legislation applicable to single source procurement. In the context of DRA: a. ‘Single Source Contract Regulations’ (SSCR) 2014, means the secondary legislation applicable to single source procurement.

“DEFSTAN 05-138” means the Defence Standard 05-138 as amended or replaced from time to time.

“Design right” has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988 (Clause 22A);

“Document” means all designs, drawings, specifications, software, electronic data, photographs, plans, surveys, reports, and all other documents and/or information prepared by or on behalf of the *Contractor* in relation to this contract.

“DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to:

- tell HM Revenue & Customs of any specified notifiable arrangements or proposals; and
- provide prescribed information on those arrangements or proposals within set time limits as:
 - contained in Part 7 of the Finance Act 2004 and in secondary legislation made under powers contained in Part 7 of the Finance Act 2004; and as
 - 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.

“Electronic Information” means all information generated, processed, transferred or otherwise dealt with under or in connection with the contract, including but not limited to Data, recorded or preserved on any information system or electronic communications network.

“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.

“*Employer Confidential Information*” is all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and contractors of the *Employer*, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is

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marked "confidential") or which ought reasonably be considered to be confidential.

"Employer Data" is:

- the 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, and which are:
 - supplied to the Contractor by or on behalf of the Employer; or
 - which the Contractor is required to generate, process, store or transmit pursuant to this contract; or
 - any Personal Data for which the Employer is the Data Controller to the extent that such Personal Data is held or processed by the Contractor.

"Environment" means all and any of the following media being water, air (wherever situate) as well as humans and their property, plants, animals and eco-systems.

"Environmental Information Regulations" is the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations.

"Environmental Laws" all or any applicable law including common law, statute, civil code, statutory guidance or by-law in each case which has as its purpose or effect the protection of the Environment.

"Evidence" means either:

- an invoice or delivery note from the timber supplier or Subcontractor to the Contractor specifying that the product supplied to the Employer is Forest Stewardship Council FSC or Programme for the Endorsement of Forest Certification PEFC certified; or
- other robust evidence of sustainability or FLEGT licensed origin, as advised by CPET.

"Financial Management Information" shall mean the value of work completed at a given point in time.

"Firm Price" means a price, agreed for the Articles or Services, or both, which is not subject to variation.

"Fixed Price" means a price, agreed for the Articles or Services, or both, that is subject to variation in accordance with the variation of price provisions of the contract.

"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.

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“FOIA” is the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

“General Anti-Abuse Rule” means:

- the legislation in Part 5 of the Finance Act 2013; and
- any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.

“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.

“Government Establishment” or “site” shall be deemed to include any owned or operated site by HM Government including Her Majesty's Ships or Vessels and Service Stations.

“Government Furnished Assets” (GFA) means a generic term for any MOD asset such as equipment, information or resources issued or made available to the *Contractor* in connection with the contract by or on behalf of the *Employer*.

“Government Furnished Equipment” and (GFE) means a generic term for materiel loaned to a contractor. These are tangible items that the contractor must manage and account for. GFE consists of: (1) Jigs, Tools and Test Equipment (JTTE) is plant and equipment, jigs, tools, gauges, test equipment, moulds and dies required for production. The MOD may agree to fund the purchase of JTTE by the contractor where it is specific to the contract. DEFCON 23 covers management of JTTE. The RFQ (ITT) should identify whether the tenderer needs to procure JTTE.

“Government Furnished Facilities” (GFF) means buildings, parts of buildings, sites and other infrastructure issued or made available to the *Contractor* in connection with the contract by or on behalf of the *Employer*.

“Government Furnished Information” (GFI) means information or data issued or made available to the *Contractor* in connection with the contract by or on behalf of the *Employer*

“Government Furnished Resource” (GFR) means MOD personnel loaned to the *Contractor* in connection with the contract by or on behalf of the *Employer*

“Halifax Abuse Principle” means the principle explained in the CJEU Case C-255/02 Halifax and others.

“Independent Verification” means that an evaluation is undertaken and reported by an individual or body:

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- 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
- 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”.

“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 the contract, including information provided in the tender or negotiations which preceded the award of the contract.

“Intellectual Property Rights” or “IPRs” is:

- copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
- applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- all other rights having equivalent or similar effect in any country or jurisdiction.

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

“Issued Property” means any item of Government Furnished Equipment, including any Articles in connection with which the *Contractor* is required under the contract to carry out any Service, issued or otherwise furnished to the *Contractor* in connection with the contract by or on behalf of the *Employer*.

“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.

“Law” is any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the *Contractor* is bound to comply.

“Legal and Sustainable” means production and process methods, also referred to as timber production standards, as defined by the document titled “UK

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Government Timber Production Policy: Definition of legal and sustainable for timber procurement". The edition current on the day the *Employer* issued the contract documents shall apply.

"Loss" includes damage or destruction.

"Main Terms" means the terms that govern the entirety of the Project Contract

"Materiel" is a generic term meaning equipment (including fixed assets), stores, supplies and spares.

"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.

"Notices" means all notices, orders, or other forms of communication required to be given in writing.

"NSA/DSA" means, as appropriate, the National or Designated Security *Employer* 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.

"Officer in Charge" shall be deemed to include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Heads of Government Establishments; and

"Occasion Of Tax Non-Compliance (OOTNC)" means:

- any tax return of the *Contractor* submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
 - 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;
 - 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
- 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 the date this contract came into effect or to a civil penalty for fraud or evasion.

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“Officer in Charge” shall be deemed to include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Heads of Government Establishments.

“A Pandemic Event means:

- a) the the COVID-19 coronavirus outbreak and/or any mutation thereof, but excludes any other outbreaks of an infection human disease;
- b) any measures, recommendations, regulations and legislation issued by the government and/or public authorities in relation to the COVID-19 coronavirus outbreak from time to time; and/or
- c) any consequences resulting from the COVID-19 coronavirus outbreak which are outside the reasonable control of the *Contractor*, which affects the works including without limitation the *Contractor* being unable to reasonably access the Site, delay in or non-delivery of any materials required for the works or the *Contractor* being unable to reasonably adequately resource the works.”

“Person” includes any legal or natural person or persons.

“Personal Data” has the meaning given to it in the Data Protection Act 2018.

“Personnel” All employees, agents, Contractor’s and Subcontractors of either party as the case may be.

“Prohibited Act” is:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the *Employer* or other Contracting Body or any other public body a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract;
- (c) committing any offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act)
 - (ii) under legislation or common law concerning fraudulent acts; or

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- (iii) defrauding, attempting to defraud or conspiring to defraud the *Employer*; or

any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK.

“Project Brief” means the document or documents forming part of this Project Contract, describing the scope and nature of the Project, setting out the Employer’s technical, management and commercial requirements and expected outcomes in respect of the Project, including all required quality standards and warranties, including all requirements in respect of insurances and securities, including all processes and procedures for management of communication, performance, quality, design, supply chain engagement, cost, payment, time, change, risk, health, and safety and all other project management processes and procedures, including the required approach to BIM as appropriate, and including all requirements in respect of sustainability, operation, and engagement with stakeholders and users.

“Project Contract” means this contract, awarded by the *Employer* to an Alliance member in respect of a Project in accordance with Schedule 4 (Direct Award Procedure and Competitive Award Procedure) of the CCS Construction Works and Associated Services Framework Alliance Contract.

“Project Manager” and “Equipment Support Manager” mean the authority so designated in the Contract.

“Project Team” means the individuals comprised of the Project Manager and the Supervisor.

“Protective Measures” means appropriate technical and organisational measures which may include (as appropriate):

- pseudonymising and encrypting Personal Data;
- ensuring confidentiality, integrity, availability and resilience of systems and services;
- ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and
- regularly assessing and evaluating the effectiveness of such measures adopted by it, including those set out in DEFFORM 532 (Part 6, Schedule 7 of this contract);

“Public Store Account (PSA)” means The primary record for accounting for receipts, usage and disposal or return of GFE of all loan types held under contract. The PSA may be a manual stock-record-card system or a computer system consistent with the contractor’s normal accounting system.

“Recycled Timber” means recovered wood that prior to being supplied to the *Employer* had an end use as a standalone object or as part of a structure.

Recycled Timber covers:

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- Pre consumer reclaimed wood and wood fibre and industrial by products but excluding sawmill co-products which fall within the category of Virgin Timber;
- Post consumer reclaimed wood and wood fibre, and driftwood;
- Reclaimed timber abandoned or confiscated at least ten years previously.

“Regulations” means the Public Contracts Regulations (SI 2015/108) 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.

“Relevant day” means the day which is thirty (30) calendar days after the relevant assessment date as detailed in clause 50.1.

“Relevant Requirements” are all applicable laws 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.

“Representative of the *Employer*” in any clause of the contract means the person duly authorised by the *Employer* to act for the purposes of the provision and identified in the contract or in any subsequent notice to act for the purposes of the provision.

“Request for Information” is a request for information or an apparent request under the Code of Practice on Access to government Information, FOIA or the Environmental Information Regulations

“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.

“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 the contract with the *Employer*.

“Secret Matter” means any matter connected with the contract, or its performance which is designated by the *Employer* in the security aspects letter annexed to the contract or otherwise in writing as "Top Secret" or "Secret", and shall include any information concerning the content of such matter and anything which contains or may reveal that matter.

“Security Policy” means the *Employer's* security policy attached as Appendix 1 to Contract Schedule J (Security Policy) as may be updated from time to time.

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“Security Policy Framework” means the HMG Security Policy Framework relating to the Government Security Classification policy as published by the Cabinet Office.

“Services” means all services (excluding the supply of Articles) which the *Contractor* is required under the contract to perform or to fulfil.

“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.

“Single Source Regulations Office” (SSRO) means the Non-Departmental Public Body acting as the independent expert for MOD single source procurement.

“Sites” means any premises from which *Contractor Deliverables* are provided in connection with this contract or from which the *Contractor* or any relevant Subcontractor 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 Subcontractor generates, processes, stores or transmits MOD Identifiable Information in relation to this contract.

“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.

“Sub-contract” means any Sub-contract at any level of the supply chain, whether awarded directly by the *Contractor* or indirectly by any lower tier Subcontractor or Associated Company, which is entered into as a consequence of or in connection with this contract. For the purpose of Clause 26.9, 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 £25,000 (twenty five thousand pounds sterling).

“Subcontractor” means any Subcontractor engaged by the *Contractor* or by any other Subcontractor of the *Contractor* at any level of Sub-contracting to provide *Contractor Deliverables* wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this contract and ‘Sub-contract’ shall be interpreted accordingly.

“Sub-contract Revenue” means the aggregate revenue (excluding VAT and before the application of any deduction, set-off or other remedy) that any Subcontractor has been paid by the *Contractor* under a Sub-contract.

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“Sub-processor” means any third Party appointed to process Personal Data on behalf of the Contractor related to the contract;

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

“Timber policy” means the timber requirements to be complied with in line with the Government Procurement Policy.

“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.

“Transparency Information” shall mean the content of this contract in its entirety, including from time to time agreed changes to the contract, and details of any payments made by the *Employer* to the *Contractor* under the contract.

“Unique Identifier” means is a numeric or alphanumeric string that is associated with a single entity within a given system.

“Unique Order Identifier” (UOI) are identifiers generated by the Contracting, Purchasing & Finance (CP&F) electronic procurement tool for non inventory purchase orders.

“Unique Package Identifier” (EUPI) are identifiers generated for contractor logistic support contracts. EUPIs comprise two parts, the first part being the identifier allocated by the *Employer* and the second part being the identifier generated by the *Contractor*.

“Unique Receipt Reference Identifier” (URRI), generated by CP&F for inventory purchase orders.

“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.

“Virgin Timber” means Timber and Wood-Derived Products that do not include Recycled Timber.

“Works Information” has the same meaning as under NEC3 Engineering and Construction Contract. At the end of the definition insert: “including User Requirement Document/Statement of Need (URD/SoN)”

12.5 Insert new Clause 12.5:

“12.5 References to any enactment, order, regulation, or other similar instrument shall be construed as a reference to the enactment, order, regulation, or

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instrument as amended or consolidated by any subsequent enactment, order, regulation, or instrument.”

12.6 Insert new Clause 12.6

“12.6 The heading to any contract Clause shall not affect the interpretation of that Clause.”

12.7 Insert new Clause 12.7

“12.7 Any decision, act, or thing which the *Employer* is required or authorised to take or do under the contract may be taken or done only by any person authorised, either generally or specifically, by the *Employer* to take or do that decision, act, or thing on behalf of the *Employer*.”

12.8 Insert new Clause 12.8

“12.8 Unless excluded within the terms of the contract or where required by law:

a. references to submission of documents in writing shall include electronic submission; and

b. 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 agreed between the parties is employed and the agreed method recorded in the contract.”

12.2 Renumber this paragraph as 12.2.1.

12.2.1 After Clause 12.2.1, insert a new Clause 12.2.2:

“12.2.2 Each Party hereby warrants to each other that entry into the contract does not and performance thereof will not in any way violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it; and that the contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.”

13.9 Insert new Clause 13.9 (DEFCON 526):

“Notices

13.9.1 Notices under or in connection with this contract shall be:

13.9.1.1 given in writing;

13.9.1.2 authenticated by signature or by such other method as agreed between the parties;

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- 13.9.1.3 marked for the attention of the appropriate department or officer; and
- 13.9.1.4 marked in a prominent position with the relevant contract number.
- 13.9.2 Notices should be delivered by:
 - 13.9.2.1 hand;
 - 13.9.2.2 first-class prepaid post (or airmail, in the case of Notices to or from overseas);
 - 13.9.2.3 facsimile;
 - 13.9.2.4 telex; or
 - 13.9.2.5 electronic mail, where such a means of communication has been agreed for the purposes of the contract
- 13.9.3 Notices shall be deemed to have been received:
 - 13.9.3.1 if delivered by hand, on the day of delivery if it is the recipient's Business Day and otherwise on the first Business Day of the recipient immediately following the day of delivery;
 - 13.9.3.2 if sent by first-class prepaid post (or airmail, if appropriate), on the third Business Day (or on the tenth Business Day, in the case of airmail) after the day of posting;
 - 13.9.3.3 if sent by facsimile, telex or other 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 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.
- 13.9.4 The addresses (including electronic addresses) of each party to the contract to which all Notices shall be sent are those specified in the contract, or such other address as either party may by written Notice specify to the other for the purpose of this Clause.
- 13.9.5 Where either party requests written confirmation of any communication which does not constitute a Notice such request shall not unreasonably be refused.
- 13.10 Insert a new Clause 13.10 (DEFCON 503):

Formal amendments to contract

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- 13.10.1 The contract shall only be amended by the written agreement of the duly authorised representatives of the parties.
- 13.10.2 The written agreement shall consist of the:
- 13.10.2.1 issue of a serially numbered amendment letter, by the *Employer*, and
- 13.10.2.2 unqualified acceptance of the offer from the *Contractor*.
The amendment shall come into force only when the *Contractor* has returned the DEFFORM 10B (Part 6, Schedule 1 of this contract) as an unqualified acceptance of the Employer's offer.
- 13.10.3 No contract amendment shall come into effect unless it satisfies clauses 13.10.1 and 13.10.2.
- 13.10.4 Where an amendment to Works Information results in a Contract Price change, that price shall be agreed prior to any formal amendments to the contract.
- 13.10.5 In exceptional circumstances where the *Employer* wishes to add work to the contract requirement that is unpriced at the time of the amendment, the *Employer* shall have the right to negotiate prices under the terms of DEFCON 643 (Price Fixing (Non-qualifying contracts)) (Clause 13.11). Where DEFCON 643 (Clause 13.11) is used the *Contractor* shall make arrangements with their Subcontractors in accordance with Clause 13.11.1.5 of DEFCON 643 (Clause 13.11).
- 13.10.6 Where necessary the *Contractor* shall either confirm the existing Parent Company Guarantee is relevant or provide a revised Parent Company Guarantee, with the DEFFORM 10B (Part 6, Schedule 1 of this contract).

Insert a new Clause 13.11 (DEFCON 620):

"Contract Change Control Procedure

Authority Changes

- 13.11.1 Subject always to DEFCON 503 (Formal Amendments to Contract) (Clause 13.10 of this contract), the *Employer* shall be entitled, acting reasonably, to require changes to the *Contractor* Deliverables (a "Change") in accordance with this Clause 13.11.

Notice of Change

- 13.11.2.1 If the *Employer* requires a Change, it shall serve a Notice ("*Employer* Notice of Change") on the *Contractor*.
- 13.11.2.2 The *Employer* Notice of Change shall set out the change required to the *Contractor* Deliverables in sufficient detail to enable the *Contractor* to provide a written proposal (a "*Contractor* Change Proposal") in accordance with Clause 13.11.3 below.

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Contractor Change Proposal

- 13.11.3.1 As soon as practicable, and in any event within fifteen (15) Business Days (or such other period as the Parties may agree) after having received the *Employer* Notice of Change, the *Contractor* shall deliver to the *Employer* a *Contractor* Change Proposal.
- 13.11.3.2 The *Contractor* Change Proposal shall include:
- (i) the effect of the Change on the *Contractor*'s obligations under the contract;
 - (ii) detailed breakdown of any costs which result from the Change;
 - (iii) the programme for implementing the Change;
 - (iv) any amendment required to this contract as a result of the Change, including, where appropriate, to the Contract Price; and
 - (v) such other information as the *Employer* may reasonably require.
- 13.11.3.3 The price for any Change shall be based on the prices (including all rates) already agreed for the contract and shall include, without double recovery, only such charges that are fairly and properly attributable to the Change.

Contractor Change Proposal – Process and Implementation

- 13.11.4.1 As soon as practicable after the *Employer* receives a *Contractor* Change Proposal, the *Employer* shall:
- (i) Evaluate the *Contractor* Change Proposal;
 - (ii) Where necessary, discuss with the *Contractor* any issues arising and following such discussions the *Employer* may modify the *Employer* Notice of Change and the *Contractor* shall as soon as practicable, and in any event not more than ten (10) Business Days (or such other period as the Parties may agree) after receipt of such modification, submit an amended *Contractor* Change Proposal.
- 13.11.4.2 As soon as practicable after the *Employer* has evaluated the *Contractor* Change Proposal (amended as necessary) the *Employer* shall:
- (i) Indicate its acceptance of the *Contractor* Change Proposal by issuing a serially numbered amendment letter in accordance with DEFCON 503 (Formal Amendments to Contract) (Clause 13.10 of this contract); or
 - (ii) Serve a Notice on the *Contractor* rejecting the *Contractor* Change Proposal and withdrawing (where issued) the *Employer* Notice of Change.
- 13.11.4.3 If the *Employer* rejects the Change Proposal it shall not be obliged to give its reasons for such rejection.

- 13.11.4.4 The *Employer* shall not be liable to the *Contractor* for any additional work undertaken or expense incurred unless a *Contractor* Change Proposal has been accepted in accordance with Clause 13.11.4.(a) above.

Contractor Changes

- 13.11.5 If the *Contractor* wishes to propose a Change, it shall serve a *Contractor* Change Proposal on the *Employer*, which shall include all of the information required by Clause 13.11.3.2 above, and the process at Clause 13.11.4.1 – 13.11.4.4 above shall apply.”

- 13.13 Insert a new Clause 13.13 (DEFCON 566):

“Change of control of *Contractor*

- 13.13.1 The *Contractor* shall notify the Representative of the *Employer* at the address given in Clause 13.13.3, as soon as practicable, in writing of any intended, planned or actual change in control of the *Contractor*, including any Subcontractors. The *Contractor* shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the *Contractor* in the UK or other jurisdictions where the *Contractor* may be subject to legal sanction arising from issuing such a notice.

- 13.13.2 For the purposes of this Clause ‘control’ means the power of a person to secure that the affairs of the *Contractor* are conducted in accordance with the wishes of that person by:

a. means of the holding of shares, or the possession of voting powers in, or in relation to, the *Contractor*; or

b. virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the *Contractor*.

and a change of control occurs if a person who controls the *Contractor* ceases to do so or if another person acquires control of the *Contractor*.

- 13.13.3 Each notice of change of control shall be taken to apply to all contracts with the *Employer*. Notices shall be submitted to:

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

- 13.13.4 The Representative of the *Employer* shall consider the notice of change of control and advise the *Contractor* in writing of any concerns the *Employer* may

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have. Such concerns may include but are not limited to potential threats to national security, the ability of the *Employer* to comply with its statutory obligations or matters covered by the declarations made by the *Contractor* prior to Contract Award.

13.13.5 The *Employer* may terminate the contract by giving written notice to the *Contractor* within six months of the *Employer* being notified in accordance with Clause 13.13.1. The *Employer* shall act reasonably in exercising its right of termination under this Clause.

13.13.6 If the *Employer* exercises its right to terminate in accordance with Clause 13.13.5 the *Contractor* shall be entitled to request the *Employer* to consider making a payment representing any commitments, liabilities or expenditure incurred by the *Contractor* in connection with the contract up to the point of termination. Such commitments, liabilities or expenditure shall be reasonably and properly chargeable by the *Contractor*, and shall otherwise represent an unavoidable loss by the *Contractor* by reason of the termination of the contract. Any payment under this Clause 13.13.6 must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Employer's sole discretion.

13.13.7 Notification by the *Contractor* of any intended, planned or actual change of control shall not prejudice the existing rights of the *Employer* or the *Contractor* under the contract nor create or imply any rights of either the *Contractor* or the *Employer* additional to the Employer's rights set out in this Clause."

16.4 At the end of the Clause insert:

"No decision taken at a risk reduction meeting shall operate to change the contractual allocation of risk hereunder, unless specifically instructed otherwise in writing by the Project Manager."

17 Delete Clause 17 and substitute with:

"The Project Manager or the *Contractor* notifies the other as soon as either becomes aware of any mistake, inaccuracy, discrepancy or omission in or between the Works Information and any other document forming part of this contract or if the Fixed Price for the works will increase due to such mistake, inaccuracy, discrepancy or omission. The Project Manager gives an instruction as to how the mistake, inaccuracy, discrepancy or omission is to be dealt with. Compliance with such an instruction by the *Contractor* shall not constitute a compensation event where the instruction relates to any mistake, inaccuracy, discrepancy or omission in the design of the works or in any part of the Works Information or any other document forming part of this contract which was provided by the *Contractor*."

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19A After Clause 19.1, insert a new Clause 19.A:

“Collateral warranties

- 19A.1 The *Contractor* shall obtain from every Subcontractor with a design responsibility (and any other Subcontractors identified in the Works Information) appointed by the *Contractor* and execute as a deed and deliver to the *Employer* within fourteen (14) Calendar days of receipt of relevant engrossments collateral warranties in the relevant form set out in Schedule 8 (Collateral Warranty), with such reasonable amendments as the beneficiary of the warranty shall require or agree, in favour of the *Employer* and/or any Third Party. Notwithstanding any other term of this contract and in addition to any other right or remedy of the *Employer*, until the *Contractor* has procured the execution and delivery of all necessary deeds of collateral warranty required from any Subcontractor referred to in this Clause within fourteen (14) Calendar days of the *Employer* so requesting, the *Contractor* shall not be entitled to payment of any sums relating to the services or work of such Subcontractor/s which would otherwise be due and payable under the terms of this contract and (without prejudice to the generality of the foregoing) section 5 of this contract (Payment) shall be read and construed accordingly.
- 19A.2 The *Contractor* shall itself, within fourteen (14) Calendar days of receipt of relevant engrossments enter into, execute as a deed and deliver collateral warranty agreements in the relevant form set out in Schedule 8 (Collateral Warranty) in favour of any Third Party. The *Employer* may, notwithstanding any other provisions of this contract, withhold all future payments due to the *Contractor* under this contract until such collateral warranties have been satisfactorily executed and delivered to the *Employer* or his duly appointed representative.
- 19A.3 The amount which shall be inserted in the appropriate Clause of each collateral warranty requiring a Subcontractor to take out and maintain Professional Indemnity Insurance (or, where approved by the *Employer* as an alternative, Product Liability Insurance) shall be such reasonable amount as shall be approved by the *Employer* (having regard to the nature of the Subcontractor's responsibilities) (and in any case shall not (unless the Project Manager agrees otherwise in writing) be lower than the relevant level (if any) set out in the Works Information), and the period of such insurance shall be 12 years from the Completion Date.
- 19A.4 The *Contractor* and Subcontractors shall comply with the applicable insurance requirements as set out in Appendix 2 of this contract, corresponding with the value and type of works involved. The *Contractor* shall detail the relevant insurance details within the applicable Insurance Table within Appendix 2.”

19.B After Clause 19.A insert a new Clause 19.B:

“Fraud and Prevention of Corruption

- 19B.1.1 The *Contractor's* Personnel shall comply with the following minimum requirements which are deemed to form part of this contract. Upon the

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Contractor entering into any Works Contracts, placed against this contract, as appropriate, this Clause 19B.1.1 is to be distributed to all personnel prior to commencement of any *works* and/or services being carried out.

19B.1.2 Any failure by the *Contractor's* Personnel to observe these minimum requirements may give rise to a termination under this contract and/or the Sub-contracts as the case may be.

19B.1.3 The *Contractor* shall carry out an internal audit on a period not greater than 6 monthly basis in respect of the contract and any Works Contracts placed therein. Where the *Contractor* or his parent is a PLC the audit committee of the *Contractor* or PLC company shall manage and be responsible for such audit. Where the *Contractor* is a joint venture company, or a non-PLC, that company or joint venture shall set up an audit committee to manage and be responsible for such audit. The audit committee of the *Contractor* shall also:

19B.1.3.1 report to the *Employer* in respect of the standards achieved in the audit;

19B.1.3.2 notify the *Employer* of any fraud identified in any internal or external audit; and

19B.1.3.3 make recommendations to the *Employer* as to measures which should be taken to improve on fraud prevention and forward an action plan to show recommendations are put in place and ensure these are acted upon.

Gifts Rewards and Inducements

19B.2 It will be a term of Sub-contracts that the Supply Chain will not offer, give or agree to give to the *Contractor* or to any employee or agent of the *Contractor* or anyone acting on his behalf or on behalf of his or their employees, any gift or consideration as an inducement or reward for doing or not doing any act in relation to the obtaining or execution of the Sub-contract or for showing or not showing favour or disfavour to any person in relation to the Sub-contract or any other contract with the *Contractor*. The Sub-contract should provide for termination of the Sub-contract on the occurrence of any such event or, where the offence has been committed by an employee acting independently of the member of the Supply Chain, the Sub-contract may be continued if the relevant employee's employment is terminated.

Construction and Maintenance Work

19B.3.1 The *Contractor* shall permit and shall procure that the Supply Chain permits there to be regular inspections of the *works* and/or services and/or materials carried out by the *Employer*, including inspections of those parts of the *works* and/or services being carried out off site and/or materials being manufactured off-site. In order to facilitate such inspections, the *Contractor* and his Supply Chain shall fully co-ordinate and cooperate with the *Employer* by answering any queries raised and allowing a more detailed inspection, if required, without obstruction provided there is no risk to health and safety or danger to persons and property. The *Contractor* and Supply Chain shall be responsible for implementing internal control mechanisms to detect and deter fraud and sharp

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practice activity. There shall be an element of risk based control approach to identify potential fraud. The *Contractor* shall ensure and provide evidence when requested that all imposed quality standards and compliance with regulatory standards are met.

- 19B.3.2 If required, the *Contractor* and his Supply Chain shall forthwith produce for inspection original documentation for work and/or services being carried out by them.
- 19B.3.3 The *Contractor* and his Supply Chain shall, where appropriate, obtain and provide to the *Employer* written confirmation from occupiers that the *works* (or relevant parts thereof in relation to Sectional Completions), have been completed.
- 19B.3.4 The Supply Chain shall, wherever possible, be paid by reference to the Milestone Payment Schedule or completed work payments.
- 19B.3.5 The *Contractor* and his Supply Chain shall maintain asset and equipment registers which shall be open to inspection by the *Employer* at regular intervals during the course of the *works* and/or services.

Compensation Events

- 19B.4.1 The following provisions are to be complied with in conjunction with Clause 6 (Compensation Events) under this contract and Sub-contracts which shall continue to have full force and effect.
- 19B.4.2 Whether a Compensation Event is requested by the *Employer* or the *Contractor* himself or by the *Contractor* on behalf of his Supply Chain; the Party requesting such Compensation Event shall provide detailed and accurate statements particularising the work required for each proposed item of work ordered or the service required as appropriate.
- 19B.4.3 Prior to any approval or authorisation of a Compensation Event, there shall be an inspection of the existing site Clauses which are proposed to be altered, rectified or replaced by the Compensation Event. Such inspection will be attended by the *Contractor*, any relevant member of the Supply Chain and the *Employer* shall be notified and invited to attend. No Compensation Event shall be carried out without paper authorisation.
- 19B.4.4 Where the *Contractor* intends to market test and invite competitive tenders in respect of any Compensation Event:
 - 19B.4.4.1 any Subcontractor who is selected to carry out the Compensation Event in place of or in addition to the existing Supply Chain, must be able to demonstrate a collaborative working relationship with the *Contractor* and an understanding of what integrated Supply Chain management involves.
 - 19B.4.4.2 where a proposed Supply Chain member has been previously engaged by a *Contractor*, the *Contractor* should be satisfied that there are demonstrably good reasons for awarding the Sub-contract to that Supply Chain member, such as evidence of good past performance.

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19B.4.2.3 the tender documentation is to be heavily safeguarded at all times by those persons responsible for it. This may involve it being locked away with access only being available when separate key-holders together unlock the container with the tender documents.

19B.4.2.4 tenders should be reviewed by boards or panels of the *Contractor* consisting of more than one individual and should include individuals with no direct connection with any of the tendering companies to reduce the risk of unfair assessments or alterations of tender bids submitted for Evaluation.

- 19B.4.5 The *Contractor* and his Supply Chain shall keep original records of the results of any work and/or services undertaken in carrying out an approved change which shall be produced for inspection and review by the *Employer* forthwith upon request.
- 19B.4.6 The *Contractor* shall put in place a monitoring system for his Personnel to check *works* orders raised in order to confirm the validity thereof. These checks shall be carried out at regular intervals on a weekly basis. If appropriate, meetings shall also be held and minuted to discuss any such Compensation Events. The Supply Chain shall co-ordinate and cooperate with the *Contractor* in respect of this Clause 19B.4.6.
- 19B.4.7 The *Contractor* and his Supply Chain shall carry out appropriate checks with occupiers to ensure that work and/or services ordered pursuant to a Compensation Event have been completed to a satisfactory standard. Occupier approval is to be obtained in writing and is to be signed and dated. Such records shall be admissible only as evidence in support of completion certificates or statements.
- 19B.4.8 Site visits and random spot checks by supervisors are to be carried out during the *works* and/or services. The *Project Manager* shall also be entitled to carry out such site visits and random spot checks at his discretion. The *Contractor* and his Supply Chain shall take all practicable steps to assist these supervisors and managers and the *Project Manager* by making areas accessible for inspection where work is being undertaken or where services are being carried out, answering queries and providing other appropriate evidence of work and/or services carried out pursuant to the Compensation Events.
- 19B.4.9 All documents provided by the *Contractor* and his Supply Chain in support of work and/or services carried out shall be original and authentic, duly signed and authorised by the appropriate representatives.
- 19B.4.10 Follow up checks to confirm that payments made are valid and relate to the correct Compensation Event in issue shall also be made by the *Employer* at its discretion. The *Contractor* and his Supply Chain shall make every effort to assist the *Employer* without delay during the follow up checking process.

Invoicing and Payment

- 19B.5.1 The following provisions are to be complied with, in conjunction with core Clause 5 (Payment) under this contract which shall continue to have full force and effect.

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- 19B.5.2 The *Contractor* shall ensure that the responsibility and procedures to be adopted for authorising work and/or services are separated from the responsibility and procedures in relation to the authorisation of payment for such work and/or services.
- 19B.5.3 The *Contractor* shall put in place a reconciliation system designed to match and compare invoices to avoid any duplication of work being claimed either intentionally or inadvertently during the payment process. This system shall also confirm proof of delivery of the work and/or service as appropriate.
- 19B.5.4 The *Contractor* shall review and check the invoices submitted to him by his Supply Chain for accuracy and validity prior to such invoices being processed for payment by the *Contractor* in accordance with the payment procedures pursuant to the contract.
- 19B.5.5 The *Employer* shall also carry out identical reviews and checks for accuracy and validity of Supply Chain invoices prior to such claimed amounts being included within the Payment Approval pursuant core Clause 5 (Payment) under this contract. A checklist is to be produced in order to assist the Parties in carrying out the said reviews and checks of such invoices.
- 19B.5.6 The *Contractor* shall ensure that all applications for payment submitted to the *Employer* are duly signed by an authorised officer of the *Contractor*, who shall be a different person from the individual who authorised the work. Each application for payment is also to contain a "statement of truth" as to the validity and accuracy of the said application for payment.
- 19B.5.7 Any verification of documentation is to be of original documentation. Copy documents are not to be submitted in place of originals unless such copies have been checked against the original, are marked as "certified copies" and duly signed and dated accordingly.
- 19B.5.8 The *Contractor* and the *Employer* shall be entitled to inspect all original invoices submitted by the *Contractor* and the Supply Chain at any time jointly by agreement, such agreement not to be unreasonably withheld or delayed and the said invoices shall be placed in a locked container at a location to be agreed by the Parties or if no such agreement can be reached, at a location selected by *Project Manager*.
- 19B.5.9 Without prejudice to Clause 19B.5.8 above, the *Contractor* and his Supply Chain shall permit inspection of the aforementioned original documents and invoices by any fraud investigation body identified by the *Employer*, including but not limited to the Controller and Auditor General, the National Audit Office, the Defence Fraud Units and by any specified personnel at any independent consultant so notified to the *Contractor*.
- 19B.5.10 All invoices submitted for review and checks by the *Contractor* and his Supply Chain shall be supported by relevant original documentation such as valid, authorised timesheets, daily diary records, CVIs, instructions, purchase orders, delivery slips and any other appropriate documentation in respect of applications for payment.

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- 19B.5.11 The *Project Manager* shall be entitled to require evidence of compliance with these payment measures by the *Contractor* as part of the Payment Request.
- 19B.5.12 The *Contractor* and his Supply Chain shall make available for inspection and checks by the *Employer* a percentage of sample orders. The *Contractor* and his Supply Chain shall be advised as to the level of checking prior to the commencement of the contract.
- 19B.5.13 The *Contractor* and his Supply Chain shall, where appropriate, make comparisons with similar invoices for similar work carried out on other similar projects or benchmark against recognised schedule of rates in advance of bidding for such work to ensure insofar as possible that competitive rates are submitted and evaluated.

IT

- 19B.6.1 The *Contractor* is encouraged to use an electronic communications system to improve communications with the Supply Chain and with the *Employer* in connection with the *works* and/or services. The following provisions shall apply where the *Contractor* and his Supply Chain have in place at any time an electronic communications and/or approvals system (“**the Central Database System**”).
- 19B.6.2 Access to the Central Database System will be controlled by a Systems Administrator who shall be a single individual from an independent third party organisation chosen by the *Employer* with experience in carrying out this function. *Employer* to access the Central Database System will only be provided through authorisation of the Systems Administrator. The Systems Administrator will keep a record of users and will act only on authorisation to permit user access from previously identified individuals within the *Contractor*, the Supply Chain and the *Employer*. Procedures should also be in place for Systems Administrators to check authorisation instructions for new users with a second person at the relevant organisation.
- 19B.6.3 The Systems Administrator shall be regulated and monitored by random spot checks and audit procedures as and when required. The *Employer* shall be entitled to remove a Systems Administrator or notify the Parties in the event of dissatisfactory performance findings during the contract.
- 19B.6.4 The *Contractor* and his Supply Chain shall be required to monitor and check information available to them on the Central Database System at regular weekly intervals. Upon a Party opening the electronic database and accessing specific data therein, it shall be deemed to have read and received such specific data. Other users shall be notified accordingly through the Central Database System.
- 19B.6.5 The Central Database System shall be capable of printing out reports and carrying out a full audit trail.
- 19B.6.6 Where the Central Database System uses the Internet:

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19B.6.6.1 The Central Database System address will not be available on the Worldwide Web.

19B.6.6.2 Encryption will not be less than 128 bit. Encryption will extend to PC/server encryption for each Session.

19B.6.7 The *Contractor* and his Supply Chain and any third party organisation which supplies and operates the Central Database System ("**the Systems Operator**") shall take all practicable steps to ensure that the Central Database System is protected and secure by implementing all of the following minimum security measures and confirming in writing to the *Employer* that such measures are in place upon entering into their Contracts:

19B.6.8 requiring users to immediately change and personalise the allocated user name and password;

19B.6.8.1 requiring users to change personal passwords regularly;

19B.6.8.2 requiring irregular or rare users to re-register as users with expiry limits for non-use;

19B.6.8.3 limiting access permissions to Parties depending upon their role and level of involvement in order to avoid users accessing sensitive or non-relevant information and data by way of controlled indexes;

19B.6.8.4 setting up controls to monitor users' activities such as whether data is being read, amended, deleted, copied etc.;

19B.6.8.5 setting up secure data centres which are to be physically secure so that servers may be safely housed;

19B.6.8.6 setting up measures to protect the security of PCs and laptops outside office hours.

19B.6.9 The following additional measures are highly recommended and the *Contractor* and his Supply Chain shall use their best endeavours to ensure that the Central Database System meets these controls prior to entering into their respective Contracts. The *Contractor* must notify the *Employer* before entering into the contract if the Central Database System it proposes to use will fail to meet any of the following measures and the *Employer* shall have discretion not to permit the use of the Central Database System should it fail to do so:

19B.6.9.1 implementing a Positive Client Identification System which denies access to users attempting to access information from different computers and denies access and/or shuts down upon detection of unusual user activity. This system shall also be capable of informing Central Database System users and/or the Systems Administrator and/or the Systems Operator of such security breaches;

19B.6.9.2 implementing a Sheep Dip File to check for viruses prior to any uploading to the main server;

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19B.6.9.3 implementing a Fire Walls Protection System which is designed to track unsuccessful access attempts;

19B.6.9.4 commissioning an independent company to test the integrity of the Central Database System and to report on its effectiveness in advance of its implementation and widespread use.

19B.6.10 On request the Systems Administrator shall permit the *Employer* and the National Audit Office access to all files within the Central Database System relating to the contract.

19B.6.11 The *Contractor* shall put in place a Disaster Recovery Strategy in respect of the Central Database System before entering into the Project Contract and notify the *Employer* of that Strategy and of the measures which the *Contractor* shall adopt to ensure the availability and integrity of information contained in and generated by the Central Database System in these circumstances.

19B.6.12 If the *Contractor* intends to use any system of electronic trading for financial approvals and financial transactions he shall inform the *Employer* and provide details to the *Employer* of the procedures which shall be in place for ensuring the integrity of the System. The *Contractor* and his Supply Chain shall only be entitled to proceed with such electronic trading if the *Employer* is satisfied that sufficient measures will be in place to ensure the integrity of the System.

19B.6.13 Any failure by the *Contractor* and his Supply Chain to comply with this Clause (Fraud and Prevention of Corruption) may result in the *Employer* making appropriate adjustments to the Fixed Price to take into account the increased risk of potential fraud."

19C Insert a new Clause 19C:

"Publicity

19C.1 The *Contractor* may publicise the *works* and/or this contract only with the *Employer's* written agreement.

19.C.2 The *Contractor* shall take all reasonable steps to ensure that its Personnel do not publicise the *works* and/or this contract other than in accordance with Clause 19.C.1. "

19D Insert a new Clause 19D (DEFCON 531 – Disclosure of Information & Z10 Boilerplate Clause):

"Freedom of Information

19D.1 Subject to Clauses 19D.4, 19D.5, 19D.11, 19D.12 and 19D.14 each party:

19D.1.1 shall treat in confidence all Information it receives from the other;

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- 19D.1.2 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 the contract;
- 19D.1.3 shall not use any of that Information otherwise than for the purpose of the contract; and
- 19D.1.4 shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the contract.
- 19D.2 The *Contractor* shall take all reasonable precautions necessary to ensure that all Information disclosed to the *Contractor* by or on behalf of the *Employer* under or in connection with the contract:
- 19D.2.1 is disclosed to its employees and Subcontractors, only to the extent necessary for the performance of the contract; and
- 19D.2.2 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 *Employer* under the contract or any Sub-contract under it.
- 19D.3 The *Contractor* shall ensure that his employees are aware of his arrangements for discharging the obligations at Clauses 19D.1 and 19D.2 before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.
- 19D.4 Clauses 19D.1 and 19D.2 shall not apply to any Information to the extent that either party:
- 19D.4.1 exercises rights of use or disclosure granted otherwise than in consequence of, or under, the contract;
- 19D.4.2 has the right to use or disclose the Information in accordance with other Clauses of the contract; or
- 19D.4.3 can show:
- (i) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the 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 the contract;

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- (iii) that the Information was received without restriction on further disclosure from a third party who lawfully acquired it and who is himself under no obligation restricting its disclosure; or
- (iv) from its records that the same information was derived independently of that received under or in connection with the contract;

provided the relationship to any other Information is not revealed.

- 19D.5 Neither party shall be in breach of this Clause 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.
- 19D.6 The *Contractor* acknowledges that unless the Project Manager has notified the *Contractor* that the *Employer* is exempt from the provisions of the FOIA, the *Employer* is subject to the requirements of the Code of Practice on Government Information, the FOIA and the Environmental Information Regulations. The *Contractor* cooperates with and assists the *Employer* so as to enable the *Employer* to comply with its information disclosure obligations.
- 19D.7 The *Contractor*:
- 19D.7.1 transfers to the Project Manager all Requests for Information that it receives as soon as practicable and in any event within two Business days of receiving a Request for Information;
- 19D.7.2 provides the Project Manager with a copy of all Information in its possession, or power in the form that the Project Manager requires within five Business days (or such other period as the Project Manager may specify) of the Project Manager's request;
- 19D.7.3 provides all necessary assistance as reasonably requested by the Project Manager to enable the *Employer* to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations; and
- 19D.7.4 procures that its Subcontractors do likewise.
- 19D.8 The *Employer* is responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.
- 19D.9 The *Contractor* does not respond directly to a Request for Information unless authorised to do so by the Project Manager.

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- 19D.10 The *Contractor* acknowledges that the *Employer* may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of information Act 2000, be obliged to disclose Information without consulting or obtaining consent from the *Contractor* or despite the *Contractor* having expressed negative views when consulted.
- 19D.11 The *Employer* may disclose the Information:
- 19D.11.1 on a confidential basis to any central government body for any proper purpose of the *Employer* 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;
 - 19D.11.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 19D.11.3 to the extent that the *Employer* (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - 19D.11.4 on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in Clause 11 (*DEFCON 501 – Definition and Interpretation*) (including benchmarking organisation for any purpose relating to or connected with this contract;
 - 19D.11.5 on a confidential basis for the purpose of the exercise of its rights under the contract; or
 - 19D.11.6 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 the 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 *Employer* under this provision.
- 19D.12 Before sharing any Information in accordance with Clause 19D.11 above, the *Employer* may redact the Information. Any decision to redact information made by the *Employer* shall be final.
- 19D.13 The *Contractor* ensures that all Information is retained for disclosure throughout the period for retention and permits the Project Manager to inspect such records as and when reasonably requested from time to time.
- 19D.14 The *Employer* shall not be in breach of the contract where it can show that any disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 ("**FOIA**") or the Environmental Information Regulations 2004. To the extent permitted by the time for compliance under FOIA or the Environmental Information Regulations 2004,

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the *Employer* shall consult the *Contractor* where the *Employer* is considering the disclosure of Information under FOIA or the Environmental Information Regulations 2004 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 FOIA or the Environmental Information Regulations 2004 is a matter in which the *Employer* shall exercise its own discretion, subject always to the provisions of FOIA or the Environmental Information Regulations 2004. For the avoidance of doubt, nothing in this Clause shall affect the Contractor's rights at law.

19D.15 Nothing in this Clause shall affect the parties' obligations of confidentiality where information is disclosed orally in confidence."

19E Insert a new Clause 19E (DEFCON 527):

"Waiver

19E.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.

19E.2 No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy."

19F Insert a new Clause 19F:

"Assignment and novation

19F.1 The *Contractor* will not give, bargain, sell assign, or otherwise dispose of the contract or any part thereof, or the benefit or advantage of the contract or any part thereof, without the previous consent in writing of the *Employer*. The *Employer* may assign the benefit of the whole or any part of the contract at any time without the prior consent of the *Contractor*."

19G Insert a new Clause 19G (DEFCON 538):

"Severability

19G.1 If any provision of the contract is held to be invalid, illegal or unenforceable to any extent then:

19G.1.1 such provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in the contract but without invalidating any of the remaining provisions of the contract; and

19G.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

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the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.”

19H Insert a new Clause 19H:

“Audit

19H.1 In addition to any other rights under this contract, the *Employer* and its agents may at any time and without notice audit the books and records being maintained by the *Contractor* whilst undertaking this contract, including those books and records relating to any costs and expenses incurred by the *Contractor* or charged to the *Employer* and including those books and records being maintained by the Subcontractors.”

19I Insert a new Clause 19I (DEFCON 537):

“Right of Third parties

19I.1 Except as provided in Clause 19I.2 of this Clause and notwithstanding anything to the contrary elsewhere in the contract, no right is granted to any person who is not a party to the contract to enforce any term of the contract in his own right and the parties to the contract declare that they have no intention to grant any such right.³

19I.2 Where, and only where, either by a term in a DEFCON which has been expressly included in the contract or by another term which specifically refers to this DEFCON, the contract expressly states that a third party shall be entitled to enforce a term of the contract:

19I.2.1 the said third party shall be entitled to enforce that term in his own right;

19I.2.2 the *Contractor* shall inform the said third party as soon as is reasonably practicable of the existence of the relevant right together with any other terms (including the terms of this Clause) relevant to the exercise of that right; and

19I.2.3 the third party's rights shall be subject to any provision in the contract:

- i. that provides for the submission of disputes under the contract generally or the said rights in particular to arbitration (Clauses 9 of the Main Terms of the contract); or
- ii. that stipulates the law and jurisdiction that will govern the contract (Clause 8 of the Main Terms of the contract).

19J Insert a new Clause 19J:

“Adjudication

³ Discussion required on the likely third parties who may be involved. Commitment to discuss in due time

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- 19J.1 Any decision of the *Employer*, an instruction from the Project Manager or a change to the Works Information which is the subject of adjudication shall remain in force until the decision of the Adjudicator.
- 19J.2 For the purposes of this Clause 19J (Adjudication), the term “dispute” shall include any difference as defined by the Act.
- 19J.3 If either Party requires adjudication they shall notify the Adjudicator. The notice shall:-
- 19J.3.1 specify the matter in dispute;
- 19J.3.2 set out the principal facts and arguments relating to the dispute;
- 19J.3.3 have appended all relevant documents which the Party referring the disputes relies upon;
- 19J.3.4 request that the Adjudicator confirm it is willing to act within four (4) days of receipt of such notice.
- 19J.4 A copy of the notice referred to in Clause 19J.3 (Adjudication) and the appended relevant documents shall be sent to the other Party at the same time.
- 19J.5 Where the Adjudicator has not indicated its willingness to act in accordance with Clause 19J.3.4 (Adjudication), or where no adjudicator has been named in this contract, either Party may apply to the Chairman of The Technology and Construction Solicitors Association (“TeCSA”) for a nomination, in which case, the following procedure will apply:
- 19J.5.1 the application shall be in writing, accompanied by a copy of this contract (without copies of any annexed documents, unless they are relevant to the dispute), a copy of the written notice requiring adjudication, and TeCSA’s appropriate appointment fee;
- 19J.5.2 the Chairman of TeCSA shall endeavour to secure the appointment of an adjudicator and the referral to it of the dispute within seven (7) days from the notice requiring adjudication; and
- 19J.5.3 any person so appointed, and not any person named in this contract whose readiness or willingness is in question, shall be the Adjudicator.
- 19J.6 The Chairman of TeCSA shall have the power by written notice to the Parties to replace the Adjudicator with another nominated person if and when it appears necessary to the Chairman of TeCSA to do so. The Chairman of TeCSA shall consider whether to exercise such power if any Party shall represent to the Chairman of TeCSA that the Adjudicator is not acting impartially, or that the Adjudicator is physically or mentally incapable of conducting the adjudication, or that the Adjudicator is failing with necessary dispatch to proceed with the adjudication or make its decision. In the event of a replacement under this Clause, directions and decisions of the previous Adjudicator shall remain in effect unless reviewed and replaced by the new

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Adjudicator, and all timescales shall be recalculated from the date of the replacement.

- 19J.7 Where an Adjudicator has already been appointed in relation to another dispute arising out of this contract, the Chairman of TeCSA may appoint either the same or a different person as the Adjudicator.
- 19J.8 Within seven (7) days of receipt of the notice referred to in Clause 19J.3.4 (Adjudication), the other Party may submit to the Adjudicator any statement, representations or documents which that Party relies upon relating to the dispute.
- 19J.9 The scope of the adjudication shall be the matters identified in the notice requiring adjudication, together with:
- 19J.9.1 any further matters which all Parties agree should be within the scope of the Adjudication; and
- 19J.9.2 any further matters which the Adjudicator determines must be included in order that the adjudication may be effective and/or meaningful.
- 19J.10 The Adjudicator may rule upon its own substantive jurisdiction, and as to the scope of the adjudication.
- 19J.11 The underlying purpose of the adjudication is to resolve disputes between the Parties that are within the scope of the adjudication as rapidly and economically as is reasonably possible.
- 19J.12 Decisions of the Adjudicator shall be binding until the dispute is finally determined by arbitration pursuant to this Clause 19J (Adjudication) or by agreement.
- 19J.13 The Adjudicator shall:
- 19J.13.1 have the power to review and revise any certificates or other things issued or made in accordance with this contract;
- 19J.13.2 act fairly and impartially, but shall not be obliged or empowered to act as though it were an arbitrator; and
- 19J.13.3 establish the procedure and timetable for the adjudication.
- 19J.14 Without prejudice to the generality of Clause 19J.13.3 (Adjudication), the Adjudicator may if it thinks fit:
- 19J.14.1 require the delivery of written statements of case;
- 19J.14.2 require any Party to produce a bundle of key documents, whether helpful or otherwise to that Party's case, and to draw such inferences as may seem proper from any imbalance in such bundle that may become apparent;

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- 19J.14.3 require the delivery to the Adjudicator and/or the other Party of copies of any documents other than documents that would be privileged from production to a court;
- 19J.14.4 limit the length of any written or oral submission;
- 19J.14.5 require the attendance before the Adjudicator for questioning of any Party or employee or agent of any Party;
- 19J.14.6 make site visits;
- 19J.14.7 make use of its own specialist knowledge;
- 19J.14.8 obtain advice from specialist consultants, provided that at least one of the Parties so requests or consents;
- 19J.14.9 meet and otherwise communicate with any Party without the presence of other parties;
- 19J.14.10 make directions for the conduct of the adjudication orally or in writing;
- 19J.14.11 review and revise any of its own previous directions;
- 19J.14.12 conduct the adjudication inquisitorially, and take the initiative in ascertaining the fact and the law; and
- 19J.14.13 reach its decision with or without holding an oral hearing, and with or without having endeavoured to facilitate an agreement between the Parties.
- 19J.15 The Adjudicator shall exercise such powers with a view of fairness and impartiality, giving each Party a reasonable opportunity, in light of the timetable, of putting its case and dealing with that of its opponent.
- 19J.16 The Adjudicator may not:
 - 19J.16.1 require any advance payment of, or security for, its fees;
 - 19J.16.2 receive any written submissions from one Party that are not also made available to the other;
 - 19J.16.2.3 refuse any Party the right at any hearing or meeting to be represented by any representative of that Party's choosing who is present; or
 - 19J.16.2.4 act or continue to act in the face of a conflict of interest.
- 19J.17 The Adjudicator shall reach a decision with twenty-eight (28) days of referral or such longer period as is agreed by the Parties after the said dispute has been referred to the Adjudicator. The Adjudicator shall be entitled to extend the said period of twenty-eight (28) days by up to fourteen (14) days with the consent of the Party by whom the dispute was referred.

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- 19J.18 If a Party requests adjudication, and it is subsequently established that it was not entitled to do so, that Party shall be solely responsible for the Adjudicator's fees and expenses.
- 19J.19 Subject to Clause 19J.18 (Adjudication), the Parties shall be jointly responsible for the Adjudicator's fees and expenses including those of any specialist consultant appointed under Clause 19J.14.8 (Adjudication). In its decision, the Adjudicator shall have the discretion to make directions with regard to those fees and expenses. If no such directions are made, the Parties shall bear such fees and expenses in equal shares, and if any Party has paid more than such equal share, that Party shall be entitled to contribution from the other Party accordingly.
- 19J.20 The Adjudicator may in any decision direct the payment of such compound or simple interest as may be commercially reasonable.
- 19J.21 All decisions of the Adjudicator shall be in writing and shall include its reasons for its decision.
- 19J.22 Every decision of the Adjudicator shall be implemented without delay. The Parties shall be entitled to such reliefs and remedies as are set out in the decision, and shall be entitled to summary enforcement of any such reliefs and remedies, regardless of whether such decision is, or is to be, the subject of any challenge or review. No Party shall be entitled to raise any right of set-off, counterclaim or abatement in connection with any enforcement proceedings.
- 19J.23 Neither TeCSA, nor its Chairman, nor deputy, nor the Adjudicator nor any employee or agent of any of them shall be liable for anything done or not done in the discharge or purported discharge of its functions as Adjudicator, whether in negligence or otherwise, unless the act or omission is in bad faith.
- 19J.24 The adjudication and all matters arising in the course of it are and will be kept confidential by the Parties except insofar as necessary to implement or enforce any decision of the Adjudicator or as may be required for the purpose of any subsequent legal proceedings.
- 19J.25 In the event that any Party seeks to challenge or review any decision of the Adjudicator in any subsequent arbitration, the Adjudicator shall not be joined as a party to, nor shall it be subpoenaed or otherwise required to give evidence or provide its notes in, such arbitration.
- 19J.26 No Party shall, save in case of bad faith on the part of the Adjudicator, make any application to the courts whatsoever in relation to the conduct of the adjudication or the decision of the Adjudicator until such time as the Adjudicator has made its decision, or refused to make a decision, and until the Party making the application has complied with any such decision.
- 19K Insert a new Clause 19K (DEFCON 539):

"Transparency

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- 19K.1 Notwithstanding any other term of this contract, including DEFCON 531 (Clause 19D of this contract) where applicable, the *Contractor* understands that the *Employer* may publish the Transparency Information to the general public. The *Contractor* shall assist and cooperate with the *Employer* to enable the *Employer* to publish the Transparency Information.
- 19K.2 Before publishing the Transparency Information to the general public in accordance with Clause 19K.1 above, the *Employer* shall redact any information that would be exempt from disclosure if it was the subject of a request for information under the Freedom of Information Act 2000 ("FOIA") or the Environmental Information Regulations 2004 ("the Regulations"), including the *Contractor* Commercially Sensitive Information.
- 19K.3 The *Employer* may consult with the *Contractor* before redacting any information from the Transparency Information in accordance with Clause 19K.2 above. The *Contractor* acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact information is a matter in which the *Employer* shall exercise its own discretion, subject always to the provisions of FOIA or the Regulations.
- 19K.4 For the avoidance of doubt, nothing in this Clause shall affect the Contractor's rights at law."

2 The Contractor's main responsibilities

- 20.1 At the end of the Clause include: "and other applicable provisions of this contract including, but not limited to complying with the Accepted Programme."
- 20.2 Number not used.
- 20 Insert new clauses 20.5 – 20.8:
- 20.5 Without prejudice to any obligation of the *Contractor* contained anywhere in any document forming part of this contract (including the Works Information) the *Contractor* warrants and undertakes that:
- 20.5.1 the works have been or will be carried out and completed using the best up-to-date practice with all reasonable skill and care expected of a competent designer of relevant discipline experienced in performing services for projects of a similar size, scope, nature, complexity and timescale to the Works;
- 20.5.2 the works have been or will be carried out and completed in a proper and workmanlike manner and using only good quality and sound materials of satisfactory quality and consistent with the intended use of the works;
- 20.5.3 the works comprise or will comprise only materials and goods which are new and of good and satisfactory quality and all workmanship, manufacture or fabrication will be to the standards necessary for completion of the works in accordance with this contract;

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- 20.5.4 the works will, when completed, comply with all appropriate requirements of any local or public authority *Employer* and any relevant statutory requirements.
- 20.6 The *Contractor* warrants that he has the experience and resources to provide the works (including the design of the works) and has experience of, and provided works similar in size, scope and complexity to the works in the *Employer's* industry.
- 20.7 The *Contractor* has had an opportunity of inspecting the Site and its surroundings and all existing structures thereon (including physical Clauses and other Clauses of or affecting this site) and shall be deemed to have fully acquainted itself with the same and to have obtained all the same information as to risks, contingencies and all other circumstances which may influence or affect the works and no failure on the part of the *Contractor* to discover or foresee any such Clause, risk, contingency or circumstances whether the same ought reasonably to have been discovered or foreseen or not shall entitle the *Contractor* to an addition to the Prices or to a change in the Completion Date or to claim indemnities or otherwise any additional sum. The *Contractor* shall not be entitled to rely upon any survey, report or other document prepared by or on behalf of the *Employer* (including the Works Information and the Site Information) regarding any such matter as is referred to in this Clause and the *Employer* makes no representation or warranty as to the accuracy or completeness of any such survey, report or document (including the Works Information and the Site Information) or any representation or statement whether negligently or otherwise made therein. In the event of any conflict between this sub-Clause 20.4 and Clause 60.1(12) this sub-Clause shall have priority.
- 20.8 The *Contractor* will provide continual supervision of the works and perform and provide everything necessary for the organisation and co-ordination of the works.
- 21.4 Delete clauses 21.2 – 21.3 and replace with:
- 21.2 The Project Manager shall examine the design documents provided by the *Contractor* and shall be entitled to reject a design document as unsatisfactory only where he considers:
- 21.2.1 that the design document is not in accordance with the Works Information;
- 21.2.2 that the design document does not comply with any Statutory requirements or regulations (including the Building Regulations, the Crown Fire Standards and any Town Planning Clearance or Clearances) or byelaws and associated legislation in force at the time the work is undertaken; or
- 21.2.3 that, if it is used for construction, it would render the *Contractor's* design unfit for the purpose or purposes described in the Works Information. For the avoidance of any doubt, nothing in these conditions or contract documents should intend to impose a fitness for purpose obligation on the *Contractor*.

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- 21.3 Notwithstanding any approval by the Project Manager under clauses 21.2 or any other provision to the contrary in this contract, the *Contractor* accepts entire responsibility for the design (including all design work prepared before or after the date hereof (and whether carried out by or on behalf of the *Employer* or the *Contractor*)), all designs contained in the Works Information and/or contained in any other document forming part of this contract and for any mistake, inaccuracy, omission or discrepancy in such design or such documents.
- 21.4 Add a new Clause 21.4:
- 21.4 The Project Manager's (or Employer's) acceptance of the Contractor's design (or any part of it) does not change or remove or reduce the Contractor's responsibility to Provide the Works or his liability for the works including the design of the works
- 22.1 Delete Clause 22.1 and replace with (Updated DEFCON 703 - **Intellectual Property Rights - Vesting In The Authority**):
- "22.1
- 22.1.1 All intellectual property rights of any nature in the results generated in the performance of work under the contract and recorded in any written or other tangible form (the 'Results'), including rights in inventions, designs, computer software, databases, copyright works and information shall vest in and be the property of the *Employer*. The *Contractor* shall take all necessary measures to secure that vesting. On request, the *Contractor* shall demonstrate to the Employer's satisfaction that, where it has Sub-contracted work under the contract, it has secured that vesting in the work performed by its Subcontractors.
- 22.1.2 The *Contractor* shall take all necessary measures to irrevocably and unconditionally waive in favour of the *Employer* any and all moral rights and all other non-assignable rights conferred on the Contractors employees and Subcontractors in-respect of any copyright work created in carrying out the contract. On request, the *Contractor* shall demonstrate to the Employer's satisfaction that, where it has Sub-contracted work under the contract, it has secured that any and all moral rights in any copyright work created by the Contractors employees and its Subcontractors has been irrevocably and unconditionally waived in favour of the *Employer*.
- 22.1.3 The *Employer* may use, have used, copy and disclose the Results by itself or through third parties for any purpose whatsoever subject to the Contractor's patents and design rights (registered or unregistered) and to the rights of third parties not employed in the performance of work under the contract.
- 22.1.4 The *Employer* shall determine whether any of the Results should be protected by patent or other protection. The costs of patent or like protection shall be borne by the *Employer*. The *Contractor* shall assist the *Employer* in filing and executing documents necessary to secure that protection. The *Contractor* shall use all commercially reasonable endeavours to secure similar assistance from

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subcontractors as appropriate. The costs of such patent or other protection shall be borne by the *Employer*.

- 22.1.5 The *Contractor* shall mark any copyright work comprising Results with the legend: 'UK Ministry of Defence © Crown-owned copyright [insert the year of generation of the work]⁴.
- 22.1.6 Apart from intellectual property rights vested in the *Employer* by virtue of Clause 22.1.1, ownership of, or rights in, all other intellectual property are not transferred to the *Employer* by this Clause.
- 22.1.7 Unless otherwise agreed with the *Employer*, the *Contractor* shall retain a copy of the Results together with records of all work done for the purposes of the contract for six years after the completion of the contract.
- 22.1.8 The *Employer* shall have the right to require the *Contractor* to furnish to the *Employer* copies of any and all of the Results and such records for so long as they are retained by the *Contractor*. A reasonable charge for this service based on the cost of providing it will be borne by the *Employer* unless already included in the price of the contract.
- 22.1.9 The *Contractor* shall treat the Results as if received in confidence from the *Employer* and shall:
- (b) not copy, use or disclose to a third party any of the Results without the prior written consent of the *Employer*, except that the *Contractor* may without prior consent, copy and use the Results, and disclose the Results in confidence to its officers, employees and Subcontractors, to such extent as may be necessary for the performance of the contract or any Sub-contract under it or in the exercise of any right granted pursuant to Clause 22.1.12 of this Clause; and
 - (c) take all reasonable precautions necessary to ensure that the Results are treated in confidence by those of its officers, employees and Subcontractors who receive them and are not further disclosed or used otherwise than for the purpose of performing work or having work performed for the *Employer* under the contract or any Sub-contract under it.
- 22.1.10 The *Contractor* shall ensure that his employees are aware of his arrangements for discharging the obligations at Clause 22.1.8 and take such steps as may be reasonably practical to enforce such arrangements.
- 22.1.11 The confidentiality provisions of Clause 22.1.9 shall not apply to the Results or any part thereof to the extent that the *Contractor* can show that they were or have become published or publicly available for use otherwise than in breach of any provision of the contract or any other agreement between the parties.

⁴ To be filled in with the relevant information

- 22.1.12 The *Contractor* shall not be in breach of the confidentiality obligations contained in this Clause where it can show that any disclosure of the Results was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the *Contractor* shall ensure that the recipient of the Results is made aware of and asked to respect its confidentiality and, wherever possible and permitted by law, shall notify the *Employer* as soon as practicable after becoming aware that such disclosure is required. Such disclosure shall in no way diminish the obligations of the *Contractor* under this Clause.
- 22.1.13 For the purposes of Clause 22.1.13 "Background IPR" means any intellectual property rights, including patents or registered designs granted in respect of any patent or registered design applications, made before the date of issue of the Employer's first written ITN for the contract and any such applications made after that date in respect of inventions or designs first reduced to writing by the inventor(s) or designer(s) before that date or any intellectual property rights which have otherwise been developed independently of the contract (whether prior to the date of the ITN or otherwise). To the extent any Results delivered in accordance with this Clause makes any use of, or relies in any way on Background IPR supplied by *Contractor* (or Background IPR supplied by the *Contractor* is necessary or desirable to be able to use all or any part of the Results), the *Contractor* hereby provides the *Employer* a non-exclusive, irrevocable, worldwide, transferable, sub-licensable, royalty-free license to use such Background IPR for the purposes of exercising its rights in relation to the Results.
- 22.1.14 The *Contractor* shall be entitled to request consent from the *Employer* to re-use (under licence or otherwise) the Results and intellectual property rights vested in the *Employer* by virtue of Clause 22.1.1 for other purposes including, but not limited to, tendering for other work for the *Employer* or work for another UK Government department. Such consent shall be properly considered by the *Employer* taking into account matters such as national security and the rights of third parties.⁵

22A Insert a new Clause 22A (DEFCON 632):

⁵ If the Contractor intends to make any use of, or relies in any way on Background IPR as defined in Clause 22.1.13, the Contractor shall clearly identify its scope in order for the Employer to acknowledge it and decide whether to grant his approval for the Contractor to do so. If such approval is granted by the Employer:

1. If the Background IPR is a COTS software either:
 - a. the Contractor is required to procure a licence to the software for the Employer. The licence required is in the form of a DEFFORM 701 (Part 6 – Schedule 9 of this Contract); or
 - b. if the contractor is unable to secure a licence under the terms within DEFORM 701 (Part 6 – Schedule 9 of this Contract) then the Contractor must inform the Employer who will decide on the next course of action.
2. If the background is not COTS software then the Employer will require a licence on the same terms as described in Clause 22.1 of this Contract.

“Third Party Intellectual Property – Rights and Restrictions

- 22A.1 As he becomes aware, the *Contractor* shall promptly notify the *Employer* of:
- 22A.1.1 any invention or design the subject of Patent or Registered Design rights (or application therefor) owned by a third party which appears to be relevant to the performance of the contract or to use by the *Employer* of anything required to be done or delivered under the contract;
- 22A.1.2 any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical information) required for the purposes of the contract or subsequent use by the *Employer* of anything delivered under the contract and, where appropriate, the notification shall include such information as is required by Section 2 of the Defence Contracts Act 1958;
- 22A.1.3 any allegation of infringement of intellectual property rights made against the *Contractor* and which pertains to the performance of the contract or subsequent use by the *Employer* of anything required to be done or delivered under the contract.

Clause 22A.1 does not apply in respect of Articles or Services normally available from the *Contractor* as a commercial off the shelf (COTS) item or service.

- 22A.1.2 If the information required under this Clause has been notified previously, the *Contractor* may meet his obligations by giving details of the previous notification.

Patents and Registered Designs in the UK – COTS Articles or Services

- 22A.1.3 In respect of any question arising (by way of an allegation made to the *Employer* or *Contractor*, or otherwise) that the manufacture or supply under the contract of any Article or Service normally available from the *Contractor* as a COTS item or service is an infringement of a United Kingdom Patent or Registered Design not owned or controlled by the *Contractor* or the *Employer*, the *Contractor* shall, subject to the agreement of the third party owning such Patent or Registered Design, be given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The *Contractor* shall indemnify the *Employer*, its officers, agents and employees against any liability and cost arising from such allegation. This Clause will not apply if:

22A.1.3.1 the *Employer* has made or makes an admission of any sort relevant to such question;

22A.1.3.2 the *Employer* has entered or enters into any discussions on such question with any third party without the prior written agreement of the *Contractor*;

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22A.1.3.3 the *Employer* has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1977;

22A.1.3.4 legal proceedings have been commenced against the *Employer* or the *Contractor* in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.

22A.1.4 The indemnity in Clause 22A.1.3 does not extend to use by the *Employer* of anything supplied under the contract where that use was not reasonably foreseeable at the time of the contract.

22A.1.5 In the event that the *Employer* has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the *Employer* shall forthwith authorise the *Contractor* for the purposes of performing the contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.

Patents and Registered Designs in the UK - All other Articles or Services

22A.1.6 If a relevant invention or design has been notified to the *Employer* by the *Contractor* prior to the date of the contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the *Contractor* is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a United Kingdom Patent or United Kingdom Registered Design, for the purpose of performing the contract.

22A.1.7 If, under Clause 1, a relevant invention or design is notified to the *Employer* by the *Contractor* after the date of contract, then:

22A.1.7.1 if the owner (or his exclusive licensee) takes or threatens in writing to take any relevant action against the *Contractor*, the *Employer* shall issue to the *Contractor* a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and

22A.1.7.2 in any event, unless the *Contractor* and the *Employer* can agree an alternative course of action, the *Employer* shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.

Patents, Utility Models and Registered Designs outside the UK

22A.1.8 The *Employer* shall assume all liability and shall indemnify the *Contractor*, its officers, agents and employees against liability, including the Contractor's

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costs, as a result of infringement by the *Contractor* or his suppliers of any Patent, Utility Model, Registered Design or like protection outside the United Kingdom in the performance of the contract when such infringement arises from or is incurred by reason of the *Contractor* following any specification, statement of work or instruction in the contract or using, keeping or disposing of any item given by the *Employer* for the purpose of the contract in accordance with the contract.

- 22A.1.9 The *Contractor* shall assume all liability and shall indemnify the *Employer*, its officers, agents and employees against liability, including the Employer's costs, as a result of infringement by the *Contractor* or his suppliers of any Patent, Utility Model, Registered Design or like protection outside the United Kingdom in the performance of the contract when such infringement arises from or is incurred otherwise than by reason of the *Contractor* following any specification, statement of work or instruction in the contract or using, keeping or disposing of any item given by the *Employer* for the purpose of the contract in accordance with the contract.

Royalties and Other Licence Fees

- 22A.1.10 The *Contractor* shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the contract, where:

22A.1.10.1 a relevant discharge has been given under Section 2 of the Defence Contracts Act 1958, or relevant authorisation in accordance with Sections 55 or 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988 in respect of any intellectual property, or

22A.1.10.2 any obligation to make payments for intellectual property has not been promptly notified to the *Employer* under Clause 22A.1.1 of this Clause.

- 22A.1.11 Where an authorisation is given by the *Employer* under Clause 22A.1.5, Clause 22A.1.6 or Clause 22A.1.7, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the *Contractor* shall also be:

22A.1.11.1 released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the contract, and

22A.1.11.1 authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.

Copyright, Design Rights etc.

- 22A.1.12 The *Contractor* shall assume all liability and indemnify the *Employer* and its officers, agents and employees against liability, including costs as a result of:

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22A.1.12.1 infringement or alleged infringement by the *Contractor* or his suppliers of any copyright, database right, design right or the like protection in any part of the world in respect of any item to be supplied under the contract or otherwise in the performance of the contract;

22A.1.12.2 misuse of any confidential information, trade secret or the like by the *Contractor* in performing the contract;

22A.1.12.3 provision to the *Employer* of any information or material which the *Contractor* does not have the right to provide for the purpose of the contract.

22A.1.13 The *Employer* shall assume all liability and indemnify the *Contractor*, its officers, agents and employees against liability, including costs as a result of:

22A.1.13.1 infringement or alleged infringement by the *Contractor* or his suppliers of any copyright, database right, design right or the like protection in any part of the world in respect of any item provided by the *Employer* for the purpose of the contract but only to the extent that the item is used for the purpose of the contract;

22A.1.13.2 alleged misuse of any confidential information, trade secret or the like by the *Contractor* as a result of use of information provided by the *Employer* for the purposes of the contract, but only to the extent that Contractor's use of that information is for the purposes intended when it was disclosed by the *Employer*.

Authorisation and Indemnity - General

22A.1.14:

22A.1.14.1 The above represents the total liability of each party to the other under the contract in respect of any infringement or alleged infringement of Patent or other Intellectual Property Right owned by a third party

22A.1.14.2 Neither party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any Patent or other Intellectual Property Right owned by a third party.

22A.1.14.3 A party against whom a claim is made or action brought, shall promptly notify the other party in writing if such claim or action appears to relate to an infringement which is the subject of an indemnity or authorisation given under this Clause by such other party. The notification shall include particulars of the demands, damages and liabilities claimed or made of which the notifying party has notice.

22A.1.14.4 The party benefiting from the indemnity or authorisation shall allow the other party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other party may reasonably require.

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22A.1.14.5 Following a notification under sub-Clause 22A.1.14.3, the party notified shall advise the other party in writing within 30 days whether or not it is assuming conduct of the negotiations or litigation. In that case the party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other party.

22A.1.14.6 The party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other party fully informed of the conduct and progress of such negotiations.

22A.1.15:

22A.1.15.1 If at any time a claim or allegation of infringement arises in respect of copyright, database right, design right or breach of confidence as a result of the provision of any item by the *Contractor* to the *Employer*, the *Contractor* may at its own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach;

22A.1.15.1 The Parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party intellectual property rights.

Sub-contracts

22A.1.16 The *Contractor* shall secure from any subcontractor, the prompt notification to the *Employer* of the information required by Clause 22A.1.1 of this Clause. On receipt of any such notification the *Employer* will issue a written authorisation to the subcontractor in accordance with Clause 22A.1.7 of this Clause. Any such authorisation will be subject always to Clauses 22A.1.10, 22A.1.11 and 22A.1.14 as though the subcontractor was the *Contractor*. If any claim or action relevant to such authorisation arises, it shall be promptly notified to the *Employer*. The *Contractor* is not authorised to enter into any substantive correspondence in such matter nor in any way to act on behalf of the *Employer* in such claim or action. Any arrangement between the *Contractor* and subcontractor to enable the *Contractor* to underwrite his indemnities to the *Employer* under this Clause is a matter between the *Contractor* and the subcontractor.

General

22A.1.17 Nothing in this Clause shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

Authorisation By The Crown For Use Of Third Party Intellectual Property Rights

22A.1.18 Notwithstanding any other provisions of the contract and for the avoidance of doubt, award of the contract by the Employer and placement of any contract task under it does not constitute an authorisation by the Crown under Sections

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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 Employer under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific intellectual property involved."

22B Insert a new Clause 22B:

"GDPR

22B.1 The *Employer* and the *Contractor* shall comply with the provisions of Part 5, Schedule 3 of this contract."

22C Insert a new Clause 22C (DEFFCON 532b):

"Protection of Personal Data

Data Protection

22C.1 In connection with the Personal Data received under the contract, each Party undertakes to comply with its obligations under Data Protection Legislation and in particular, but without limitation, each Party shall 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.

22C.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the *Employer* is the Controller and the *Contractor* is the Processor. The only processing that the *Contractor* is authorised to do is listed in DEFFORM 532 (Part 6, Schedule 7 of this contract); by the *Employer* and may not be determined by the *Contractor*. The completed DEFFORM 532 (Part 6, Schedule 7 of this contract); shall form part of the Specification for the contract.

22C.3 The *Contractor* shall notify the *Employer* without undue delay if it considers that any of the Employer's instructions infringe the Data Protection Legislation. The *Employer* agrees that the *Contractor* shall not be required to provide legal advice to the *Employer* and that no notification (or absence of notification) by the *Contractor* will be construed as legal advice or a representation by the *Contractor*.

22C.4 The *Contractor* shall provide all reasonable assistance to the *Employer* 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 *Employer*, include:

22C.4.1 a systematic description of the envisaged processing operations and the purpose of the processing;

22C.4.2 an assessment of the necessity and proportionality of the processing operations in relation to the services provided under the contract;

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22C.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

22C.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

22C.5 The *Contractor* shall, in relation to any Personal Data processed in connection with its obligations under the contract:

22C.5.1 process that Personal Data only in accordance with DEFFORM 532 (Part 6, Schedule 7 of this contract), unless the *Contractor* is required to do otherwise by Law. If it is so required the *Contractor* shall promptly notify the *Employer* before processing the Personal Data unless prohibited by Law;

22C.5.2 ensure that it has in place Protective Measures, including those set out in DEFFORM 532 (Part 6, Schedule 7 of this contract), as appropriate to protect against a Data Loss Event, which the *Employer* may acting reasonably reject (but failure to reject shall not amount to approval by the *Employer* of the adequacy of the Protective Measures), having taken account of the:

22C.5.2.1 nature of the data to be protected;

22C.5.2.2 harm that might result from a Data Loss Event;

22C.5.2.3 state of technological development; and

22C.5.2.4 cost of implementing any measures;

22C.5.3 ensure that:

22C.5.3.1 subject to Clause 22C.5.1., the *Contractor* Personnel do not process Personal Data except in accordance with the contract (and in particular DEFFORM 532 (Part 6, Schedule 7 of this contract));

22C.5.3.2 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 *Employer* or as otherwise permitted by the contract;

(c) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU unless the prior written consent of the *Employer* has been obtained and the following Clauses are fulfilled:

(1) the *Employer* or the *Contractor* has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or DPA 2018 Article 73) as determined by the *Employer*;

(2) the Data Subject has enforceable rights and effective legal remedies;

(3) 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 *Employer* in meeting its obligations); and

(4) the *Contractor* complies with any reasonable instructions notified to it in advance by the *Employer* with respect to the processing of the Personal Data; and

(e) at the written direction of the *Employer*, delete or return Personal Data (and any copies of it) to the *Employer* on termination of the contract unless the *Contractor* is required by Law to retain the Personal Data.

22C.6 Subject to Clause 22C.5, the *Contractor* shall notify the *Employer* without undue delay if, in connection with Personal Data processed under the contract, it:

22C.6.1 receives a Data Subject Request (or purported Data Subject Request);

22C.6.2 receives a request to rectify, block or erase any Personal Data;

22C.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

22C.6.4 receives any communication from the Information Commissioner or any other regulatory authority;

22C.6.5 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

22C.6.6 becomes aware of a Data Loss Event.

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- 22C.7 The Contractor's obligation to notify under Clause 2.C.6 shall include the provision of further information to the *Employer* in phases, as details become available.
- 22C.8 Taking into account the nature of the processing, the *Contractor* shall provide the *Employer* with assistance, insofar as possible, in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 2.C.6 (and insofar as possible within the timescales reasonably required by the *Employer*) including by promptly providing:
- 22C.8.1 the *Employer* with full details and copies of the complaint, communication or request;
- 22C.8.2 such assistance as is reasonably requested by the *Employer* to enable the *Employer* to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- 22C.8.3 the *Employer*, at its request, with any Personal Data it holds in relation to a Data Subject;
- 22C.8.4 assistance as requested by the *Employer* following any Data Loss Event;
- 22C.8.5 assistance as requested by the *Employer* with respect to any request from the Information Commissioner's Office, or any consultation by the *Employer* with the Information Commissioner's Office.
- 22C.9 The *Contractor* shall maintain complete and accurate records and information as necessary to fulfil its obligations under Clause 22.C.8.
- 22C.10 The *Contractor* shall allow for audits of its Data Processing activity by the *Employer* or the Employer's designated auditor as required to demonstrate the Employer's compliance with its obligations as a Controller. Such audits will be conducted in accordance with general audit conditions contained in the contract.
- 22C.11 The *Contractor* shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 22C.12 Before allowing any Sub-processor to process any Personal Data related to the contract, the *Contractor* must:
- 22C.12.1 notify the *Employer* in writing of the intended Sub-processor and processing;
- 22C.12.2 obtain the written consent of the *Employer*;
- 22C.12.3 enter into a written contract with the Sub-processor which give effect to the terms set out in this Clause such that they apply to the Sub-processor; and

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22.C.12.4 provide the *Employer* with such information regarding the Sub-processor as the *Employer* may reasonably require.

22C.13 The *Contractor* shall remain fully liable for all acts or omissions of any Sub-processor.

22C.14 The *Contractor* may, at any time on not less than 30 Business days' notice, revise this Clause 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 the contract).

22C.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The *Employer* may on not less than 30 Business Days' notice to the *Contractor* amend the contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

22C.16 Any contract amendments resulting from Clause 22.C.14 and/or 22.C.15 shall be conducted in accordance with any change control procedure as set out in the contract.

24A Insert new Clause 24A:

"Sustainability

24A.1 The *Contractor* shall take all reasonable steps to procure the observance of the Best Environmental Practice and Environmental Laws (including any Statutory Requirements relating to Best Environmental Practice and Environmental Laws) and the DREAM Requirements related to the subject matter or the execution of the contract by any servants, employees or agents of the *Contractor* and any subcontractors engaged in the performance of the contract.

24A.2 If the *Contractor* becomes aware of any prosecution or proceedings, for criminal breaches of the Best Environmental Practice and Environmental Laws (including any Statutory Requirements relating to Best Environmental Practice and Environmental Laws) and the DREAM Requirements related to the subject matter or the execution of the contract, against the *Contractor*, any servants, employees or agents of the *Contractor* and any subcontractors engaged in performance of the contract, the *Contractor* shall immediately notify the *Employer* at the address specified in the contract.

24A.3 Any convictions during the period of the contract for criminal breaches of the Best Environmental Practice and Environmental Laws (including any Statutory Requirements relating to Best Environmental Practice and Environmental Laws) and the DREAM Requirements related to the subject matter or the execution of the contract by the *Contractor* or any of the Contractor's directors/partners or senior management who have powers of representation, decision or control, shall be regarded as a material breach of this contract. In such cases and the *Employer* shall have the right to terminate the contract in accordance with the provisions of Clause 90B (DEFCON 514).

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- 24A.4 The *Contractor* shall take all reasonable steps to ensure that all activities under this contract shall comply with certified environmental management standards based on. ISO14001 or equivalent.
- 24A.5 The *Contractor* shall include the dependencies for the sustainable procurement objectives in the contract risk register and in the risk management plan for the contract, with appropriate review points. Where there is no requirement under the contract for a risk management plan the *Contractor* shall submit a sustainable procurement plan for agreement with the *Employer*.
- 24A.6. The risk management plan or sustainable procurement plan shall include:
- 24A.6.1 the actions required to fulfil the sustainable procurement objectives of the contract and the time-lines associated with such actions;
- 24A.6.2 reporting schedule on implementing the plan, as required by the *Employer*.
- 24A.6.3 an indication of any areas where the *Employer* and the *Contractor* will need to work together to enhance the sustainable delivery of the contract;
- 24A.6.4 a schedule for joint audit and review of the key performance indicators by the *Employer* and the *Contractor*, as required by the *Employer*; and
- 24A.6.5 a flow-down of the plan and actions to Subcontractors where appropriate.
- 24A.7 If the information required under this Clause has been provided previously to the *Employer* or Other Government Department by the *Contractor*, the *Contractor* may satisfy these requirements by giving details of the previous notification and confirming they remain valid.
- 24A.8 In order to satisfy the *Employer* that the Works and plant and materials being delivered in accordance with the sustainable procurement objectives in, this contract and Works Information, the FAC-1 Alliance framework contract, Alliance contract Specification, the *Contractor* shall work jointly with the *Employer* to develop Key Performance Indicators and shall seek to agree a method of independent verification of these Indicators.
- 24A.9 Key Performance Indicators arising from the delivery of the Works and plant and materials shall include but not be limited to the following:
- 24A.9.1 The rate of arising of reportable incidents under UK or (where appropriate) other equivalent Health and Safety legislation.
- 24A.9.2 The “Carbon footprint” of the contract; this being the kilograms of CO2 equivalence of all greenhouse gas emissions arising from all prime and sub-tier activity connected with the delivery of the Works and plant and materials. This shall include but not be limited to emissions derived from the:
- 24A.9.2.1 purchase of electricity;
- 24A.9.2.2 direct use of gas or oil for heating;

24A.9.2.3 use of energy in the supply chain;

24A.9.2.4 movement of personnel and material in support of the service.

24A.9.3 The quantities of surplus material of all descriptions used in the delivery of the Works and plant and materials at prime or sub-tier level which are re-used, recycled or disposed of and the method of such disposal. For the purposes of this Clause "surplus material" shall include but not be limited to:

24A.9.3.1 Paper, card and cardboard,

24A.9.3.2 Wood and wood containing products,

24A.9.3.3 Ferrous and non-ferrous metals,

24A.9.3.4 Construction materials

24A.9.3.5 Solvents, paints and adhesives,

24A.9.3.6 IT equipment

24A.9.3.7 Equipment systems and related assemblies and subassemblies.

24A.9.4 Measures taken by the *Contractor* or its first-tier subs to enhance the local environment in the environs of its sites delivering the Works and plant and materials.

24A.10 The *Contractor* is encouraged to bring to the attention of the *Employer* any measures which might promote sustainable procurement from a social, economic and environmental point of view.

25A Insert a new Clause 25A (DEFCON 681):

"Decoupling Clause - Sub-contracting With The Crown

25A.1 If the *Contractor* shall enter into any other contract with the Crown relating in any way to the subject matter of the contract, then, no breach by the Crown of that other contract nor any other act or omission nor any written or oral statement nor any representation whatsoever of or by the Crown its servants or agents or other contractors relating to or connected with any other contracts as aforesaid shall, regardless of any negligence on its part or their part:

25A.1.1 give the *Contractor* any right under the contract to an extension of time or additional payment or damages or any other relief or remedy whatsoever against the *Employer*;

25A.1.2 affect, modify, reduce or extinguish either the obligations of the *Contractor* or the rights or remedies of the *Employer* (including without limitation the right to liquidated damages under the contract); or

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25A.1.3 be taken to amend, add to, delete or waive any term or Clause of the contract.”

26.5 Insert a new Clause 26.5:

“Small and Medium Sized Enterprises (SMEs)

26.5.1.1 The *Contractor* is required to take all reasonable steps to engage SMEs as Subcontractors and to seek to ensure that no less than the percentage of the Subcontractors stated in the Contract Data (the “**SME Percentage**”) are SMEs or that a similar proportion of the Defined Cost of the *works* is undertaken by SMEs.

26.5.1.2 The *Contractor* is required to report to the *Client* in its regular contract management monthly reporting cycle the numbers of SMEs engaged as Subcontractors and the value of the Defined Cost of the *works* that has been undertaken by SMEs.

26.5.1.3 Where available, the *Contractor* is required to tender its Sub-contracts using the same online electronic portal as was provided by the *Client* for the purposes of tendering this contract.

26.5.1.4 The *Contractor* is to ensure that the terms and Clauses used to engage Subcontractors are no less favourable than those of this contract. A reason for the *Project Manager* not accepting Sub-contract Clauses proposed by the *Contractor* is that they are unduly disadvantageous to the Subcontractor.

Apprenticeships

26.5.2.1 The *Contractor* takes all reasonable steps to employ apprentices, and reports to the *Employer* the numbers of apprentices employed and the wider skills training provided, during the delivery of the *works*.

26.5.2.2 The *Contractor* takes all reasonable steps to ensure that no less than the percentage of its employees stated in the Contract Data (the “**Apprenticeship Percentage**”) are on formal apprenticeship programmes or that a similar proportion of hours worked in delivering the *works*, (which may include support staff and Subcontractors) are provided by employees on formal apprenticeship programmes.

26.5.2.3 The *Contractor* makes available to its employees and Subcontractors working on the contract, information about the Government’s Apprenticeship programme and wider skills opportunities.

26.5.2.4 The *Contractor* provides any further skills training opportunities that are appropriate for its employees engaged in carrying out the *works*.

26.5.2.5 The *Contractor* provides a written report detailing the following measures in its regular contract management monthly reporting cycle and is prepared to discuss apprenticeships at its regular meetings with the *Project Manager*.

- the number of people during the reporting period employed on the contract, including support staff and Subcontractors;

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- the number of apprentices and number of new starts on apprenticeships directly initiated through the procurement process;
- the percentage of all employees taking part in an apprenticeship programme;
- if applicable, an explanation from the *Contractor* as to why it is not managing to meet the specified percentage target;
- actions being taken to improve the take up of apprenticeships;
- other training/skills development being undertaken by employees in relation to this contract, including:
 - (i) work experience placements for 14 to 16 year olds;
 - (ii) work experience /work trial placements for other ages;
 - (iii) student sandwich/gap year placements;
 - (iv) graduate placements;
 - (v) vocational training;
 - (vi) basic skills training; and
 - (vii) on site training provision/ facilities.”

26.6 Insert a new Clause 26.6:

“Sub-contracting to Supported Employment Enterprises

- 26.6.1 When placing Sub-contracts, the *Contractor* is asked to give consideration, as far as possible, to placing work on a competitive basis with Subcontractors that are Supported Businesses.
- 26.6.2 For the purpose of Clause 26.6.1 to 26.6.3, “Supported Businesses” means establishments or services where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market.
- 26.6.3 The *Contractor* can find details of Supported Businesses in the United Kingdom on the Supported Business Directory that is British Association for Supported Employment at Unit 4, 200 Bury Road, Tottington, Lancashire BL8 3DX (Telephone: 01204 880733) or <http://business.base-uk.org/directory>.”

26.7 Insert a new Clause 26.7:

“Provision of steel

- 26.7.1 The Supplier shall ensure that all Sub-contracts, which the Supplier intends to procure for the provision of steel following date of this contract, and which the

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Supplier has not, before the date of this contract, already awarded to a particular Subcontractor, are:

26.7.1.1 advertised on Defence Contracts Online or Contracts Finder, or both; and

26.7.1.2 awarded following a fair, transparent and competitive process proportionate to the nature and value of the Sub-contract.

26.7.2 Any Sub-contract awarded by the Supplier pursuant to Clause 26.7 must contain suitable provisions to impose, as between the parties of the Sub-contract:

26.7.2.1 requirements to the same effect as those in Clause 26.7; and

26.7.2.1 a requirement for the Subcontractor to include in any Sub-contract which it in turn awards, suitable provisions to impose, as between the parties to that Sub-contract, requirements to the same effects as those required by this Clause 26.6.

26.7.3 For the purposes of Clauses 26.7 “Sub-contract” means a contract between two or more suppliers, at any stage of remoteness from the *Employer* in a subcontracting chain, made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this contract and “Subcontractor” means any third party with whom (a) the Supplier enters into a Sub-contract; or (b) a third party under (a) enters into a Sub-contract; or the servants or agents of that third party.”

26.8 Insert a new Clause 26.8 (DEFCON 534):

“Sub-contracting and prompt payment

26.8.1 Sub-contracting any part of the contract shall not relieve the *Contractor* of any of the Contractor’s obligations, duties or liabilities under the contract.

26.8.2 Where the *Contractor* enters into a Sub-contract he shall cause a term to be included in such Sub-contract:

26.8.2.1 providing that where the Subcontractor submits an invoice to the *Contractor*, the *Contractor* will consider and verify that invoice in a timely fashion;

26.8.2.2 providing that the *Contractor* shall pay the Subcontractor any sums due under such an invoice no later than a period of 30 days from the date on which the *Contractor* has determined that the invoice is valid and undisputed;

26.8.2.3 providing that where the *Contractor* fails to comply with paragraph 26.8.2.1 above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of paragraph 26.8.2.2 after a reasonable time has passed; and

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26.8.2.4 requiring the counterparty to that Sub-contract to include in any Sub-contract which it awards, provisions having the same effect as clauses 26.8.2.1 to 26.8.2.4 of this Clause.”

26.9 Insert a new Clause 26.9 (DEFCON 674):

“Advertising Sub-contracts (Public Contracts Regulations 2015 only)

26.9.1 The *Contractor* shall promptly notify the *Employer*, if the *Contractor* intends to award a Sub-Contract.

26.9.2 In addition to and without prejudice to the operation of Regulation 71, the *Contractor* shall, subject to clauses 26.9.3 and 26.9.4:

26.9.2.1 publish an advertisement on (and provide all information required by) Defence Contracts Online in respect of all Sub-Contract opportunities arising during the Contract Period;

26.9.2.2 not design and/or conduct the procurement process or procedure in respect of any Sub-Contract with the intention of unduly favouring or disadvantaging one or more economic operators;

26.9.2.3 within 30 (thirty) days after the date on which each or any Sub-Contract shall have been awarded update the relevant advertisement on Defence Contracts Online in respect of such Sub-Contract identifying the name and registered office address details of the Subcontractor so appointed and providing a description of the subject matter and the value (excluding VAT) of such Sub-Contract;

26.9.2.4 provide reports to the Commercial Officer, if so requested, on the number, type and value of Sub-Contract opportunities placed on Defence Contracts Online and awarded in its supply chain during the Contract Period; and

26.9.2.5 promote Defence Contracts Online to all Sub-Contractors and encourage those operators to register on it.

26.9.3 The Contractor’s obligations provided in clauses 26.9.2.1 to 26.9.2.5 (inclusive) shall not apply where any of the following applies in relation to a Sub-Contract:

26.9.3.1 if that Sub-Contract shall have been notified by the *Contractor* to the *Employer* as part of the Contractor's tender submission; or

26.9.3.2 if the *Employer* agrees in writing that clauses 26.9.2.1 to 26.9.2.5 (inclusive) shall not apply in connection with that Sub-contract.

26.9.4 The *Contractor* shall not advertise or publicise in any manner the subject matter and/or any provision or provisions of any Sub-Contract and/or the contract where the *Employer* notifies the *Contractor* in writing directing the *Contractor* not to do so.

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26.9.5 *Employer* may issue guidance on how to advertise Sub-contract opportunities on Defence Contracts Online from time to time and the *Contractor* shall comply with that guidance so issued in relation to the advertisement of any Sub-Contract.”

27.5 Insert a new Clause 27.5

“Confidentiality and Information Sharing

27.5.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this contract, each party shall:

27.5.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

27.5.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent;

27.5.1.3 immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information; and

27.5.1.4 notify the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

27.5.2 The Clause above shall not apply to the extent that:

27.5.2.1 such disclosure is a requirement of the *law of the contract* placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause Z10 (Freedom of Information);

27.5.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

27.5.2.3 such information was obtained from a third party without obligation of confidentiality;

27.5.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this contract; or

27.5.2.5 it is independently developed without access to the other party's Confidential Information.

27.5.3 The *Contractor* may only disclose the *Employer's* Confidential Information to the *Contractor* Personnel who are directly involved in the carrying out of the *works* and who need to know the information, and shall ensure that such *Contractor* Personnel are aware of and shall comply with these obligations as to confidentiality.

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The *Contractor* shall not, and shall procure that the *Contractor* Personnel do not, use any of the *Employer* Confidential Information received otherwise than for the purposes of this contract.

- 27.5.4 The *Contractor* may only disclose the *Employer* Confidential Information to the *Contractor* Personnel who need to know the information, and shall ensure that such *Contractor* Personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any *Contractor* Personnel causes or contributes (or could cause or contribute) to the *Contractor* breaching its obligations as to confidentiality under or in connection with this contract, the *Contractor* shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any *Contractor* Personnel, the *Contractor* shall provide such evidence to the *Employer* as the *Employer* may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the *Contractor* is taking appropriate steps to comply with this Clause, including copies of any written communications to and/or from *Contractor* Personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with *Contractor* Personnel in connection with obligations as to confidentiality.
- 27.5.5 At the written request of the *Employer*, the *Contractor* shall procure that those members of the *Contractor* Personnel identified in the *Employer's* notice signs a confidentiality undertaking prior to commencing any work in accordance with this contract.
- 27.5.6 Nothing in this contract shall prevent the *Employer* from disclosing the *Contractor's* Confidential Information:
- 27.5.6.1 to any Crown Body or any other Contracting Bodies. All Crown Bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Body;
- 27.5.6.2 to any consultant, contractor or other person engaged by the *Employer* or any person conducting an Office of Government Commerce gateway review;
- 27.5.6.3 for the purpose of the examination and certification of the *Employer's* accounts; or
- 27.5.6.4 for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Employer* has used its resources.
- and for the purposes of the foregoing, disclosure of the *Contractor's* Confidential Information shall be on a confidential basis and subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the *Employer* under this Clause 27.5.6.

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- 27.5.7 The *Employer* shall use all reasonable endeavours to ensure that any government department, Contracting Body, employee, third party or Subcontractor to whom the *Contractor's* Confidential Information is disclosed pursuant to the above Clause is made aware of the *Employer's* obligations of confidentiality.
- 27.5.8 Nothing in this Clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR
- 27.5.9 The *Employer* may disclose the Confidential Information of the *Contractor*:
- 27.5.9.1 on a confidential basis to any Crown Body for any proper purpose of the *Employer* or the relevant Crown Body;
- 27.5.9.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 27.5.9.3 to the extent that the *Employer* (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 27.5.9.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any Crown Body (including any benchmarking organisation) for any purpose connected with this contract;
- 27.5.9.5 on a confidential basis for the purpose of the exercise of its rights under this contract; or
- 27.5.9.6 on a confidential basis to a proposed successor body of the *Employer* 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 *Employer* under this Z Clause.
- 27.6 Insert a new Clause 27.6:

“Health and Safety

- 27.6.1 The *Contractor* will be the Principal *Contractor* and Principal Designer as defined by and for the purposes of the CDM Regulations.
- 27.6.2 The *Contractor* warrants that it:
- 27.6.2.1 is fully aware of his obligations as Principal *Contractor* and Principal Designer under the CDM Regulations and possesses the requisite degree of competence and level of resources to meet those obligations; and

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27.6.2.2 will ensure that all Subcontractors and the *Contractor's* design consultant are fully aware of their obligations under the CDM Regulations (in particular the provisions of Regulation 11 and 18 being duties of designers) and are fully competent and are adequately resourced to meet those obligations."

27.7 Insert a new Clause 27.7 (DEFCON 602A):

"Quality Assurance (with deliverable quality plan)

27.7.1 The *Contractor* shall submit the Deliverable Quality Plan as defined in AQAP 2105 to the *Employer* in accordance with the contract.

27.7.2 When agreed by the *Employer*, the Deliverable Quality Plan shall be incorporated into the contract. Notwithstanding that the Deliverable Quality Plan will have been seen and agreed by the *Employer*, the *Contractor* shall be solely responsible for the accuracy, suitability and applicability of the Deliverable Quality Plan.

27.8 Insert a new Clause 27.8 (DEFCON 608)

"Access and facilities to be provided by the *Contractor*

27.8.1 The *Contractor* shall provide to the Employer's Representatives, following reasonable notice, relevant accommodation / facilities, at no direct cost to the *Employer*, and all reasonable access to its premises for monitoring the Contractor's progress and quality standards in performing the contract.

27.8.2 As far as reasonably practical, the *Contractor* shall ensure that the provisions of Clause 27.8.1 are included in their Sub-contracts with those suppliers identified in the contract. The *Employer*, through the *Contractor*, shall arrange access to such subcontractors.

27A Add new Clause 27A (DEFCON 604):

"Progress reports

27A.1 The *Contractor* shall supply the *Employer* with reports on the progress of the contract.

27A.2 Reports shall detail as a minimum:

27A.2.1 Performance / Delivery of the *Contractor* Deliverables;

27A.2.2 Risks and Opportunities;

27A.2.3 Any other information specified in the contract;

27A.2.4 Any other information reasonably requested by the *Employer*.

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27A.3 Reports shall be provided to the addressees in boxes 1 and 2 of the DEFFORM 111 (Part 6, Schedule 2 of this contract) and in the form and frequency specified in the contract.

27A.4 The provision of these reports by the *Contractor* and receipt by the *Employer* shall be in accordance with DEFCON 525 (Acceptance). These reports shall not prejudice any rights or obligations of the *Employer* or the *Contractor* under the contract.

27B Insert a new Clause 27B (DEFCON 525):

“Acceptance

27B.1 Subject to Clause 27B.2 of this Clause, acceptance of an Article occurs at the time and in accordance with the procedure specified in the contract or, if none is so specified:

27B.1.1 where the contract specifies a time limit within which to reject, that time has elapsed;

27B.1.2 where the contract specifies no time limit within which to reject, a reasonable time has elapsed since delivery has occurred; or

27B.1.3 when it has been delivered and the *Employer* does any act in relation to it which is inconsistent with the Contractor's ownership.

27B.2 The *Employer* shall not have accepted an Article:

27B.2.1 merely because the *Employer* asks for, or agrees to, its repair by or under an arrangement with the *Contractor*; or

27B.2.2 unless otherwise specified in the contract, merely because the Article has been delivered to a third party.

27B.3 Unless otherwise specified in the contract, the *Employer* shall not be deemed to have accepted an Article unless it has had a reasonable opportunity to examine it after delivery for the purpose:

27B.3.1 of ascertaining whether it is in conformity with the contract; or

27B.3.2 in the case of a contract for sale by sample, of comparing the bulk with the sample.

27B.4 Acceptance shall be governed by this Clause to the exclusion of any common law or Statutory provision relating to acceptance of goods.

27B.5 Where software is to be supplied as a requirement of the contract it will be subject to the provisions of this Clause as if it were an Article.

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27C Insert a new Clause 27C (DEFCON 524)

“Rejection

- 27C.1 Prior to acceptance by the *Employer* in accordance with DEFCON 525 (Clause 27B of this contract), the *Employer* may reject any Article (whether or not after inspection) which does not conform with the requirements of the contract.
- 27C.2 The *Employer* may (whether or not after inspection) reject the whole of any consignment of the Articles if:
- 27C.2.1 such proportion or percentage of the Articles in that consignment as the contract may specify as being appropriate for the purposes of this Clause, do not conform with the requirements of the contract; or
- 27C.2.2 samples, whether of Articles or of the material in the Articles, taken randomly from that consignment do not conform with the requirements of the contract.
- 27C.3 For the purposes of this Clause, an item of Issued Property in connection with which the *Contractor* is required under the contract to carry out any Service, shall, following completion of the Service, be subject to rejection under Clauses 27C.1 and 27C.2 of this Clause as if it was an Article, but without prejudice to the Employer's proprietary and other rights in that item of Issued Property. The provisions of Clauses 27C.4, 27C.5, 27C.6 and 27C.7 shall similarly apply to such items.
- 27C.4 Subject to DEFCON 524A and Clause 27C.7 of this Clause, the *Contractor* shall at his own expense and within fourteen days of being notified of the rejection, or within any other period specified in the contract, remove any Article or consignment which the *Employer* has rejected.
- 27C.5 If the *Contractor* fails to remove the rejected Article or consignment in accordance with Clause 27C.4 of this Clause, the *Employer* may return it to the *Contractor* at the Contractor's risk and expense.
- 27C.6 The *Contractor* shall at his own expense and within the contractual period for delivery, or within such further reasonable period as the *Employer* may allow, supply Articles that conform with the requirements of the contract.
- 27C.7 The *Contractor* may object in writing to a notification of rejection by the *Employer* within the period specified at Clause 27C.4. If the objection is not resolved within a reasonable time, it shall be treated as a dispute within the meaning of DEFCON 530 (Clause 9 of this agreement). 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 *Employer*.

27D Insert new Clause 27D (DEFCON 647):

“Financial Management Information

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- 27D.1 As a minimum the *Contractor* shall report the Financial Management Information to the *Employer* as detailed in Annex A to this DEFCON (Schedule 4 – Annex A). The *Contractor* shall provide Financial Management Information in the format at Annex B to this Clause (Schedule 4 – Annex B), to the addressees specified in the contract within:
- 27D.1.1 []⁶ Business days of the start of the contract;
- 27D.1.1 after a change that exceeds either 5% of the contract value or £250k; and
- 27D.1.1 at a frequency specified in the contract.
- 27D.2 The *Contractor* shall retain the Financial Management Information and supporting financial records in accordance with DEFCON 609 (Clause 27F of this contract).
- 27E [Insert new Clause 27E (DEFCON 605):

“Financial Reports

- 27E.1 The *Contractor* shall submit to the *Employer* Financial Reports on DEFFORM 136 (Part 6, Schedule 4 of this contract) (or in such other form or frequency as the *Employer* may specify in the contract) and to the addressees as specified in the contract.
- 27E.2 Reports shall be provided to the addressees in boxes 1 and 2 of the DEFFORM 111 (Part 6, Schedule 2 of this contract) and at the frequency specified in the contract.
- 27E.3 The Financial Reports specified in the contract are in addition to any Financial Reports requested under DEFCON 647 (Clause 27D of this contract) (Accruals Information).
- 27F Insert new Clause 27F (DEFCON 609):

“Contractor’s records

- 27F.1 The *Contractor* and its Subcontractors shall maintain all records specified in and connected with the contract (expressly or otherwise), and make them available to the *Employer* when requested on reasonable notice.
- 27F.2 The *Contractor* and its Subcontractors shall also permit access to relevant records that relate to the contractual obligations to supply goods or services under the contract, held by or controlled by them and reasonably required by the Comptroller and Auditor General, their staff and any appointed representative of the National Audit Office, and provide such explanations and information as reasonably necessary for the following purposes:

⁶ Insert value

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- 27F.2.1 to enable the National Audit Office to carry out the Employer's statutory audits and to examine and/or certify the Employer's annual and interim report and accounts; and
- 27F.2.2 to enable the National Audit Office to carry out an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Employer* has used its resources.
- 27F.3 With regard to the records made available to the *Employer* under Clause 1 of this Clause, and subject to the provisions of DEFCON 531 (Clause 19D of this contract) (Disclosure of Information), the *Contractor* shall permit records to be examined and if necessary copied, by the *Employer*, or Representative of the *Employer*, as the *Employer* may require.
- 27F.4 Unless the contract specifies otherwise the records referred to in this Clause shall be retained for a period of at least 6 years from the:
- 27F.4.1 end of the contract term;
- 27F.4.2 termination of the contract; or
- 27F.4.3 final payment, whichever occurs latest.
- 27G Insert a new Clause 27G (DEFCON 642)

"Progress Meetings

- 27G.1 The *Contractor* shall attend progress meetings at the frequency and times specified in the contract. Any additional meetings shall be at no cost to the *Employer*.
- 27G.1.1 The Employer's Project Manager and acquisition team members shall attend each meeting and will advise the *Contractor* in advance of the expertise of his supporting team.
- 27G.1.2 The Contractor's Project Manager shall be required to attend each meeting supported by personnel suitably qualified to respond to the areas of expertise notified by the *Employer*.
- 27G.2 All meetings will be held at a location to be agreed between the *Contractor* and the Project or Equipment Support Manager.
- 27G.3 Unless stated otherwise the *Contractor* shall be responsible for making a record of the discussions and decisions of the meeting. These will be forwarded within two weeks of the meeting, in draft form, to the Commercial Officer at the address given in boxes 1 and 2 of the DEFFORM 111 (Part 6, Schedule 2 of this contract), for agreement prior to the final version being issued.
- 27H Insert a new Clause 27H (DEFCON 678):

“SME Spend data collection

- 27H.1 The *Contractor* shall by 30 June (or such alternative date agreed between the parties (acting reasonably) in writing having regard for the end date of the Contractor's financial year)) each year during the Contract Period at (subject to the operation of Clause 28.4) no additional cost, charge and expense to the *Employer* provide to the *Employer* the information identified in DEFFORM 139 (Part 6, Schedule 5 of this contract) (as amended by the *Employer* from time to time and with each such amended version taking effect in accordance with Clause 27.3), including:
- 27H.1.1 the total Revenue on and prior to the Reporting Date in respect of the relevant financial year immediately prior to the Reporting Date;
- 27H.1.2 the total value of Sub-contract Revenue paid under the contract in respect of the relevant financial year immediately prior to the Reporting Date; and
- 27H.1.3 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.
- 27H.2 The *Employer* may issue from time to time guidance to the *Contractor* in relation to the completion of DEFFORM 139 (Part 6, Schedule 5 of this contract) (and the *Contractor* shall not unreasonably refuse to comply with any such guidance so issued when completing such DEFFORM and complying with this Clause).
- 27H.3 The *Employer* may at any time during the Contract Period change the reporting template in DEFFORM 139 (Part 6, Schedule 5 of this contract), provided that the *Employer* shall have given a minimum of 30 (thirty) 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 the contract.
- 27H.4 Where the *Contractor* is reasonably likely to incur additional costs arising from any change to the reporting template in DEFFORM 139 (Part 6, Schedule 5 of this contract) notified by the *Employer* to the *Contractor* pursuant to Clause 4, the *Contractor* may notify the *Employer* to such effect providing at the same time a *Contractor* Change Proposal (as defined in DEFCON 620 (Clause 13.13) including the information identified in paragraph 3 b. of DEFCON 620 (Clause 13.13). On and from the date on which the *Employer* receives such notification and proposal the parties shall operate, and comply with their respective obligations under, paragraphs 3 and 4 of DEFCON 620 (Clause 13.13) in relation to such change (but not paragraphs 1 and 2 of DEFCON 620 (Clause 13.13), which shall not apply in relation to such change) and for the purposes of this Clause all references to "*Contractor* Proposal" shall be construed as references to the "*Contractor* Change Proposal" and "*Employer* Notice of Change" shall be construed as references to the *Employer's* notice issued pursuant to Clause 4.

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27H.5 Notwithstanding the requirements of DEFCON 609 (Clause 27F of this contract), the *Contractor* shall retain the information identified in Clause 2 of this Clause and supporting records for a period of 24 (twenty-four) months commencing on the date of their provision pursuant to Clause 2 of this Clause.

27I Insert new Clause 27I (DEFCON 691)

“Timber and wood derived products

27I.1 All Timber and Wood-Derived products supplied by the *Contractor* under the contract (including all Timber and Wood-Derived Products supplied by Subcontractors):

27I.1.1 shall comply with the Contract Specification; and

27I.1.2 must originate either;

27I.1.2.1 from a Legal and Sustainable source; or

27I.1.2.2 from a FLEGT-licensed or equivalent source.

27I.2 In addition to the requirements of Clause 27I.1 above, all Timber and Wood-Derived products supplied by the *Contractor* under the contract (including all Timber and Wood-Derived products supplied by Subcontractors) shall originate from a forest source where management of the forest has full regard for:

27I.2.1 identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;

27I.2.2 mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and

27I.2.3 safeguarding the basic labour rights and health and safety of forest workers.

27I.3 If requested by the *Employer*, the *Contractor* shall provide to the *Employer* evidence that the Timber and Wood-Derived Products supplied to the *Employer* under the contract complies with the requirements of Clause 27I.1 or Clause 27I.2, or both.

27I.4 The *Employer* reserves the right at any time during the execution of the contract and for a period of 5 years from final delivery under the contract to require the *Contractor* to produce the evidence required for the Employer's inspection within 14 days of the Employer's request.

27I.5 If the *Contractor* has already provided the *Employer* with the evidence required under Clause 27I.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 27I.2 and 27I.3.

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- 271.6 The *Contractor* shall maintain records of all Timber and Wood-Derived Products, delivered to and accepted by the *Employer*, in accordance with DEFCON 609 (Clause 27F of this contract).
- 271.7 Notwithstanding Clause 271.4, 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:
- 271.7.1 a record tracing the Recycled Timber to its previous end use as a standalone object or as part of a structure; and
- 271.7.2 an explanation of the circumstances that rendered it impractical to record evidence of proof of timber origin.
- 271.8 The *Employer* reserves the right to decide, except where in the Employer's opinion the timber supplied is incidental to the requirement and from a low risk source, whether the evidence submitted to it demonstrates compliance with Clause 271.2 and Clause 271.3. In the event that the *Employer* is not satisfied, the *Contractor* shall commission and meet the costs of an "Independent Verification" and resulting report that will:
- 271.8.1 verify the forest source of the timber or wood; and
- 271.8.2 assess whether the source meets the relevant criteria of Clause 271.3.
- 271.9 The statistical reporting requirement at Clause 271.11 applies to all Timber and Wood-Derived Products delivered under the contract. The *Employer* 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 DEFCON 503 (Clause 13.10 of this contract).
- 271.10 The *Contractor* shall provide to the *Employer*, using DEFFORM 691A (271.12) the data or information the *Employer* requires in respect of Timber and Wood-Derived Products delivered to the *Employer* under the contract, or in respect of each Order in the case of a Framework Agreement, or at such other frequency as stated in the contract. The *Contractor* shall send all completed DEFFORMs 691A (271.12), including Nil Returns where appropriate, to the Employer's Commercial Branch identified in the Appendix to contract.
- 271.11 DEFFORM 691A (271.12) may be amended by the *Employer* from time to time, in accordance with DEFCON 503 (Clause 13.10 of this contract).

27I.12 **Timber and Wood-Derived Products Supplied under the contract – Data Requirements**

contract No: _____

Schedule of Requirements item and timber product type	Volume of timber delivered to the <i>Employer</i> with FSC, PEFC or equivalent evidence	Volume of timber delivered to the <i>Employer</i> with other evidence	Volume (as delivered to the <i>Employer</i>) of timber without evidence of compliance with Government Timber Procurement Policy	Total volume of timber delivered to the <i>Employer</i> under the contract

28 Insert Clause 28 (DEFCON 658):

“Cyber

Employer obligations

28.1 The *Employer* shall:

28.1.1 determine the Cyber Risk Level appropriate to this contract and, where the *Contractor* has not already been notified of the Cyber Risk level prior to the date of this contract, shall provide notification of the relevant Cyber Risk level and the appropriate Cyber Security Instructions to the *Contractor* as soon as is reasonably practicable; and

28.1.2 notify the *Contractor* as soon as reasonably practicable where the *Employer* reassesses the Cyber Risk Level relating to this contract.

Contractor Obligations

28.2 The *Contractor* shall, and shall procure that its Subcontractors shall:

28.2.1 comply with DEFSTAN 05-138;

28.2.2 complete the CSM Risk Assessment Process in accordance with the Employer's instructions, ensuring that any change in the Cyber Risk Level is notified to any affected Subcontractor, and complete a further CSM Risk Assessment or CSM Supplier Assurance Questionnaire where a change is proposed to the Contractor's supply chain which has or may have an impact on the Cyber Risk Level of this contract or on receipt of any reasonable request;

28.2.3 carry out 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;

28.2.4 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 in accordance with Good Industry Practice *provided always that* where there is a conflict between the Contractor's obligations under 28.2.1 above and this 28.2.4 the *Contractor* shall notify the *Employer* in accordance with the notification provisions in DEFSTAN 05-138 as soon as it becomes aware of the conflict and the *Employer* shall determine which standard or measure shall take precedence;

28.2.5 comply with all Cyber Security Instructions notified to it by the *Employer* as soon as reasonably practicable;

28.2.6 notify the JSyCC WARP in accordance with ISN 2014/02 as amended or updated from time to time and the Contractors NSA/DSA, and in the case of a Subcontractor 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

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providing full details of the circumstances of the incident and any mitigation measures already taken or intended to be taken;

- 28.2.7 in coordination with its NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the *Employer* and its agents and representatives and its NSA/DSA 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 Contractors NSA/DSA in the circumstances and taking into account the Cyber Risk Level;
- 28.2.8 consent to the *Employer* recording and using information obtained in relation to the contract for the purposes of the Cyber Security Model whether on the Supplier Cyber Protection Service or elsewhere. For the avoidance of doubt such information shall include the cyber security accreditation of the *Contractor* and / or Subcontractor as appropriate; and
- 28.2.9 include provisions equivalent to 28.6 of this Clause in all Sub-contracts imposing provisions equivalent to this Clause 28.2 (the “equivalent provisions”) and, where a Subcontractor breaches terms implementing this Clause in a Sub-contract, the *Contractor* shall, and shall procure that its Subcontractors shall, in exercising their rights or remedies under the relevant Sub-contract:

28.2.9.1. notify the *Employer* of any such breach and consult with the *Employer* regarding any remedial or other measures which are proposed as a consequence of such breach, taking the Employer’s views into consideration; and

28.2.9.2 have regard to the equivalent provisions.

PROVIDED ALWAYS THAT where the *Contractor* has notified the *Employer* that it or one or more of its Subcontractors cannot comply with 28.2.1 to 28.2.9 above the *Employer* and *Contractor* will seek to agree a Cyber Security Implementation Plan and where the *Employer* has agreed a Cyber Security Implementation Plan with the *Contractor*, the *Contractor* shall, and shall procure that its Subcontractors shall, comply with such Cyber Security Implementation Plan until implementation is agreed to have been achieved whereupon 28.2.1 to 28.2.9 above shall apply in full. In the event that a Cyber Security Implementation Plan cannot be agreed the Cyber provisions of DEFCON 530 (Clause 9 of this contract) or any agreed alternative dispute resolution procedure shall apply.

Management Of Subcontractors

- 28.3.1 The *Employer* agrees that the *Contractor* shall be entitled to rely upon the self-certification by a Subcontractor of its compliance with its obligations pursuant to Clause 28.2. In the event that a Subcontractor is found to be in breach of its obligations in Clause 28.2, and where the *Contractor* has relied upon the Subcontractor’s self-certification, the *Contractor* shall not be held to be in breach of this Clause.

- 28.3.2 Where the *Contractor* becomes aware that a Subcontractor is not complying with its obligations, the *Contractor* shall notify the *Employer* and provide full details of the Subcontractor's non-compliance as soon as reasonably practicable and shall consult with the *Employer* as to the appropriate course of action which may include but not be limited to the agreement of a remedial plan or termination of the Sub-contract having regard to Clause 28.2.9.
- 28.3.3 Having regard to the Employer's views, the *Contractor* shall take all reasonable measures to address any non-compliance of a Subcontractor in accordance with the reasonable timescales required by the *Employer*. Where the *Contractor* fails to do so, this shall amount to a breach of this Clause and the provisions of 28.6.2 or 28.6.3 as appropriate shall apply.
- 28.3.4 The *Contractor* shall, and shall procure that its Subcontractors shall, include provisions equivalent to this Clause 28.3 in all Sub-contracts which flow down the obligations set out in Clause 28.2 of this contract.

Records

- 28.4.1 The *Contractor* shall keep and maintain, and shall ensure that any Subcontractor shall keep and maintain, until 6 years after termination or expiry of this contract, or as long a period as may be agreed between the Parties, full and accurate records including but not limited to:
- 28.4.1.1 details of all MOD Identifiable Information relating to the *Contractor* Deliverables provided under this contract; and
- 28.4.1.2 copies of all documents required to demonstrate compliance with DEFSTAN 05-138 and this Clause, 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 Subcontractor.
- 28.4.2 The *Contractor* shall, and shall ensure that any Subcontractor shall on request provide the *Employer*, the Employer's representatives and/or the Contractors NSA/DSA such access to those records as may be required in connection with this contract.

Audit

- 28.5.1 Except where an audit is imposed on the *Employer* by a regulatory body or there is a Cyber Security Incident in which case the *Contractor* agrees, and shall procure that its Subcontractors agree, that the *Employer* and its representatives, in coordination with the Contractors NSA/DSA or the NSA/DSA on behalf of the *Employer*, may conduct such audits as it considers in its absolute opinion necessary, the *Employer*, its representatives and/or the Contractors NSA/DSA may, not more than twice in any calendar year and for a period of 6 years following the termination or expiry of this contract, whichever is the later, conduct an audit for the following purposes to review:

28.5.1.1 and verify the integrity, confidentiality and security of any MOD Identifiable Information;

28.5.1.2 the Contractor's and/or any Subcontractor's compliance with its obligations under this Clause; and

28.5.1. 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 28.5.1.1 and 28.5.1.2 above.

28.5.2 The *Employer* shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the *Contractor* and/or Subcontractor or delay the provision of the *Contractor Deliverables* and supplier information received by the *Employer* in connection with the audit shall be treated as confidential information.

28.5.3 The *Contractor* shall, and shall ensure that any Subcontractor shall on demand provide the *Employer* 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:

28.5.3.1. all information requested by the *Employer* within the permitted scope of the audit;

28.5.3.2 reasonable access to any Sites controlled by the *Contractor* or any Associated Company and any Subcontractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the contract and, where such Sites and/or equipment are out with the control of the *Contractor*, shall secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and

28.5.3.3 access to any relevant staff.

28.5.4 The *Employer* shall endeavour to (but is not obliged to) provide at least 15 Calendar days' notice of its intention to conduct an audit.

28.5.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause, unless the audit identifies a material breach of the terms of this Clause by the *Contractor* and/or Subcontractor in which case the *Contractor* shall reimburse the *Employer* for all the Employer's reasonable costs incurred in the course of the audit.

Breach of Obligations

28.6.1 In exercising its rights or remedies under this Clause, the *Employer* shall:

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28.6.1.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of any breach or potential breach and the Cyber Risk Level of this contract; and

28.6.1.2 give all due consideration, where appropriate, to action other than termination of the contract, including but not limited to a remedial period if this is appropriate in all the circumstances.

28.6.2 Where the Cyber Risk Level of this contract is assessed to be a **moderate or high**, and the *Contractor* breaches the terms of this Clause, the *Employer* shall be entitled:

28.6.2.1 to terminate the contract (whether in whole or in part) and to claim damages in accordance with DEFCON 514 (Clause 90B of this contract) as though such breach is a material breach; and

28.6.2.2 where the contract has not been terminated, to recover from the *Contractor* any other loss sustained in consequence of any breach of this Clause, subject to any provision which is agreed elsewhere in this contract.

28.6.3 Where the Cyber Risk Level of this contract is assessed to be **very low or low**, and the *Contractor* breaches the terms of this Clause, the *Employer* shall be entitled:

28.6.3.1 to recover from the *Contractor* the amount of any loss sustained in consequence of any breach of this Clause, subject to any provision which is agreed elsewhere in this contract; and

28.6.3.2 where the *Contractor* does not comply with any reasonable instructions issued by the *Employer* or the Contractors NSA/DSA within the time period specified to remedy such breach or prevent further breaches, the *Employer* shall be entitled to terminate this contract (whether in whole or in part) and to claim damages in accordance with DEFCON 514 (Clause 90B of this contract) as though such breach is a material breach.

28.6.4 Where the *Contractor* commits an act of fraud, negligence or wilful misconduct in respect of its obligations under this Clause the *Employer* shall be entitled to terminate this contract (whether in whole or in part) and to claim damages in accordance with DEFCON 514 (Clause 90B of this contract) as though such breach is a material breach.

General

28.7.1 On termination or expiry of this contract the provisions of this Clause excepting 28.2.2 and 28.2.3 above shall continue in force so long as the *Contractor* and/or and Subcontractor holds any MOD Identifiable Information relating to this contract.

28.7.2 Termination or expiry of this contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Clause 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 the contract which existed at or before the date of termination or expiry.

28.7.3

28.7.3.1 The *Contractor* agrees that the *Employer* has absolute discretion to determine changes to DEFSTAN 05-138 and/or the Cyber Risk Level. In the event that there is such a change to DEFSTAN 05-138 or the Cyber Risk Level, 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 DEFSTAN 05-138 or Cyber Risk Level *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.

27.7.3.2 Subject to 28.7.3.1 above, where the *Contractor* seeks such adjustment or extension, the *Employer* will proceed in accordance with DEFCON 620 (Clause 13.13) or any agreed alternative change control procedure to determine the request for adjustment or extension. The *Contractor* must deliver a *Contractor Change Proposal* to the *Employer* within 8 weeks of the occurrence of the change in DEFSTAN 05-138 or Cyber Risk Level or such longer period as may be agreed by the Parties, identifying the impact of that change and accompanied by full details of the request for adjustment. For the avoidance of doubt, the *Employer* shall not be required to withdraw any *Employer Notice of Change* which may have been issued insofar as it relates to DEFSTAN 05-138 or the Cyber Risk Level whether or not the *Contractor Change Proposal* is rejected. In the event that the *Contractor* does not agree with the *Employer's* determination, then the provisions of DEFCON 530 or any agreed alternative dispute resolution procedure shall apply.

28.7.4

The *Contractor* shall not recover any costs and/or other losses under or in connection with this Clause 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 *Employer* or with other bodies

29A

Number not used

29B

Insert new Clause 29B (DEFCON 660):

“Official Sensitive Security Requirements

29B.1

In this Clause “Information” means information recorded in any form disclosed or created in connection with the contract.

29B.2 The *Contractor* shall protect all Information relating to the aspects designated OFFICIAL-SENSITIVE as identified in the security aspects letter annexed to the contract, in accordance with the official security Clauses contained in Part 5 - Schedule 2 of the contract.

29B.3 The *Contractor* shall include the requirements and obligations set out in Clause 29B.2 in any Sub-contract placed in connection with or for the purposes of the contract which requires disclosure of OFFICIAL-SENSITIVE Information to the Subcontractor or under which any Information relating to aspects designated as OFFICIAL-SENSITIVE is created by the Subcontractor. The *Contractor* shall also include in the Sub-contract a requirement for the Subcontractor to flow the requirements of this Clause to its Subcontractors and through all levels of the supply chain to the lowest level where any OFFICIAL-SENSITIVE Information is handled.”

29C Insert a new Clause 29C (Quality Assurance)

“Quality Assurance

General

29C.1.1 The *Contractor* must implement, operate and maintain a 3rd party registered (by a UKAS accredited Registration Body) corporate Quality Management System (QMS). All aspects of the QMS must comply with the current edition of ISO 9001 and the requirements of AQAP 2110, and it is to be used to control all *works* carried out by the *Contractor’s* Personnel.

29C.1.2 The QMS must capture Subcontractors working on the contract that are not registered to ISO 9001.

29C.1.3 The *Contractor* must ensure at all times the activities shown in the table below are carried out by the *Contractor* or Subcontractors holding the appropriate scope of registration.

Service	Activity
1	Project management services to cover all aspects of the works including the management of design and construction activities
2	Designer Principal <i>Contractor</i> and Principal Designer in accordance with CDM Regulations
3	Delivery of Safe Systems of Work as Authorised Persons or Authorised Engineers under the HSE Regulations
4	Design of M&E, civil engineering for any of the operations shown above (construction and facilities management)
5	Quantity surveying activities (including for the production of Bills of Quantities)
6	The provision of estate related consultancy services

7	The operation, repair and maintenance of buildings and infrastructure (specifically to include electrical and mechanical components, building components, energy management and public health elements, grounds maintenance)
8	The selection, appointment and supervision of suppliers (to include stores management)
9	Sustainable development

29C.1.4 If there is a requirement for a local procedure or process this must be reviewed and approved by the *Contractor's* Business Quality Manager in order to ensure compliance with the requirements of ISO 9001 and AQAP 2110 and brought to the attention of the *Employer* at the earliest opportunity.

Project Quality Plan (PQP)

29C.2.1 The *Contractor* shall provide the *Employer* with a PQP and update it when major changes are required. It shall be produced in accordance with the current issue of AQAP 2105 (NATO requirements for deliverable quality plans) and shall include the additional requirement of a 'Lessons Learned' section showing the improvement from previous Project Contracts. The PQP shall also include the Quality Audit Programme (QAP) for the Project. The QAP shall show registration body, HQ, independent and local audits including those of Subcontractors.

29C.2.2 A PQP shall be submitted to the *Employer* for review, and be updated before completion of the design phase of the Project.

29C.2.3 The *Contractor* shall have *works* specific quality plans to cover most of its activities. In instances where one off or bespoke activities are planned the Site Quality Representative (SQR) shall issue and control any *works* specific quality plans, which shall identify the processes and controls necessary to assure the quality of *works* by Subcontractors for both on-site and off-site activities

Subcontractors

29C.3.1 The *Contractor* shall carry out such checks that are necessary to ensure, that its Subcontractors are competent and capable of carrying out the *works* assigned to them. A record of all pre-contract assessments of its Subcontractors and any subsequent evaluations made shall be made available for inspection on request.

Staff Requirements

29C.4.1 Project Quality Manager (PQM)

29C.4.1.1 The *Contractor* shall appoint a PQM for the duration of the Project. The PQM shall have the responsibility and authority that includes:

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(i) Ensuring that processes needed for the PQP are established, implemented and maintained

(ii) Reporting to the *Contractor's* representative and the *Project Manager* on the performance against the PQP and any need for improvement, and on any need for improvements to be made to the QMS.

(iii) Promote awareness of the *Employer's* requirements throughout the *Contractor's* organisation.

29C.4.1.2 The PQM shall be a member of the Chartered Quality Institute. They will have at least 5 (five) years' experience in quality, holding at least an HNC in building construction and or facility management.

29C.4.2 Site Quality Representative (SQR)

29C.4.2.1 The *Contractor* shall appoint a SQR. The SQR shall be responsible for the implementation and management of the QMS and PQP processes and procedures including internal auditing for the contract.

29C.4.2.2 The SQR shall have at least five (5) years building construction experience and hold an ISO 9001: 2015 (or current edition) Lead Assessor's Certificate recognised by the Chartered Quality Institute. Staff who have five (5) years' experience but lack the Lead Assessor's Certificate may be appointed subject to them gaining that qualification within one (1) month of contract award.

29C.4.2.2 The SQR shall be directly responsible to the Project Quality Manager.

Audits

29C.5.1 Registration body (Third Party)

29C.5.1.1 The *Employer* reserves the right to get the *Contractor* to arrange for third party surveillance visits by their registration body throughout the period of the Project in accordance with the following table. In these circumstances the registration body would review *works* that may be being undertaken at the time, this shall include design and/or construction activities. Where the *Employer* decides that such a requirement exists on a Project then the relevant details will be set out in the Mini-Tender documentation for that Project.

Third Party Registration Audits		
Project Length	Frequency of visits	Timing
3 – 12 Months	1	At the mid-point of the Project
3 – 24 Months	4	After completion of the design

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		phase and then during construction phases
3 – 36 Months	6	After completion of the design phase and then during construction phases
3 – 48 Months	8	After completion of the design phase and then during construction phases
3 – 60 Months	10	After completion of the design phase and then during construction phases
<p>Note 1: The timings shown above are to be used as a guide and should be agreed with the <i>Project Manager</i> and recorded in the PQP.</p> <p>Note 2: Although the timing of the visits can be varied the number of visits shall be as shown in the table above.</p>		

29C.5.1.2 Four (4) weeks prior to attendance by the registration body, the *Employer* shall be invited to attend the visit as an observer (including opening and closing meetings).

29C.5.2 *Contractors PQM Audits*

29C.5.2.1 The PQM, in conjunction with the *Project Manager*, shall carry out an assessment of all the contract requirements to determine the criticality of each deliverable. From this assessment they will derive the frequency of auditing and the QAP, which will set in place plans to record:

- (i) The number of non-conformities found (including those by the registration body).
- (ii) Number and nature of customer complaints.
- (iii) Any non-conformities found by the *Employer* as a result of any audits.

29C.5.2.2 The agreed QAP shall be issued to the SQR who shall carry out auditing and reporting in accordance with the QAP.

29C.5.2.3 The SQR shall audit the product of the deliverable in order to confirm it conforms to the *Employer's* requirements and not the delivery process or procedure that was used in its delivery. This shall include any deliverable provided by a Subcontractor.

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29C.5.2.4 The *Contractor* shall submit a report on the QAP covering progress and performance one month in advance of the quarter. The *Employer* may choose to attend as an observer, any of the audits (including opening and closing meetings) listed in the QAP.

29C.5.3 Quality control of off-site Subcontractors

29C.5.3.1 Where a deliverable is provided by an off-site Subcontractor, such as designers, the PQM shall develop an audit programme, as part of the QAP, and issue it to the *Employer*. The frequency of audits shall be determined by taking into consideration the amount of activities carried out by the Subcontractor. However, auditing shall be carried out as a minimum, at least once for each discipline and each Subcontractor.

29C.5.3.2 Products shall be audited to ensure that they conform to the specified requirements and not the delivery process or procedure that was used in its delivery.

29C.5.4 Audit Results

29C.5.4.1 Results of all audits and surveillance visits shall be issued in writing to the *Project Manager* within two (2) weeks of the audit/visit.

29C.5.4.2 The following categorisation of any non-conformity found during audits is to be used:

(i) Major: Non-conformities likely to adversely affect legislation compliance, health, safety, interchange ability, maintenance, strength, life, reliability, environmental, logistic sustainability or functioning of the product or service, or when cost to the *Employer* or delivery date agreed with the *Employer* is likely to be affected, or when the nonconformity is readily apparent and might cause concern to the user.

(ii) Minor: All other departures from the contractual requirements, which do not fall into the Major category.

29C.5.4.3 The *Employer* reserves the right to re-classify any Minor nonconformity as a Major and to require the *Contractor* to implement corrective actions commensurate with a Major non-conformance.

29C.5.4.4 Any subsequent corrective actions shall be agreed with the *Employer* prior to implementation (it is the *Contractor's* responsibility to devise and implement effective corrective actions). Following implementation, the *Contractor* shall demonstrate that the corrective action has been effective, will prevent recurrence and retain records that demonstrate the actions have been effective and the issue has been closed out.

29C.5.4.5 The *Contractor* is to provide copies of Management Review Meetings including local, contract and corporate within four (4) weeks of completion to the *Employer*.

Monitoring

- 29C.6.1 While, usually, auditing is a post completion activity, monitoring is carried out while the activity is in progress. The SQR shall programme all monitoring activities ensuring that the necessary 'Hold points' are in place and both in-process and final inspections are carried out and that all *works* meet the specified requirements before release.

Training

- 29C.7.1 The *Contractor* shall train its Personnel on processes and procedures contained within the Quality Management System.
- 29C.7.2 The training programme shall be made available to the *Employer* prior to the end of the contract mobilisation period.
- 29C.7.3 The SQR is to provide training in the processes and procedures to be used for all Subcontractors working on site. Records of training are to be kept.

Management Reviews

- 29C.8.1 The *Contractor's* Business Quality Manager will chair an annual contract Management Review Meeting as described in ISO 9001: 2015 (or current edition) to ensure the management systems continuing suitability, adequacy and effectiveness for the *Employer's* Projects.
- 29C.8.2 An invitation is to be issued to the *Employer* in order that the *Employer* can nominate a member of staff to attend.
- 29C.8.3 Copies of the minutes of this meeting and the Corporate Management Review meetings are to be issued to the *Employer* within two (2) weeks of being carried out.
- 29D Insert new Clause 29D:

"Building Information Modelling (BIM) Requirements

- 29D.1.1 The *Contractor* warrants and undertakes that it shall comply with the BIM Documents.
- The *Contractor* shall act as the BIM Information Manager on this contract, as more fully set out in the BIM Documents.
- The *Contractor* shall use processes, technologies and systems that meet the UK Government's BIM Requirements in accordance with the Employer's Exchange Information Requirements (EIR) as detailed in Part5, Schedule 8 (DIO BIM Requirements) and ensure that all information and data in these systems is maintained in accordance with security classification of the Level 2 Asset and in accordance with any asset specific Built Asset Security Information Requirements (BASIR).
- 29D.2.1 In delivering the Works the *Contractor* shall:

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29D.2.1.1 schedule, plan, coordinate and deliver the Information: model(s), documents and data files, at the Level of Development specified in the Project Information Delivery Plan (IDP) and to the EIR;

29D.2.1.2 hold model(s), documents and data files at the Level of Development specified in the Project IDP and in accordance with the EIR until the *Employer* have procured their Employers Asset Information Model Common Data Environment (AIM CDE) at which time they will publish information to the Employers AIM CDE; and/or

29D.2.1.3 on request forward the model(s), documents and data files in the specified formats to another third party contractor engaged by the *Employer*;

29D.2.2 arrange for complementary BIM processes, procedures and standards to be incorporated into any Sub-contracts that it enters into in relation to the contract to the extent required to enable the *Contractor* to comply with this Clause;

29D.2.3 produce the Master Information Delivery Plan to meet the requirements of the Project Information Delivery Plan developed by the Employers TSP in liaison with the Employers Project Manager. In collaboration with the Employers TSP the *Contractor* shall update the MIDP throughout the project and ensure that information is published throughout each stage in accordance with the Project IDP and MIDP.

29D.2.4 work with the Project Manager collaboratively in completion of the initial post operation evaluation for projects handed over in accordance with the GSL guidance document;

29D.2.5 arrange for and undertake, with the Project Team as a whole, a BIM Maturity Assessment in accordance with Employers BIM Maturity Assessment Tool;

29D.2.6 throughout the course of the contract, as a result of their work development activities, update the COBie Demand Matrix (CDMx) in accordance with the DIO EIR, Project IDP and Asset Information Requirements (AIR), appropriate to those work development activities to ensure COBie data is delivered at the appropriate stage LOD & LOI; and

29D.2.7 in line with Clause 5, Payment is dependent on completion of these activities, including the provision, updating, acceptance and validation of information within the Employers AIM CDE, as appropriate with those work development activities (See 29D.2.1.2 & 29D.2.1.3).

29D.3.1 **For any Works initiated by another third party contractor engaged by the *Employer* the *Contractor* shall:**

29D.3.1.1 receive the information: models, documents and data files at the Level of Development (“**LOD & LOI**”) provided as specified in the Project IDP and in accordance with the EIR;

29D.3.1.2 review and mark-up Models, Documents and Data files as a result of its work development activities as per 29D.2.1;

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29D.3.1.3 throughout the course of the contract, as a result of their work development activities, update the COBie Demand Matrix (“**CDMx**”) in accordance with the DIO EIR, Project IDP and Asset Information Requirements (“**AIR**”), appropriate to those work development activities to ensure COBie data is delivered at the appropriate stage LOD & LOI.;

29D.3.1.4 produce and maintain the Project Information Delivery Plan to meet the Gateway Plain Language Questions, receive and align the MIDP and accept, reject and store appropriate shared and published information deliverable files against plan for the next phase of the Works Development activities;

29D.3.1.5 support the Project Manager and Project Team collaboratively in completion of the post operation evaluation for projects handed over in accordance with the GSL guidance document;

29D.3.1.6 arrange for and undertake, with the Project Team as a whole, a BIM Maturity Assessment in accordance with Employers BIM Maturity Assessment Tool; and

29D.3.1.7 in line with Clause 50, payment for any development activities is dependent on completion of those Works development activities, including the provision, updating, acceptance and validation of information within the Employers AIM CDE as appropriate with those work development activities.

29D.4.1 Building Information Modelling (BIM) workshops:

29D.4.1.1 The *Contractor* shall undertake a collaborative approach and facilitate workshops to promote BIM process and appropriate technologies and Government Soft Landing (GSL) with both the Projects TSP, *Employer* staff and/or the Employers representatives;

29D.4.1.2 The *Contractor* will develop project by project Case Studies in collaboration with the TSP and the *Employer* to disseminate BIM best practice across the *Contractor* and *Employer* staff and/or the Employers representatives

29E Insert a new Clause 29E (DEFCON 76):

“Contractor's Personnel at Government Establishments

General

29E.1 The following general provisions apply:

29E.1.1 The Officer in Charge shall provide such available administrative and technical facilities for the Contractor's Representatives employed at Government Establishments for the purpose of the contract as may be necessary for the effective and economical discharge of work under the contract. These facilities will be provided free of charge unless otherwise stated in the contract. The status to be accorded to the Contractor's Representatives for messing purposes will be at the discretion of the Officer in Charge.

- 29E.1.2 Any land or premises (including temporary buildings) made available to the *Contractor* by the *Employer* in connection with the contract shall be made available to the *Contractor* free of charge, unless otherwise stated in the contract, and shall be used by the *Contractor* solely for the purposes of performing the contract. The *Contractor* shall have the use of such land or premises as licensee and shall vacate the same upon completion of the contract. Any utilities required by the *Contractor* shall be subject to the charges set out in the contract.
- 29E.1.3 The *Contractor* shall have no claim against the *Employer* for any additional cost or delay occasioned by the closure for holidays of Government Establishments, where this is made known to him prior to entering into the contract.

Liability in respect of damage to Government Property

- 29E.2.1 Without prejudice to the provisions of DEFCON 611 (Issued Property) (Clause 70B of this contract), the *Contractor* shall, except as otherwise provided for in the contract, make good or, at the option of the *Employer*, pay compensation for all damage occurring to any Government Property, which includes land or buildings, occasioned by the *Contractor*, or by any of his Representatives, arising from his or their presence on a Government Establishment in connection with the contract, provided that this Clause 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 his or their reasonable control.
- 29E.2.2 The total liability of the *Contractor* under Clause 29E.2.1 herein shall be subject to any limitation specified in the contract.

Contractor's Property

- 29E.3 All property of the *Contractor* and his Representatives shall be at the risk of the *Contractor* whilst it is on any Government Establishment, and the *Employer* shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby, except as follows:
- 29E.3.1 where any such loss or damage was caused or contributed to by any act, neglect or default of any Government Servant, agent or contractor then the *Employer* shall accept liability therefor to the extent to which such loss or damage is so caused or contributed to as aforesaid; and
- 29E.3.2 where any property of the *Contractor* has been taken on charge by the Officer in Charge, and a proper receipt has been given therefor, then the *Employer* shall be liable for any loss or damage occurring to that property while held on such charge as aforesaid.

Contractor's Representatives

- 29E.4.1 The *Contractor* shall submit in writing to the *Employer* for approval, initially and as necessary from time to time, a list of those of his Representatives who may

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need to enter a Government Establishment for the purpose of, or in connection with, work under the contract, giving such particulars as the *Employer* may require, including full details of birthplace and parentage of any such Representative who:

29E.4.1.1 was not born in the United Kingdom; or

29E.4.1.2 if he was born in the United Kingdom, was born of parents either or both of whom were not born in the United Kingdom.

29E.4.2 The *Employer* shall issue passes for those Representatives who are approved by it in accordance with Clause 29E.4.1 herein for admission to a Government Establishment and a Representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the *Employer* and shall be surrendered on demand or on completion of the work.

29E.4.3 Notwithstanding the provisions of Clauses 29E.4.1 and 29E.4.2 hereof if, in the opinion of the *Employer*, any Representative of the *Contractor* shall misconduct himself, or it shall not be in the public interest for any person to be employed or engaged by the *Contractor*, the *Contractor* shall remove such person without delay on being required to do so and shall cause the work to be performed by such other person as may be necessary.

29E.4.4 The decision of the *Employer* upon any matter arising under Clauses 29E.4.1 to 29E.4.3 inclusive shall be final and conclusive.

Observance of Regulations

29E.5 The following provisions apply:

29E.5.1 The *Contractor* shall ensure that his Representatives have the necessary probity (by undertaking the Government's Baseline Personnel Security Standard) and, where applicable, are cleared to the appropriate level of security when employed within the boundaries of a Government Establishment.

29E.5.2 Where the *Contractor* requires information on the Government's Baseline Personnel Security Standard (the Standard) or security clearance for his Representatives or is not in possession of the relevant rules, regulations or requires guidance on them, he shall apply in the first instance to the Project Manager/Equipment Support Manager.

29E.5.3 On request, the *Contractor* shall be able to demonstrate to the *Employer* that the Contractor's processes to assure compliance with the standard have been carried out satisfactorily. Where that assurance is not already in place, the *Contractor* shall permit the *Employer* to inspect the processes being applied by the *Contractor* to comply with the Standard.

29E.5.4 The *Contractor* shall comply and shall ensure that his Representatives comply with the rules, regulations and requirements that are in force whilst at that Establishment which shall be provided by the *Employer* on request.

- 29E.5.5 When on board ship, compliance with the rules, regulations, and requirements shall be in accordance with the Ship's Regulations as interpreted by the Officer in Charge. Details of those rules, regulations and requirements shall be provided on request by the Officer in Charge.

Injuries, Disease and Dangerous Occurrences

- 29E.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 Employer).

Dependants of Contractor's Representatives

- 29E.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 MOD rates.

Health and Safety Hazard Control

- 29E.8 Where the *Contractor* enters a Government Establishment for the purpose of performing work under the contract:

- 29E.8.1 The *Contractor* shall notify the Officer in Charge or the site project liaison officer or overseeing officer nominated in the contract of:

29E.8.1.1 any health and safety hazards associated with the work to be performed by him or any of his Representatives;

29E.8.1.2 any foreseeable risks to the health and safety of all persons associated with such hazards; and

29E.8.1.3 any precautions to be taken by him as well as any precautions which, in his opinion, ought to be taken by the *Employer*, in order to control such risks.

- 29E.8.2 The *Employer* shall notify the *Contractor* of:

29E.8.2.1 any health and safety hazards which may be encountered by the *Contractor* or any of his Representatives on the Government Establishment;

29E.8.2.2 any foreseeable risks to the health and safety of the *Contractor* or any of his Representatives, associated with such hazards; and

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29E.8.2.3 any precautions to be taken by the *Employer* as well as any precautions which, in its opinion, ought to be taken by the *Contractor*, in order to control such risks.

29E.8.3 The *Contractor* shall notify his Representatives of and, where appropriate, provide adequate instruction in relation to:

29E.8.3.1 the hazards, risks and precautions notified by him to the *Employer* under sub-Clause 29E.8.1

29E.8.3.2 the hazards, risks and precautions notified by the *Employer* to the *Contractor* under sub-Clause 29E.8.2; and

29E.8.3.3 the precautions which, in his opinion, ought to be taken by his Representatives in order to control those risks.

29E.8.4 The *Contractor* shall provide the Officer in Charge or the site project liaison officer or overseeing officer nominated in the contract with:

29E.8.4.1 copies of those sections of his own and, where appropriate, his Representatives' safety policies which are relevant to the risks notified under sub-Clause 29E.8.1;

29E.8.4.2 copies of any related risk assessments; and

29E.8.4.3 copies of any notifications and instructions issued by him to his Representatives under sub-Clause 29E.8.3

29E.8.5 The *Employer* shall provide the *Contractor* with copies of:

29E.8.5.1 those sections of its own Safety Policies which are relevant to the risks notified under sub-Clause 29E.8.2;

29E.8.5.2 any related risk assessments; and

29E.8.5.3 any notifications and instructions issued by it to its employees similar to those called for from the *Contractor* under sub-Clause 29E.8.3."

3 Time

31.2 At the end of the 5th (fifth) bullet point add the following points:

- an action log of the occurrence and response to any known or potential compensation events
- financial forecasts identifying the impact on the Prices of any assessed and implemented compensation events and the forecasted impact on the Prices of any known but as yet unassessed and unimplemented compensation events, including any requested breakdowns of such costs
- list of any quality issues including rework, defects and snagging lists
- details of customer satisfaction levels linked to User Requirement Document/Statement of Need (URD/SoN)

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- plans for stakeholder management, including correspondence with planning and other approval authorities
- current, previous and projected progress against the initial programme/milestones
- any risks or issues (including, without limitation any environmental, sustainability and Defence Related Environmental Assessment Model (DREAM) issues) encountered in or in carrying out the works
- health and safety updates including without limitation accident frequency rates, 'near miss' data, percentages of incidents reported to the *Employer* within required timescales under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR and details of any reports which the *Contractor* is required to submit under RIDDOR to the relevant enforcing authority (e.g. Health and Safety Executive or Local Authority).
- The programme needs to be redrafted to "The *Contractor* provides information which shows how each activity on the Milestone Payment Schedule relates to the operations on each programme which he submits for acceptance"

33.1 At the beginning of the Clause, insert "Subject to the *Contractor* complying with its security obligations set out in Clause 29A (Security Measures), 29B (Official Sensitive Security Requirements, Part 5 Schedule 2 (Annex N JSP 440) and sections 14,15 and 16 of the Construction Works and Associated Services Framework Specification.

34.1 At the end of the Clause insert:

"During any period in which any work is so stopped or not started, the *Contractor* keeps secure and protects the Site and the works and all Equipment, Plant and Materials against any deterioration, loss, damage or theft."

4 Testing and defects

40.8 Add new Clause 40.8:

"If the *Contractor* has failed to carry out a test or inspection as required by the Works Information either before or after Completion, the Project Manager assesses the cost of having the test or inspection carried out by others and the *Contractor* pays the amount assessed. Where the works or a material part thereof fails to pass the test or inspection so that such failure deprives the *Employer* materially of the benefit thereof the Project Manager is entitled to reject the works or such part."

43.2 Delete and replace with:

"43.2 The *Contractor* corrects a notified Defect in accordance with the response time categories below, or as agreed with the Project Manager, and before the end of the defect correction period. The defect correction period begins when the Defect is notified.

43.2.1 Emergency. As soon as is reasonably practicable.

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43.2.2 Urgent. Functionality to be restored within five (5) Business days and a permanent repair within twenty (20) Business days.

43.2.3 Routine. To be rectified within twenty (20) Business days.”

45.1 Delete this Clause and replace with:

“If the *Contractor* is given access in order to correct a notified Defect but he has not corrected it within its *defect correction period*, the *Employer* shall be entitled to employ other people to correct the Defect and all costs consequent thereon or incidental thereto shall be determined by the Project Manager and shall be deducted from any monies due to the *Contractor*.”

5 Payment – Delete the entire section 5 from the standard NEC3 form and replace it with:

“50 Assessing the amount due

50.1 The Project Manager assesses the amount due at each assessment date. The first assessment date is decided by the Project Manager to suit the procedures of the Parties and is not later than the assessment interval after the starting date. Later assessment dates occur:

- at the end of each assessment interval until four weeks after the Supervisor issues the Defects Certificate; and
- at Completion of the whole of the works.

50.2 The amount due is:

- the Price for Work Done to Date;
- plus other amounts to be paid to the *Contractor*;
- less amounts to be paid by or retained from the *Contractor*.

Any tax which the law requires the *Employer* to pay to the *Contractor* is included in the amount due.

50.3 If no programme (and/or any subsequent monthly programmes that have not been provided on time (as the case may be)) is identified in the Contract Data and/or a subsequent monthly programme has not been provided on time, then without prejudice to any other remedy the *Employer* may have, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the *Contractor* has submitted a first programme to the Project Manager for acceptance showing the information which this contract requires.

50.4 In assessing the amount due, the Project Manager considers any application for payment the *Contractor* has submitted on or before the assessment date.

The Project Manager gives the *Contractor* details of how the amount due has been assessed. The Contractor's application is the notice of payment to the *Employer* specifying the amount due at the payment date and stating the basis on which the amount was calculated. If no application is received on or before the assessment date (or no valid invoice has been received by the *Employer* in accordance with DEFCON 522 (Clause 58 of this contract)) the amount due (and therefore the notified sum) shall be nil."

- 50.5 The Project Manager corrects any wrongly assessed amount due in a later payment certificate.

Add new Clause 50.6 - 50.11:

- 50.6 The Project Manager certifies a payment within one week of each assessment date. The Project Manager's certificate is the notice of payment to the *Contractor* specifying the amount due at the payment due date

- 50.7 The date on which payment becomes due is ten (10) Business days after the assessment date. The final date for payment is the Relevant Day.

- 50.8 In respect of each payment instalment the *Employer* shall pay to the *Contractor* by the Relevant Day (subject to any pay less notice issued in accordance with Clause 50.9) the amount certified by the Project Manager under Clause 50.6 (notified sum), or where an amount has not been so certified by the Project Manager the sum stated in the Contractor's application for payment under Clause 50.4 (notified sum).

- 50.9 If either Party intends to pay less than the notified sum, he notifies the other Party not later than fifteen (15) Business days before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under this contract unless he has notified his intention to pay less than the notified sum as required by this contract.

- 50.10 In relation to giving notices under this Clause 50 it is immaterial that the amount then considered to be due may be zero.

- 50.11 A pay less notice given by the *Employer* under this Clause 50 may be given on its behalf by the Project Manager or any other person who the *Employer* notifies the *Contractor* as being authorised to do so.

51 Payment

- 51.1 Number not used.

- 51.2 Each certified payment is made within three weeks of the assessment date or, if a different period is stated in the Contract Data, within the period stated. If a certified payment is late, or if a payment is late because the Project Manager does not issue a certificate which he should issue, interest is paid on the late payment. Interest is assessed from the date by which the late payment should

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have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.

- 51.3 If an amount due is corrected in a later certificate either:
- by the Project Manager in relation to a mistake or a compensation event; or
 - following a decision of the Adjudicator or the tribunal,

interest on the correcting amount is paid. Interest is assessed from the date when the incorrect amount was certified until the date when the correcting amount is certified and is included in the assessment which includes the correcting amount.

- 51.4 Interest is calculated on a daily basis at the interest rate and is compounded annually.

52 Defined Cost

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

- 53 Add new Clause 53 (DEFCON 670):

"Tax Compliance

Warranty

- 53.1 The *Contractor* represents and warrants that at the date this contract came into effect, it has notified the *Employer* in writing of any OOTNC or any litigation that it is involved in that is in connection with any OOTNC.

Duty of the *Contractor* to notify OOTNC

- 53.2 If, at any point during the performance of this contract, an OOTNC occurs, the *Contractor* shall:

- 53.2.1 notify the *Employer* in writing of such fact within 20 Business days of its occurrence; and

- 53.2.2 promptly provide to the *Employer*:

53.2.2.1 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

53.2.2.2 such other information in relation to the OOTNC as the *Employer* may reasonably require.

53.2.3 For the avoidance of doubt, the obligation at Clause 53.2 also applies to OOTNC in non-UK jurisdictions. If the OOTNC occurred in non-UK jurisdictions, the notification must be accompanied by a full explanation of the OOTNC and any relevant tax laws and administrative provisions so the *Employer* can understand the nature and seriousness of the OOTNC.

53.2.4 The duty to notify does not substitute the Contractor's obligations under DEFCON 605 (Clause 27E in this contract)(Financial Reports) when used.

Default

53.3 The *Employer* shall be entitled to terminate the contract in the event that:

53.3.1 the warranty given by the *Contractor* pursuant to Clause 53.1 is materially untrue;

53.3.2 the *Contractor* commits a material breach of its obligation to notify the *Employer* of any OOTNC as required by Clause 53.2; or

53.3.3 the *Contractor* fails to provide details of proposed mitigating factors which in the reasonable opinion of the *Employer*, are acceptable.

53.4 In the event that the *Employer* terminates the contract under Clause 53.3, the *Employer* shall be entitled to recover from the *Contractor*:

53.4.1 the amount of any loss resulting from the termination; and

53.4.2 any other loss sustained in consequence of any breach of this Clause, where the contract has not been terminated.

Duties of the *Employer*

53.5 In exercising its rights or remedies under this Clause, the *Employer* shall:

53.5.1 act in a reasonable and proportionate manner taking into account, among other things:

53.5.1.1 the gravity and duration of the OOTNC and any sanctions imposed by a court or tribunal; and

53.5.1.2 any remedial action taken by the *Contractor* to prevent reoccurrence of the OOTNC.

53.5.2 Without prejudice to Clause 53.4, seriously consider, where appropriate, action other than termination of the contract to deal with the failure by the *Contractor* to comply with this Clause.

55 Insert a new Clause 55 (DEFCON 528):

“Import and Export licences

- 55.1 If, in the performance of the contract, the *Contractor* needs to import into the UK or export out of the UK anything not supplied by or on behalf of the *Employer* and for which a UK import or export licence is required, the responsibility for applying for the licence shall rest with the *Contractor*. The *Employer* 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

- 55.2.1 When an export licence or import licence or authorisation either singularly or in combination is required from a foreign government for the performance of the contract, the *Contractor* shall as soon as reasonably practicable consult with the *Employer* on the licence requirements. Where the *Contractor* is the applicant for the licence or authorisation the *Contractor* shall:

55.2.1.1 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 shall also include information, technical data and software), the *Contractor*, unless otherwise agreed with the *Employer*, shall identify in the application:

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

(2) the end use as: For the Purposes of HM Government; and

55.2.1.2 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".

- 55.2.2 If the *Contractor* or any Subcontractor in the performance of the contract needs to export materiel not previously supplied by or on behalf of the *Employer* 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 Subcontractor. For the purposes of this Clause materiel shall mean information, technical data and items, including Articles, components of Articles and software.

- 55.2.3 Where the 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 contract risk register and in the risk management plan for the contract, with appropriate review points. Where there is no requirement under the contract for a risk management plan the *Contractor* shall submit this information to the Employer's representative.

55.2.4 During the term of the contract and for a period of up to 2 years from completion of the contract, the *Employer* may make a written request to the *Contractor* to seek a variation to the Clauses to a foreign export licence or import licence or authorisation to enable the *Employer* 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 *Employer* makes such a request it will consult with the *Contractor* before making a determination of whether the *Employer* or the *Contractor* is best placed in all the circumstance to make the request. Where, subsequent to such consultation the *Employer* notifies the *Contractor* that the *Contractor* is best placed to make such request:

55.2.4.1 the *Contractor* shall, or procure that the Contractor's Subcontractor 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 5 Business days to resolve the issue and should they fail the matter shall be escalated to an appropriate level within both Parties' organisations, to include their respective export licensing subject matter experts; and

55.2.4.2 the *Employer* shall provide sufficient information, certification, documentation and other reasonable assistance as may be necessary to support the application for the requested variation.

55.2.5 Where the *Employer* 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 *Employer* to make the application for the requested variation.

55.2.6 Where the *Employer* invokes Clause 55.2.4 or 55.2.5 the *Employer* will pay the *Contractor* a fair and reasonable charge for this service based on the cost of providing it.

55.2.7 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 this Clause. Where it is not possible to include equivalent terms to those set out in this Clause, the *Contractor* shall report that fact and the circumstances to the *Employer*.

Obtaining a Licence or authorisation from a foreign government – *Employer* obligations

55.3.1 Without prejudice to HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the *Employer* 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 the contract.

- 55.3.2 The *Employer* shall provide such assistance as the *Contractor* may reasonably require in obtaining any UK export licences necessary for the performance of the contract.

Contractor obligation to provide information

- 55.4.1 The *Contractor* shall use reasonable endeavours to identify whether any *Contractor Deliverable* is subject to:

55.4.1.1 a non-UK export licence, authorisation or exemption; or

55.4.1.2 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. This does not include the Intellectual Property-specific restrictions of the type referred to in Clause 22A (DEFCON 632).

- 55.4.2 If at any time during the term of the contract the *Contractor* becomes aware that all or any part of the *Contractor Deliverables* are subject to Clause 55.4.1.1 or 55.1.1.2, it shall notify the *Employer* of this as soon as reasonably practicable by providing details in the DEFFORM 528 (Part 6, Schedule 6 of this contract) or other mutually agreed alternative format. Such notification shall be no later than 30 days of knowledge of any affected *Contractor Deliverable* and in any event such notification shall be not less than 30 days prior to delivery of the *Contractor Deliverables*.

- 55.4.3 If the information to be provided under Clause 55.4.2 has been provided previously to the *Employer* by the *Contractor* under the 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 55.4.2.

- 55.4.4 During the term of the contract, the *Contractor* shall notify the *Employer* as soon as reasonably practicable of any changes in the information notified previously under Clause 55.4.2 or 55.4.3 of which it becomes or is aware that would affect the Employer'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 (Part 6, Schedule 6 of this contract) to the *Employer*.

- 55.5.5 For a period of up to 2 years from completion of the contract and in response to a specific request by the *Employer*, the *Contractor* shall notify the *Employer* as soon as reasonably practicable of any changes in the information notified previously under Clause 55.4.2 or 55.4.3 of which it becomes aware that would affect the Employer'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(Part 6, Schedule 6 of this contract) to the *Employer*.

- 55.4.6 Where following receipt of materiel from a Subcontractor or any of its other suppliers restrictions are notified to the *Contractor* by that Subcontractor, supplier or other third party or are identified by the *Contractor*, the *Contractor* shall immediately inform the *Employer* by issuing an updated DEFFORM 528 (Part 6, Schedule 6 of this contract). Within [X] days of such notification, the *Contractor* shall propose to the *Employer* 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 *Employer* shall notify the contractor within [X] days of receipt of a proposal whether it is acceptable and where appropriate the contract shall be modified in accordance with its terms to implement the proposal.⁷
- 55.4.7 If the restrictions prevent the *Contractor* from performing its obligations under the contract and have not been removed, modified or otherwise satisfactorily managed within a reasonable time, the *Employer* may at its absolute discretion elect to amend the contract in accordance with DEFCON 503 (Clause 13.10 in this contract) or as otherwise may be provided by the contract or to terminate the contract. Except as set out in Clause 55.4.8, 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 that would otherwise be due under the contract, costs incurred by the *Contractor* and benefits received by the *Employer*. 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 in accordance with the provisions in the contract.
- 55.4.8 In the event that the restrictions notified to the *Employer* pursuant to Clause 12 were known or ought reasonably have been known by the *Contractor* (but were not disclosed) at contract award or if restrictions notified to the *Employer* pursuant to Clause 55.4.4 or 55.4.6 were known or ought reasonably to have been known by the *Contractor* at the date of submission of the most recent DEFFORM 528 (Part 6, Schedule 6 of this contract) submitted to the *Employer* in accordance with Clause 55.4.2, termination under Clause 55.4.7 will be in accordance with DEFCON 514 (Clause 90B of this contract) and the provisions of Clause 55.6 will not apply.

Employer obligation to provide information

- 55.5.1 The *Employer* shall use reasonable endeavours to identify any export control restrictions applying to materiel to be provided to the *Contractor* as GFA. Where the *Employer* is to provide materiel necessary to enable the *Contractor* to perform the contract or in respect of which the Services 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 55.4.1 above, the *Employer* shall provide a completed DEFFORM 528 (Part 6, Schedule 6 of this contract) or will provide a new or updated DEFFORM 528 (Part 6, Schedule 6 of this contract) to the *Contractor* within 30 days of the

⁷ Insert values

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date of knowledge and in any case not later than 30 days prior to the delivery of such material to the *Contractor*.

55.5.2 In the event that the *Employer* becomes aware that the DEFFORM 528 (Part 6, Schedule 6 of this contract) disclosure was incomplete or inaccurate or in the event additional such material is identified then the *Employer* shall provide, as soon as reasonably practicable a new or revised DEFFORM 528 (Part 6, Schedule 6 of this contract). In the event that the *Employer* becomes aware that a prior disclosure included in DEFFORM 528 (Part 6, Schedule 6 of this contract) submitted to the *Contractor* was incomplete or inaccurate less than 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.

55.5.3 Where:

55.5.3.1 restrictions are advised by the *Employer* to the *Contractor* in a DEFFORM 528 (Part 6, Schedule 6 of this contract) provided pursuant to Clause 19 or 20 or both; or

55.5.3.1 any of the information provided by the *Employer* in any DEFFORM 528 (Part 6, Schedule 6 of this contract) proves to be incorrect or inaccurate, the *Employer* 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 Import and 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 the contract, the matter shall be handled under the terms of DEFCON 503 (Clause 13.10 in this contract) or as may otherwise be provided by the contract as appropriate and if no alternative solution satisfies the essential terms of the contract and the restrictions have not been removed, modified or otherwise satisfactorily managed within a reasonable time the *Employer* may terminate the contract. Termination under these circumstances will be under the terms of DEFCON 656A or 656B (Clause 90A of this contract) as appropriate and as referenced in the contract.

Interim Position

55.6 Pending agreement of any amendment of the contract as set out in Clause 55.4.7 or 55.5.3, 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 the contract directly affected by the restrictions or provision of incorrect or incomplete information.

56 Insert new Clause 56:

“Payment & Interest

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- 56.1 All valid, properly prepared invoices submitted to the *Employer* in accordance with this Clause will be paid by the *Employer* on or before the Relevant Day.
- 56.2 Where and to the extent that the debt would otherwise be a 'qualifying debt' under the Late Payment of Commercial Debts (Interest) Act 1998:
- 56.2.1 the interest provided for by this Clause is a contractual remedy and is not a statutory interest. Therefore, to the extent permissible by law, the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 relating to statutory interest will not apply to this contract;
- 56.2.2 from the day after the Relevant Day and thereafter until payment is made, simple interest at a rate calculated in accordance with sub-Clause may be claimed by the *Contractor* on the value of all valid claims for payment (or unpaid parts thereof);
- 56.2.3 without prejudice to sub-Clause 56.2.1 of this Clause 56, the rate of interest referred to in sub-Clause 56.2.2 of this Clause 56 will be the prevailing rate of statutory interest (as defined in the Late Payment of Commercial Debts (Interest) Act 1998) on the Relevant Day;
- 56.2.4 no interest will be payable for any period of delay attributable to the conduct of the *Contractor*;
- 56.2.5 all claims for interest made pursuant to this Clause 56 will be notified in writing to the Commercial Officer; and
- 56.2.6 any interest pursuant to this Clause 56 will not form a part of the Prices and, as a remedy for late payment, will not be subject to VAT.
- 56.3 If the *Employer* corrects the amount due in a later payment approval, then the *Employer* will pay interest on the corrected amount. Interest will be calculated from the date when the correct amount was certified until the date when the corrected amount is included in a later payment approval.
- 57 Insert a new Clause 57 (DEFCON 129J):

“The use of the electronic business delivery form

- 57.1 Form Usage:
- 57.1.1 The *Contractor* must use the electronic business delivery form for all deliveries of Articles and performance of Services.
- 57.1.2 The electronic business delivery form, DEFFORM 129J (Part 6, Schedule 3 of this contract), must accompany the package or consignment to which it applies. The *Contractor* must either:
- 57.1.2.1 attach the form as a label, directly to the package surface; or

57.1.2.2 forward the form in a document envelope as provided in Clauses 57.2.1.1 and 57.2.2.1 of this Clause.

57.2 Form Structure

57.2.1 For the provision of Articles

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

a. 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, see Clause 57.6.

b. The *Contractor* must use the bar coded Unique Identifier as defined in DEFCON 5J (Clause 59 of this contract), unless specified otherwise in the contract.

c. 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 MOD receipting system.

57.2.2 For the provision of Services

57.2.2.1 Where performance is for a Service, the following criteria apply:

57.2.2.1.1 Standard size is A4 (210 mm x 297 mm).

57.2.2.1.2 The *Contractor* must use the bar coded Unique Identifier as defined in DEFCON 5J (Clause 59 in this contract) unless specified otherwise in the contract.

57.2.2.1.3 The *Contractor* must provide one form either on completion of the Service or on completion of each agreed stage of the Service.

57.3 Bar Code Symbology and Print Quality

57.3.1 The bar code symbology used shall meet the requirements of STANAG 4329, "NATO Standard Bar Code Symbologies", specifically Code 39 (ISO/IEC 16388), unless otherwise specified.

57.3.2 The barcode print quality shall be as defined in ISO/IEC 16388 (Information technology – Automatic identification and data capture techniques – Code 39 bar code symbology 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.

57.4 Methods of Printing

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57.4.1 For method of printing the DEFFORM 129J (Part6, Schedule 3 of this contract), electronic business delivery form, see DefStan 81-041 (Part 6). Laser printing is preferred.

58 Insert a new Clause 58 (DEFCON 522):

“Payment and recovery of sums due

58.1 Payment for *Contractor* Deliverables will be made by electronic transfer and prior to submitting any claims for payment under Clause 58.2 the *Contractor* will be required to register their details (Supplier on-boarding) on the Contracting, Purchasing and Finance (CP&F) electronic procurement tool.

58.2 Where the *Contractor* submits an invoice to the *Employer* in accordance with Clause 58.1, the *Employer* will consider and verify that invoice in a timely fashion.

58.3 The *Employer* shall pay the *Contractor* any sums due under such an invoice no later than a period of 30 days from the date on which the *Employer* has determined that the invoice is valid and undisputed.

58.4 Where the *Employer* fails to comply with Clause 58.2 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 58.3 after a reasonable time has passed.

58.5 The approval for payment of a valid and undisputed claim for payment by the *Employer* shall not be construed as acceptance by the *Employer* of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under this contract.

58.6 Without prejudice to any other right or remedy, the *Employer* reserves the right to set off any amount owing at any time from the *Contractor* to the *Employer* against any amount payable by the *Employer* to the *Contractor* under the contract or under any other contract with the *Employer*, or with any other Government Department.”

59 Insert a new Clause 59 (DEFCON 5J):

“Unique identifiers

59.1 Use

59.1.1 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.

59.1.2 Number not used.

59.2 Confirmation of Receipt

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59.2.1 Confirmation of receipt of deliveries by Unique Identifiers shall not be construed as an acceptance of the Articles for the purposes of DEFCON 525 or any other term of the contract relating to acceptance by the *Employer*.

59A Insert a new Clause 59A (DEFCON 513):

“Value Added Tax

59A.1 The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supply of *Contractor Deliverables* by the *Contractor* to the *Employer*.

59A.2 If the *Contractor* is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of his business activities at the time of any supply, and the circumstances of any supply are such that the *Contractor* is liable to pay the tax due to HM Revenue and Customs (HMRC), the *Employer* shall pay to the *Contractor* in addition to the Contract Price (or any other sum due to the *Contractor*) a sum equal to the output VAT chargeable on the tax value of the supply of *Contractor Deliverables*, and all other payments under the contract according to the law at the relevant tax point.

59A.3 The *Contractor* is responsible for the determination of VAT liability. The *Contractor* shall consult its Client Relationship Manager or the HMRC Enquiries Desk (and not the Commercial Officer) in cases of doubt. The *Contractor* shall notify the *Employer's* Commercial Officer of the *Employer's* VAT liability under the contract, and any changes to it, within twenty 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 *Employer* may require the *Contractor* to obtain, and pass to the *Employer*, a formal ruling from HMRC. The *Contractor* shall comply promptly with any such requirement. Where the *Contractor* obtains a ruling from HMRC, it shall supply a copy to the *Employer* within three Business Days of receiving that ruling unless it proposes to challenge the ruling. Where the *Contractor* challenges the ruling it shall supply to the *Employer* a copy of any final decisions issued by HMRC on completion of the challenge within three Business Days of receiving the decision.

59A.4 Where supply of *Contractor Deliverables* comes within the scope of UK VAT, but the *Contractor* is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the *Employer* 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 it takes into account any changes in VAT law regarding registration.

59A.5 Where *Contractor Deliverables* are deemed to be supplied to the *Employer* 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 *Employer* shall pay to the *Contractor* in addition to the Contract Price (and any other sum due to the *Contractor* under the contract) a sum equal to the tax the *Contractor* is liable to pay to the tax authorities of the country in question in relation to the *Contractor Deliverables*

within thirty Calendar days of a written request for payment of any such sum by the *Contractor*.

59A.6 In relation to the *Contractor* Deliverables supplied under the contract the *Employer* shall not be required to pay any sum in respect of the *Contractor*'s input VAT (or similar EU or non-EU or both input taxes). However, these input taxes will be allowed where it is established that, despite the *Contractor* having taken all reasonable steps to recover them, it has not been possible to do so. Where there is any doubt that the *Contractor* has complied with this requirement the matter shall be resolved under DEFCON 530 or some other form of dispute resolution as agreed between the Parties.

59A.7 Should HMRC decide that the *Contractor* has incorrectly determined the VAT liability, in accordance with Clause 2 above, the *Employer* will pay the VAT assessed by HMRC. In the event that HMRC so determines, the *Contractor* shall pay any interest charged on any assessment or penalties or both directly to HMRC. Such interest or penalties or both shall not be recoverable from the *Employer* under this contract or any other contract. The *Contractor* shall supply the *Employer* with a copy of all correspondence between HMRC and the *Contractor*'s advisors regarding the VAT assessment within three Business Days of a written request from the *Employer* for such correspondence.

6 Compensation events

60.1 Insert a new sub-clause (20):

"60.1(20) A Pandemic Event."

In clause 61.3 after "has happened" insert, "(or, if earlier, within eight weeks of the date an experienced contractor would reasonably have become aware of the event)".

In clause 61.4 delete "from a fault of the *Contractor*" and insert:

"from a fault, act or omission of the *Contractor* (which includes the fault of any Subcontractor or any employee or supplier of the *Contractor*),

- arises from any act or omission by the *Contractor*, any Subcontractor or agent or employee of the *Contractor*, under any separate contract with the *Client* to do anything on or adjacent to the Site (whether concurrent with the *Contractor* Providing the Works or otherwise),
- is a *Contractor* responsibility under the contract."

Insert a new Clause 61.8:

"61.8 61.8.1 The parties recognise that the continuance of the COVID-19 pandemic may have an adverse impact on the ability of the *Contractor* to perform its obligations under this contract. The *Contractor* shall not therefore be in breach of its obligations under this contract, nor liable for late or non-performance of any of its obligations under this contract, if such delay or failure is a sole and

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direct result of the continuance of the COVID-19 pandemic.

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

61.8.3 Notwithstanding any other provision in this contract and subject to clause 61.8.4 below, the *Contractor* shall be entitled to request an appropriate period of:

61.8.3.1 additional time for performing the contract; and/or

61.8.3.2 relief from other contractual consequences, of late or non-performance of such obligations provided always that the *Contractor* has used, to the satisfaction of the *Employer*, all reasonable endeavours, both to mitigate the adverse impact of the continuance of the COVID-19 pandemic, and to facilitate the continued performance of its obligations under this contract

to the extent that a compensation event is an event of the type referred to in Clause 60.1(20).

61.8.4 The maximum period of additional time and/or for which relief will be granted under this clause shall be limited to [X], after which the *Employer* may terminate this contract on giving [X] days' notice in writing to the *Contractor*. On termination of this contract, the *Contractor* shall be entitled to be paid an amount equal to any and all charges payable (but as yet unpaid) for Contractor Deliverables delivered up to the date of termination but shall otherwise have no claim against the *Employer* in relation to such termination."

Insert at the end of clause 62.2:

"If the *Project Manager* accepts the *Contractor's* quotation the *Contractor* provides a revised programme within one week of such acceptance."

In clause 62.6 delete "two weeks" and replace with "three weeks".

At the beginning of clause 63.1, delete "The" and replace with:

"The changes to the Prices are assessed using rates for activities from the Activity Schedule:

- where the additional or substituted work is of a similar character to, is executed under similar conditions as, and does not significantly change the quantity of work set out in the Scope, the rates and prices for the work set out in the Activity Schedule determines the valuation,

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- where the additional or substituted work is of similar character to work set out in the Scope but is not executed under similar conditions thereto and/or significantly changes its quantity, the rates and prices for the work set out in the Activity Schedule is the basis for determining the valuation and the valuation includes a fair allowance for such difference in conditions and/or quantity,
- where additional or substantial work is not of similar character to work set out in the Scope the work is valued at market rates and prices,

and such rates and prices shall be added to the Price List and notwithstanding this, where the *Client* and *Contractor* agree, the”.

In clause 63.2, delete “the total Defined Cost, the Prices are not reduced unless otherwise stated in these *conditions of contract*” and replace with “the total of the Prices, the total of the Prices is so reduced.”

In clause 63.7, at the end of the clause insert “but excluding inefficiencies within the *Contractor’s* organisation.”

Delete clause 63.8 and insert, “number not used.”

Delete clause 63.10 and insert, “number not used.”

Delete clause 63.12 and insert, “number not used.”

Insert new clauses 63.17 to 63.19:

“63.17 Any extension to the Completion Date and/or to a Key Date and increase in Prices are reduced by the extent to which the *Contractor* and/or any Subcontractor, supplier contributed to the effect of the compensation event.

63.18 Any compensation event under clauses 60.1(13) and 60.1(19) does not give rise to any changes to the Prices and the *Contractor* is only entitled to an extension to the Completion Date and/or to a Key Date.

63.19 There is no extension to the Completion Date and/or Key Date where the compensation event relates to work for which the *Contractor* has been required by the Works Information to make due allowance for in any Accepted Programme save that this clause shall not prevent any float and/or time risk allowance provided for in an Accepted Programme from being taken into account when assessing the effect of any compensation event (where relevant).

7

Title

70.1 Delete 70.1 and 70.2 and substitute with:

“70.1 The *Contractor* warrants that it has full unencumbered legal title to any Plant and Materials that are outside the Working Areas and which the Supervisor has marked as for this contract. Upon such marking, such full unencumbered legal

title passes to the *Employer*.

70.2 The *Contractor* warrants that it has full unencumbered legal title to Plant and Materials brought within the Working Areas and that such title passes to the *Employer* upon such Plant and Materials being brought within the Working Areas.”

70.3 Insert a new Clause 70.3 (DEFCON 694):

“Accounting For Property Of The *Employer*

70.3.1 The *Contractor* shall:

70.3.1.1 maintain a Public Store Account (PSA), as defined in DEFSTAN 05-099, which shall include a complete list of all property of the *Employer*, as defined in Clause 70.3.2, and record for that property all transactions or other accounting information specified at Annex A to this Clause (Part 5, Schedule 5 of this contract);

70.3.1.2 supply to the *Employer* quarterly reports on the current PSA holdings. At least one report in any twelve-month accounting period or part thereof shall be a reconciled report. This shall be submitted with the Annual Certificate Form AAC 32 as required in DEFSTAN 05-099. The other three reports submitted in the period may be un-reconciled advisory reports. The submission by the *Contractor* and receipt by the *Employer* of these reports shall not prejudice any rights or obligations of the *Employer* or the *Contractor* under the contract;

70.3.1.3 ensure that the PSA is available for inspection by the *Employer* at any reasonable time;

70.3.1.4 on being given two months’ notice or any other period as has been stated in the contract permit, and co-operate with, the *Employer* to conduct audits of the PSA in a manner to be determined by the *Employer*, where the *Employer* has reasonable grounds to doubt the integrity of the PSA to the extent that the *Employer* is not satisfied of the proper use of property of the *Employer*, an audit may be conducted without notice;

70.3.1.5 retain the PSA for a period of three years after disposal of the last item of the property of the *Employer*, or for any other period as may be specified in the contract;

70.3.1.6 if the *Employer* agrees that a Subcontractor at whatever level of Subcontracting shall have responsibility in the Subcontractor’s PSA for property of the *Employer* issued in aid of the contract, the *Contractor* shall include in any Sub-contract with those Subcontractors only the provisions corresponding to those set out in this Clause that apply to property of the *Employer* issued in aid of the Sub-contract, in particular Clauses 70.3.2, 70.3.4 and 70.3.7; and

70.3.1.7 manage the Government Furnished Assets component of the PSA in accordance with the provisions of DEFSTAN 05-099; and implement any new edition of or amendment to DEFSTAN 05-099 within three months of the

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

70.3.2 For the purposes of this Clause 'property of the Employer' means GFA and fixed assets, including property issued under DEFCON 611 (Clause 70B of this contract) and property of the *Employer* issued to the *Contractor* under any other authorising document except for property vested in the *Employer* under Clause 1 of DEFCON 649 (Clause 70A of this contract).

70.3.3 For the avoidance of doubt, it is a Clause of this contract that this Clause shall apply to all property issued to the *Contractor* from the date of this contract, whether in aid of the contract, any other contract or other agreement with the *Employer*. Property of the *Employer* issued prior to the date of this contract may be subject to separate contractual arrangements.

70.3.4 The obligations of the *Contractor* arising under this Clause in respect of property of the *Employer* issued in aid of the contract shall survive completion of the contract and shall not be completed until all such obligations are fulfilled including the provisions of sub-Clause 70.3.1.5).

70.3.5 The obligations of the *Contractor* arising, under this Clause, in respect of property of the *Employer* unconnected with the contract, shall survive completion of the contract and shall not be completed until all those obligations are fulfilled. Including the provisions of sub-Clause 70.3.1.5) unless and until a subsequent contract containing DEFCON 694 (Clause 70.3 of this contract) is placed with the *Contractor*, at which time obligations, in respect of any remaining property of the *Employer*, unconnected with the contract, shall be subsumed in the subsequent contract.

70.3.6 If, after completion of the contract, no subsequent contract is placed containing DEFCON 694 (Clause 70.3 of this contract) within the period detailed at sub-Clause 70.3.1.5), then the obligations of the *Contractor* arising under this Clause in respect of property of the *Employer* unconnected with the contract shall cease on expiry of the period detailed at sub-Clause 70.3.1.5).

70.3.7 The *Employer* reserves the right to amend Annex A (Part 5 – Schedule 5 of this contract) without further consultation where the amendments arise from the Employer's proper and reasonable accounting requirements. For the purposes of this Clause, Annex A shall be regarded as a Specification. If the *Employer* exercises this right:

70.3.7.1 the *Contractor* shall implement the amendment to Annex A (Part 5 – Schedule 5 of this contract) at the commencement of the Employer's next accounting year provided that a notice of six months or such other period as may expressly be agreed between the *Employer* and *Contractor* is given to the *Contractor*. These amendments shall not have retrospective effect; and

70.3.7.2 the *Contractor* shall inform the *Employer* as soon as practicable, but in any event within three months of notice having been given, if the *Contractor* cannot comply with the amendment to Annex A (Part 5 – Schedule 5 of this contract).

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70A Insert a new Clause 70A (DEFCON 649):

“Vesting

70A.1 Subject to the following provisions of this Clause:

70A.1.1 Each Article as it is constructed together with its component parts and equipment so far as incorporated in the Articles; and

70A.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 *Employer*, 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 *Employer*, and shall not be within the control or disposition of the *Contractor* other than for that purpose.

70A.2 Neither the *Contractor*, nor a Subcontractor, nor any other person shall have a lien on any Article or materiel which have vested in the *Employer* under Clause 70A.1 of this Clause for any sum due to the *Contractor*, Subcontractor 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 Subcontractors and other persons dealing with any such Articles or materiel.

70A.3 Without prejudice to Clause 70A.1 of this Clause, 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 *Employer*. The *Contractor* shall comply with any direction given by the *Employer* in this respect.

70A.4 Any Article or materiel which is rejected by the *Employer* shall immediately re-vest in the *Contractor*.

70A.5 If the *Employer* terminates the contract otherwise than under DEFCONs 656A or 656B (Clause 90A), any Article which has not been accepted in accordance with DEFCON 525 (Clause 27B) and any materiel which has not been incorporated in any Article which has been accepted in accordance with DEFCON 525 (Clause 27B) shall re-vest in the *Contractor*. Such re-vesting shall occur on the expiry of thirty days from the date on which that termination shall take effect, unless the *Employer* has given the *Contractor* notice, prior to that expiry, that the *Employer* elects to retain the property in the Article or materiel.

70A.6 Any payment made by the *Employer* in respect of any Article or materiel which re-vest in the *Contractor* under Clauses 70A.4 or 70A.5 of this Clause shall be recoverable from the *Contractor*.

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- 70A.7 The *Contractor* shall hand over to the *Employer* any Article or materiel in which the *Employer* has elected to retain the property under Clause 5 of this Clause. If the *Contractor* fails to do so, the *Employer* 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*.
- 70A.8 The *Employer* shall pay a fair and reasonable price for any Article or materiel in which it has elected to retain the property under Clause 90A.8 of this Clause and which are handed over to it by the *Contractor* or otherwise come into his possession.
- 70A.9 Where any Article or materiel in the Employer's possession or control has re-vested in the *Contractor* in accordance with Clauses 70A.4 or 70A.5 of this Clause, 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 *Employer* or the premises of any Government Department (including any agencies thereof), the *Contractor* shall remove them within fourteen days of their re-vesting."
- 70B Insert a new Clause 70B (DEFCON 611):

"Issued Property

General

- 70B.1.1 All Issued Property shall remain the property of the *Employer*. It shall be used in the execution of the contract and for no other purpose, without the prior approval in writing of the *Employer*.
- 70B.1.2 Neither the *Contractor*, nor any Subcontractor, nor any other person, shall have a lien on Issued Property, for any sum due to the *Contractor*, Subcontractor or other person, and the *Contractor* shall take all such steps as may be necessary to ensure that the title of the *Employer*, and the exclusion of any such lien, are brought to the notice of all Subcontractors and other persons dealing with any Issued Property.

Receipt

- 70B.2.1 Subject to Clauses 70B.2.2 and 70B.2.5 below, within 14 days of receipt of Issued Property, or such other longer period as may be specified in the contract, the *Contractor* shall:
- 70B.2.1.1 check the Issued Property to verify that it corresponds with the Issued Property specified in the contract;
- 70B.2.1.2 conduct a reasonable visual inspection; and

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70B.2.1.3 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

70B.2.1.4 notify the *Employer* of any defects, deficiencies or discrepancies discovered.

70B.2.2 Where Issued Property is packaged it shall not be unpacked earlier than is necessary. The period identified at Clause 70B.2.1 above shall count from the date on which packages are opened.

70B.2.3 The *Employer* shall within a reasonable time after receipt of any notice under Clause 70B.2.1 of this Clause replace, re-issue or authorise repair of Issued Property agreed to be defective or deficient and, if appropriate, the *Employer* shall revise the Contract Price, delivery schedule or both. If appropriate, it shall also issue written instructions for the return or disposal of the defective or deficient Issued Property.

70B.2.4 In the event that the *Employer* 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 70B.2.1, fair and reasonable revisions of the Contract Price, delivery schedule or both shall be made as may be appropriate provided that the *Contractor* has taken all reasonable measures to mitigate the consequences of any such delay.

70B.2.5 Clauses 70B.2.1 – 70B.2.4 do not apply in the following circumstances:

70B.2.5.1 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 the contract;

70B.2.5.2 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 the contract.

Custody

70B.3.1 Subject to Clause 70B.3.4 below and any limitation or exclusion of liability as may be specified in the contract, the *Contractor* shall be responsible for the safe custody and due return of Issued Property, whether or not incorporated into the Articles, and shall be responsible for all loss or damage thereto, until re-delivered in accordance with the Employer's instructions or until the expiry of the period specified in Clause 70B.4.3.

70B.3.2 The *Contractor* shall be responsible for such calibration and maintenance of the Issued Property as is specified in the contract.

70B.3.3 If requested, the *Employer*, within a reasonable time, and where practicable before delivery of the Issued Property, shall notify the *Contractor* of the value of the Issued Property.

70B.3.4 The *Contractor* shall not be liable in respect of:

70B.3.4.1 defects or deficiencies notified to the *Employer* in accordance with Clause 3 of this Clause or latent defects which the *Contractor* can show could not reasonably have been discovered by means of the activities described at Clause 70B.2.1 of this Clause;

70B.3.4.2 fair wear and tear in Issued Property resulting from its normal and proper use in the execution of the contract (except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance by the *Contractor*);

70B.3.4.3 Issued Property rendered unserviceable as a direct result of ordinary performance of the contract;

70B.3.4.4 any loss or damage to Issued Property arising from:

- 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;
- ionising radiation or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel;
- the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof;
- 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

70B.4.1 The *Contractor* shall:

70B.4.1.1 open and maintain a Public Store Account (PSA) in accordance with DEF STAN 05-099.

70B.4.1.2 ensure that all property of the *Employer* recorded in the PSA, including but not limited to Issued Property, is available for inspection by the *Employer* at any reasonable time;

70B.4.1.3 on being given two months' notice or such other period as has been stated in the contract permit, and co-operate with, the *Employer* to conduct audits of the property of the *Employer* recorded in the PSA in a manner to be determined by the *Employer*, where the *Employer* has reasonable grounds to believe that the property of the *Employer* has not been used in accordance with the terms of issue then these audits may be conducted without notice.

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70B.4.2 At contract completion the *Contractor* shall forward a list of Issued Property still held to the Employer's Commercial Officer named in the contract. Return or disposal of such Issued Property will be as specified in the contract, or as instructed by the *Employer* at contract completion. If no disposal instructions are specified in the contract the *Employer* shall provide such instructions within two months of the Contractor's written request to do so

73.3 Insert Clause 73.3:

"Notwithstanding the above, the *Contractor* has full responsibility for all Plant and Materials prior to Completion of the works and shall compensate the *Employer* for any loss or damage occurring to the same."

73A Insert a new Clause 73A:

"Redundant materiel

73A.1 Redundant Materiel shall mean Materiel as defined in Clause 11.2 (Definitions) that is identified as surplus to the requirement of the contract for whatever reason.

73A.2 All Redundant Materiel resulting from work carried out under, or procured for the purposes of the contract, the costs of which have been paid by the *Employer* under the contract, or which is otherwise owned by the *Employer*, shall be disposed of as follows:

73A.2.1 On completion of the contract or earlier if appropriate, the *Contractor* shall prepare a list of those items of the Materiel which are considered to be:

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

73A.2.2 The *Contractor* shall send the lists referred to in sub-sub-Clause 73A.2.1 (i) and 73A.2.1.(ii) above to the Commercial Officer named in the contract.

73A.2.3 Within three months of the date of receipt of the lists, the *Employer* shall issue disposal instructions to the *Contractor*. Such disposal instructions shall require that the items of materiel are either:

- (i) transferred to other subsisting contracts;
- (ii) subject to contract, retained by the *Contractor* for use in the performance of future contracts placed with the *Contractor*;
- (iii) subject to contract, repaired by the *Contractor*; or

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- (iv) at the direction of the *Employer*, sold by the *Contractor*, acting on behalf of the *Employer*, for the best price reasonably obtainable. Materiel designated in accordance with sub-sub-Clause 2.a.(ii) above shall be dismantled and disposed of in such a manner as to preclude the possibility of resale in its existing form.

73A.3 The proceeds of the sale of items of Materiel sold pursuant to sub-sub-Clause 73A.2.3.(iv) above shall be credited to the *Employer* in accordance with arrangements made between the *Contractor* and the *Employer*.

73A.4 A list of the items sold by the *Contractor* shall be sent to the Commercial Officer specified in the contract together with a statement of the proceeds of sale. “

8 Risks and insurance

80.1 At the end of the first sentence add:

“(except to the extent these are covered by the Insurance Table (Required Insurances) at Clause 84.[]⁸).”

Delete the bullet points and substitute with:

- Claims, proceedings, compensation and costs payable which are due to negligence, breach of statutory duty or interference with any legal right by the *Employer* or by any person employed by or contracted to him except the *Contractor*
- Riot, War, invasion, act of foreign enemies or hostilities.
- Civil war, rebellion, revolution, terrorism, insurrection or military usurped power.
- Ionising radiations or contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- Loss of use or damage to the works, or any part of the Site resulting from;
 - use of and/or discovery of munitions, or
 - pressure waves caused by the speed of aircraft or other aerial devices travelling at sonic or supersonic speeds.
- Loss of or wear or damage to the parts of the works taken over by the *Employer*, except loss, wear or damage occurring before the issue of the Defects Certificate which is due to:
 - a Defect which existed at take over,
 - an event occurring before take over which was not itself an Employer’s risk, or the activities of the *Contractor* on the Site after take over.
- Loss of or wear or damage to the works and any Equipment, Plant and Materials retained on the Site by the *Employer* after a termination, except loss, wear or damage due to the activities of the *Contractor* on the Site after the termination

⁸ Insert the relevant clause number depending on which insurance option is used.

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- Additional Employer's risks stated in the Contract Data.

83.1 Remove Clause 83.1 and substitute with:

"The *Contractor* indemnifies the *Employer* against claims, proceedings, compensation and costs due to an event which is not at the Employer's risk."⁹

84 Delete clause and replace with [relevant clause 84 from Part 5, Schedule 1]¹⁰.

9 **Termination**

90.1 Renumber Clause 90.1 as 90.1.1.

90.1.2 Insert new clauses 90.1.2 and 90.1.3:

"90.1.2 In the event of such notice being given the *Employer* will at any time before the expiration of the notice of termination be entitled to exercise such of the following powers as he considers expedient:

a) to direct the *Contractor*, where work has not been commenced, to refrain from commencing work;

b) to direct the *Contractor* to complete in accordance with the works, or any part thereof in course of design, construction, repair maintenance or operation at the expiration of the notice, and to hand over the same at such times or times as may be mutually agreed on or, in default of agreement at the time or times provided by this contract.

c) to direct that the *Contractor* will as soon as may be reasonably practicable after receipt of such notice:

- (i) take such steps as will ensure that work on the design, construction repair and maintenance tasks is reduced as rapidly as possible;
- (ii) as far as possible consistent with Clause 90.1.2c(i) to concentrate work on the completion of tasks already on a partly finished state;
- (iii) determine on the best possible terms such Sub-contracts and orders for design, construction and repair and maintenance and for materials and parts as have not been completed or delivered, observing in connection with clauses 90.1.2c(i) and Clause 90.1.2c(ii) any direction given under Clause 90.1.2a and 90.1.2b as far as may be possible.

⁹ Note – proposed amendment suggested : "The *Contractor* indemnifies the *Employer* against claims, proceedings, compensation and costs due to an event which is a *Contractor's Risk*." - To be discussed.

¹⁰ Insert relevant reference from Part 5, Schedule 1.

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90.1.3 The *Contractor* will in any Sub-contract or order the value of which is £10,000 sterling or over made or placed by him with any one Subcontractor in connection with or for the purpose of this contract take power to determine such Sub-contract in the event of termination of this contract under this Clause upon the terms of clauses 90.1.2 to 90.1.3 inclusive.

90.2 Delete the Termination Table and insert the following Table:

Terminating Party	Reason	Procedure	Amount due
The <i>Employer</i>	A reason other than R1 – R21 and RX1-RX6	P1, P2 , P4, P5 and P6	A1, A2 and A3(where <i>Contractor</i> default)
	R1 - R15 (including R RX1 – RX6), R18, R21 – R23	P1, P2, P3, P4, P5 and P6	A1, A3 and A5
	R17, R19 or R20	P1, P4, P5 and P6	A1, A2, A3 and A5
The <i>Contractor</i>	R1 – R10, RX1 – RX5 or R16	P1, P4, P5 and P6	A1, A2 and A5

90.5 At the end of the Clause, insert:

“save to the extent only that the *Contractor* is directed to do so in accordance with Clause 90.1.2 above.”

90A Add a new Clause 90A (DEFCONS 656A and 656B):

“Termination for Convenience – Contracts of £5 million and over”

90A.1 The *Employer* shall have the right to terminate the contract in whole or in part at any time by giving the *Contractor* at least 20 (twenty) Business Days written notice (or such other period as may be stated in the contract). Upon expiry of the notice period the contract, or relevant part thereof, shall terminate without prejudice to the rights of the parties already accrued up to the date of termination. Where only part of the contract is being terminated, the *Employer* and the *Contractor* shall owe each other no further obligations in respect of the part of the contract being terminated, but will continue to fulfil their respective obligations on all other parts of the contract not being terminated.

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- 90A.2. Following the above notification the *Employer* shall be entitled to exercise any of the following rights in relation to the contract (or part being terminated) to direct the *Contractor* to:
- 90A.2.1 not start work on any element of the *Contractor Deliverables* not yet started;
- 90A.2.2 complete in accordance with the contract the provision of any element of the *Contractor Deliverables*;
- 90A.2.3 as soon as may be reasonably practicable take such steps to ensure that the production rate of the *Contractor Deliverables* is reduced as quickly as possible;
- 90A.2.4 terminate on the best possible terms any Sub-contracts in support of the *Contractor Deliverables* that have not been completed, taking into account any direction given under sub clauses b to c of this Clause.
- 90A.3 Where this Clause applies (and subject always to the Contractor's compliance with any direction given by the *Employer* under Clause 90A.2):
- 90A.3.1 the *Employer* shall take over from the *Contractor* at a fair and reasonable price all unused and undamaged materiel and any *Contractor Deliverables* in the course of manufacture that are:
- 90A.3.1.1 in the possession of the *Contractor* at the date of termination; and
- 90A.3.1.2 provided by or supplied to the *Contractor* for the performance of the contract, except such materiel and *Contractor Deliverables* in the course of manufacture as the *Contractor* shall, with the agreement of the *Employer*, choose to retain;
- 90A.3.2 the *Contractor* shall deliver to the *Employer* within an agreed period, or in absence of such agreement within a period as the *Employer* may specify, a list of:
- 90A.3.2.1 all such unused and undamaged materiel; and
- 90A.3.2.2 *Contractor Deliverables* in the course of manufacture, that are liable to be taken over by, or previously belonging to the *Employer*, and shall deliver such materiel and *Contractor Deliverables* in accordance with the directions of the *Employer*;
- 90A.3.2.3 in respect of Services, the *Employer* shall pay the *Contractor* fair and reasonable prices for each Service performed, or partially performed, in accordance with the contract.
- 90A.4 The *Employer* shall (subject to Clause 90A.5 below and to the Contractor's compliance with any direction given by the *Employer* in Clause 90A.2 above) indemnify the *Contractor* against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the *Contractor* by reason of the termination of the contract, subject to:

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- 90A.4.1 the *Contractor* taking all reasonable steps to mitigate such loss; and
- 90A.4.2 the *Contractor* submitting a fully itemised and costed list of such loss, with supporting evidence, reasonably and actually incurred by the *Contractor* as a result of the termination of the contract or relevant part.
- 90A.5 The Employer's total liability under the provisions of this Clause shall be limited to the total price of the *Contractor* Deliverables payable under the contract (or relevant part), including any sums paid, due or becoming due to the *Contractor* at the date of termination.
- 90A.6 The *Contractor* shall include in any Sub-contract over £250,000 which it may enter into for the purpose of the contract, the right to terminate the Sub-contract under the terms of Clauses 90A.1 to 90A.5 except that:
- 90A.6.1 the name of the *Contractor* shall be substituted for the *Employer* except in Sub-Clause 90A.3.1.;
- 90A.6.2 the notice period for termination shall be as specified in the Sub-contract, or if no period is specified 20 (twenty) Business Days; and
- 90A.6.3 the Contractor's right to terminate shall be restricted by including the following additional Clause "Provided that this right is not exercised unless the main contract, or relevant part, has been terminated by the Secretary of State for Defence in accordance with the provisions of DEFCON 656B (Clause 90A)".
- 90A.7 Claims for payment under this Clause shall be submitted in accordance with the Employer's direction.
- 90B Insert a new Clause 90B (DEFCON 514 – Material breach):
- 90B.1 In addition to any other rights and remedies, the *Employer* shall have the right to terminate the contract (in whole or in part) with immediate effect by giving written notice to the *Contractor* where the *Contractor* is in material breach of its obligations under the contract.
- 90B.2 Where the *Employer* has terminated the contract under Clause 90.6 the *Employer* shall have the right to claim such damages as may have been sustained as a result of the Contractor's material breach of the contract, including but not limited to any costs and expenses incurred by the *Employer* in:
- 90B.2.1 carrying out any work that may be required to make the *Contractor* Deliverables comply with the contract; or
- 90B.2.2 obtaining the *Contractor* Deliverable in substitution from another supplier.
- 91.1 Delete the first main bullet point and replace with: (DEFCON 515 – Bankruptcy and Insolvency)
- "If the other Party is an individual or a firm:"

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- R1 Delete R1(from the first bullet point) and replace it with “the presentation of a petition for bankruptcy order against the individual or, in the case of a firm constituted under English law, any partner of the firm unless it is withdrawn within 3 Business Days from the date on which the *Contractor* is notified of the presentation;”
- R2 Delete R2(from the second bullet point) and replace it with “the court making a bankruptcy order in respect of the individual or, in the case of a firm constituted under English law, any partner of the firm;”
- R4 Delete R4(from the fourth bullet point) and replace it with “the individual, the firm or, in the case of a firm constituted under English law, any partner of the firm making a composition or a scheme of arrangement with his or its creditors (including a Scheme of Arrangement under Part 26 and Part 26A Companies Act 2006);”
- RX1 Insert a new bullet point (fifth bullet point):
- “the application by the individual or, in the case of a firm constituted under English law, any partner of the firm to the court for an interim order pursuant to section 253 of the Insolvency Act 1986;”
- RX2 Insert a new bullet point (sixth bullet point):
- “the court making an interim order pursuant to section 252 of the Insolvency Act 1986;”
- RX3 Insert a new bullet point (seventh bullet points):
- “where the *Contractor* is either unable to pay his debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The *Employer* shall regard the *Contractor* as being unable to pay his debts if:
- a. he has failed to comply with or to set aside a statutory demand under section 268 of the Insolvency Act 1986 within 21 days of service of the statutory demand on him; or (RX3.1)
 - b. execution or other process to enforce a debt due under a judgement or order of the court has been returned unsatisfied in whole or in part.” (RX3.2)
- RX4 Insert a new bullet point (eighth bullet point):
- “the presentation of a petition for sequestration in relation to the Contractor's estates unless it is withdrawn within 3 Business Days from the date on which the *Contractor* is notified of the presentation; or”
- RX5 Insert a new bullet point (ninth bullet point):
- “the court making an award of sequestration in relation to the Contractor's estates.”

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- 91.1 Delete the second main bullet point and replace it with
“Where the *Contractor* is a company registered in England”
- R5 Delete R5 (from the first bullet point) and replace it with “the court making an order that the company shall be wound-up;”
- R7 Delete R7 (from the third bullet point) and replace it with “the company passing a resolution that the company shall be wound- up;”
- R8 Delete R8 (from the fourth bullet point) and replace it with “an application is made to court, or an order is made, for the appointment of an administrator of the Company or a notice of intention to appoint an administrator is filed at the Court or an administrator is appointment over the Company;”
- R9 Delete R9 (from the fifth bullet point) and replace it with “the appointment of a Receiver or manager or administrative Receiver.”
- R10 At the end of R10 (the sixth bullet points) insert: “(including a Scheme of Arrangement under Part 26 and Part 26A Companies Act 2006)”.
- 91.1 At the end of the clause insert:

“The *Employer* may also terminate if any event described in Clause 91.1 above occurs in respect of any company, which from time to time has guaranteed the obligations of the *Contractor* in connection with this contract.

Where the *Contractor* is a company registered other than in England, events occur or are carried out which, within the jurisdiction to which it is subject, are similar in nature or effect to those specified in sub- Clauses R5 – R10 above.

Such termination shall be without prejudice to and shall not affect any right of action or remedy which shall have accrued or shall accrue thereafter to the *Employer* and the *Contractor*.”
- 91.1A Insert a new Clause:

“The *Employer* may terminate if the *Contractor* applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986.” (RX6)
- 91.2 Delete the first sentence and substitute with:

“The *Employer* may terminate all or part of the Contractor’s employment under this contract if the *Contractor* has defaulted in one of the following ways and not put the default right within four (4) weeks of the notification.”

Delete the first bullet point and substitute with:

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“Failed to Provide the Works or any portion thereof within the time or times specified to the standards agreed in this contract. (R11)”

At the end of the Clause insert:

- “Failed to meet its requirements for overall performance measured by Key Performance Indicators as set out in the Works Information (R21).
- Is in breach of its obligations under Clause 13.9.7 to 13.9.13 and Clause 14.9 of the FAC-1 Construction Works and Associated Services Framework Alliance Contract (Change of Control of the *Contractor*) (R22).”

91.4 Delete this clause and substitute with:

“The *Contractor* may terminate if the *Employer* has not paid an amount certified by the Project Manager as properly due and payable (and no valid pay less notice has been given) within thirteen (13) weeks of the date of the Relevant Day. (R16)”

91.5 Delete the words “Either Party” and replace them with “The *Employer*”.

In line 1, after “if”, delete “the Parties have” and substitute with:

“either Parties has”.(R17)

91.6 Delete the second and third bullet point and substitute with:

- “*Employer* may terminate if the instruction was due to any other reason other than a default by the *Contractor* or *Employer*.(R19)”

91.7 Delete this Clause and substitute with:

“The *Employer* may terminate if an event which the Parties could not reasonably prevent has substantially affected the Contractor’s work for a continuous period of more than thirteen (13) weeks (R20).”

91.8 Insert new Clause 91.8:

“The *Employer* may terminate this contract in accordance with CCS FAC-1 Framework Alliance contract Schedule 6, Part 2 special terms Clause 14 (Prevention of Fraud and Bribery), Clause 15 (Conflicts of Interest clauses), and clauses 19B.1 to 19.B.14 (Fraud), Clause 28.1 to 28.8.4 (Cyber), Clause 29.1 to 29.8 (Security Measures), Clause 13.9.7 to 13.9.13 (Change of control of *Contractor*) of this contract (R23).”

92.1 Delete the Clause after the word “works” and substitute with:

“(and employ other contractors for that purpose) and may use any Plant and Materials provided by the contractor. (P1)”

92.2 Delete P2 and substitute with:

“In addition to any goods and materials that may have vested in the *Employer*, the *Employer* may instruct the *Contractor* to remove any Equipment, Plant and Materials and assign the benefit of any Sub-contract or other contract related to performance of this contract to the *Employer*. The *Employer* may, at his discretion take over from the *Contractor* at a fair and reasonable price, if payment has not already been made, all used and undamaged materials, bought-out parts and components, and works in course of design or construction, in the possession of the *Contractor* and properly provided by or supplied to the *Contractor* for the performance of this contract. The *Contractor* will prepare and deliver to the *Employer* within an agreed period, or in default of agreement within such period as the *Employer* may specify, a list of all such unused and undamaged materials, in addition to materials vested in the *Employer*, bought-out parts and components and works in the course of design or construction liable to be taken over by or previously belonging to the *Employer* and will deliver these in accordance with the directions of the *Employer*.”

Delete P4 and substitute with:

“The *Contractor* provides to the *Employer* information and other things which the Works Information states he is to provide at the end of the contract.”

Insert new clauses 92.3- 92.6:

“92.3 Save as otherwise expressly provided in the contract:

- termination or expiry of this contract is without prejudice to any rights, remedies or obligations accrued under the contract prior to termination or expiration and nothing in the contract prejudices the right of either Party to recover any amount outstanding at such termination or expiry and
- termination of this contract does not affect the continuing rights, remedies or obligations of the *Employer* or the *Contractor* under Clause 8 (Risks and insurance) and Clause 92 (Procedures on termination) and under 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.

92.4 On the termination of the contract for any reason, the *Contractor* (P5):

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- immediately returns to the *Employer* all Confidential Information, Personal Data and IP Materials relating to the contract in its possession or in the possession or under the control of any Personnel which was obtained or produced in the course of providing the works;
- immediately delivers to the *Employer* all property (including materials, documents, information and access keys) provided to the *Contractor* for the purposes of the contract. Such property is to be handed back in good working order (allowance to be made for reasonable wear and tear);
- assists and co-operates with the *Employer* to ensure an orderly transition of the works to any replacement contractor and/or the completion of any work in progress;
- promptly provides all information concerning the works which may reasonably be requested by the *Employer* for the purposes of adequately understanding the provision of the works or for the purpose of allowing the *Employer* or any replacement contractor to conduct due diligence.

92.5 If the *Contractor* does not immediately return all Confidential Information, Personal Data, IP Materials relating to the contract and property, the *Employer* may recover possession thereof and the *Contractor* grants a licence to the *Employer* or its appointed agents to enter (for the purposes of such recovery) any premises of the *Contractor* or its Personnel (P5).

92.6 Where the contract is terminated the *Contractor* shall provide all reasonable assistance to assist with the orderly transition of the works to a replacement contractor and the provision of information concerning the works which the *Employer* may request free of charge (P6)."

93.1 Delete this Clause and substitute with:

"The amount due on termination includes (A1)

- an amount due assessed as for normal payments;
- the Defined Cost for Plant and Materials:
 - which have been delivered and retained by the *Employer*, or
 - which the *Employer* owns and of which the *Contractor* has to accept delivery
- other Defined Cost reasonably incurred in expectation of completing the whole of the works,
- any amounts retained by the *Employer* excluding deductions made; or

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- other amounts withheld by the *Employer* on a permanent basis or to which the *Employer* has subsequently become permanently entitled.

93.2 Delete A3 and A4 and substitute with:

A3 The *Employer* may charge the *Contractor* (or may deduct the same from any amount otherwise due to the *Contractor*) for any such sum as may be reasonably estimated by the Project Manager of completing or procuring a third party to complete the works to the extent such costs exceed the payment which would otherwise have been payable to the *Contractor* for carrying out the remaining part of the works and provided that such estimate will be based on the *Employer* using reasonable endeavours to mitigate any additional expenditure in obtaining replacement works. Any sum estimated as aforesaid which isn't recovered by the *Employer* by way of deduction from payments otherwise due to the *Contractor* shall be payable by the *Contractor* to the *Employer* as a debt on demand.

A4 A deduction of any other sums that the *Employer* is entitled to deduct under or in connection with the contract (whether arising under any term of this contract or under any statute or rule of law or of equity).

Insert new Clause:

"A5 A deduction of any other sums that the *Employer* is entitled to deduct under or in connection with the contract (whether arising under any term of this contract or under any statute or rule of law or of equity)."

93.4 Insert new Clause 93.4:

"For the avoidance of doubt the *Employer* will not be liable on termination for any *Contractor* loss of profits."

93.5 Number not used.

Insert new Clause Z100:

"Z100 LIMITATIONS ON LIABILITY

Unlimited liabilities

Z100.1 Neither Party limits its liability for:

- death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
- fraud or fraudulent misrepresentation by it or its employees;
- 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

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- any liability to the extent it cannot be limited or excluded by Law.

Z100.2 The financial caps on the Contractor's liability set out in Clause Z100.4 below shall not apply to the following:

- for any indemnity given by the Contractor to the Authority under this Contract;
- breach by the Contractor of Schedule 3 (GDPR) and/or the Data Protection Legislation.

Z100.3 The financial caps on the Employer's liability set out in Clause Z100.5 below shall not apply to any indemnity given by the Authority to the Contractor under this Contract.

Financial limits

Z100.4 Subject to Clauses Z100.1 and Z100.2 and to the maximum extent permitted by Law the Contractor's total liability in respect of losses that are caused by any act, omission or default of the Contractor shall in no event exceed:

- [REDACTED] in respect of liability to the Employer for loss of or damage to the Employer's property as set out in clause 29E; and
- [REDACTED] in respect of liability to the Employer for losses arising out of a breach by the contractor of this Contract as set out in DEFCON 514 (clause 90B), and

without limiting sub-bullet point 1 and 2 of this clause Z100.4 and subject always to Clauses Z100.1 and Z100.2, the Contractor's total liability throughout the Contract Period in respect of all other liabilities whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall be [REDACTED] in the aggregate.¹¹

Z100.4A The Contractor's total liability for all losses caused by an act, omission or default of the Contractor under or in connection with this Contract shall not exceed [REDACTED] of the Contract Price.

Z100.5 Subject to Clauses Z100.3 and to the maximum extent permitted by Law the Employer'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 [REDACTED].

Consequential loss

Z100.6 Subject to Clauses Z100.1, Z100.2 and Z100.7 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:

- indirect loss or damage;
- special loss or damage;
- consequential loss or damage;
- loss of profits (whether direct or indirect);

¹¹ The limits are subject to confirmation from MOD following its contingent liability assessment.

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- loss of turnover (whether direct or indirect);
 - loss of business opportunities (whether direct or indirect); or
 - 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.

Z100.7 The provisions of Clause **Z100.6** shall not restrict the Employer's ability to recover any of the following losses incurred by the Employer to the extent that they arise as a result of an act, omission or default by the Contractor:

- any additional operational and administrative costs and expenses arising from the Contractor's act, omission or default including any costs paid or payable by the Employer:
 - to any Third Party;
 - for putting in place workarounds for any Contractor deliverables; and
 - relating to time spent by or on behalf of the Employer in dealing with the consequences of the Contractor's act, omission or default
- any or all wasted expenditure and losses incurred by the Employer arising from the Contractor's act, omission or default including wasted management time;
- delay damages;
- any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Employer data, or other data or software, including, to the extent the Employer data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Employer data, data or software;
- damage to the Employer's physical property and tangible assets,
- costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any Intellectual Property Rights of third parties or breach of any obligations of confidence;
- any additional costs incurred by the Employer in relation to the Employer's contracts with a third party (including any compensation or interest paid to a third party by the Employer) as a result of the Contractor's act, omission or default (including the extension or replacement of such contracts); or
- any fine or penalty incurred by the Employer pursuant to Law and any costs incurred by the Employer in defending any proceedings which result in such fine or penalty.

Invalidity

Z100.8 If any limitation or provision contained or expressly referred to in this Clause Z100 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 Z100.

Third party claims or losses

Z100.9 Without prejudice to any other rights or remedies the Authority may have under this Contract, the Employer shall be entitled to make a claim under this Contract against the Contractor in respect of any losses incurred by the Employer which arise out of a claim made against the Employer by a third party under any contract with that third party provided that such third party claim:

- arises naturally and ordinarily as a result of the Contractor's failure to failure to perform any of its obligations under this Contract; and
- is a type of claim or loss that would have been recoverable under this Contract if the third party were a party to this Contract (whether as the Employer or the Contractor), such claim to be construed as direct losses for the purpose of this Contract.

No double recovery

Z100.10 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 Employer shall be entitled to use (singly or together) such rights and remedies available to the Employer so as to recover the full extent of any recoverable losses suffered or incurred, including any remedies the Employer may have pursuant to any Parent Company Guarantee.

Liability Date

Z100.11 The end of liability date is twelve years after the Completion of the whole of the works.

PART A – NEC3 Option A

Contract Data Part: 1 - Data provided by the *Employer*

The following details the Contract Data which will be provided by the *Employer* for each Delivery Agreement,

Certain defined terms and information in the Contract Data will be common to all Delivery Agreements; other information included in the Contract Data will be specific to individual Projects.

Part one – Data to be provided by the *Employer*

1. General

The *Clauses of contract* are the core clauses and the clauses for main option A of the NEC3 Engineering and Construction Contract April 2013.

- The *works* are **[to be agreed on a project specific basis]**;
- The *Employer* is the Ministry Of Defence whose principal offices are at Whitehall, London, SW1A 2HB, United Kingdom
- The *Project Manager* is
[Name and organisation] of [address]
- The Supervisor is
[Name and organisation] of [address]
- The Works Information is in **[to be agreed on a project specific basis]**;
- The Site Information is in **[to be agreed on a project specific basis]**;
- The *boundaries of the site* are **[to be agreed on a project specific basis]**;
- The *language of this contract* is **English**;
- The *law of the contract* is the law of **England and Wales**;
- The *period for reply* is **[] weeks**;
- The *Adjudicator nominating body* is **TECSA**;
- The *tribunal* is the **English Courts**;
- The following matters will be included in the risk register **[to be agreed on a project specific basis]**.

2. Number not used

3. Time

- The starting date is ***[to be agreed on a project specific basis]***
- The access dates are

Part of the Site	Date
1
2
3

[to be agreed on a project specific basis]

- The *Contractor* submits revised programmes at intervals no longer than [].

4. Testing and Defects

- The *defects date* is [] weeks after Completion of the whole of the works.
- The *defect correction period* is [] weeks for "Routine Defects" except that
 - The *defect correction period* for "Serious Defects" is []
 - The *defect correction period* for "Emergency Defects" is []
 as defined by the *Supervisor* in accordance with Clause 42.3
[To be agreed on a project specific basis if different]

5. Payment

- The *currency of this contract* is the pound sterling (£).
- The *assessment interval* is []
- The *interest rate* is 3% per year above the base rate in force from time to time of the Bank of England.

○

6. Compensation events

- The place where weather is to be recorded is [].
[to be agreed on a project specific basis]
- The *weather measurements* to be recorded for each calendar month are:
 - the cumulative rainfall (mm);
 - the number of days with rainfall more than 5 mm;
 - the number of days with minimum air temperature less than 0 degrees Celsius;
 - the number of days with snow lying at 0900 hours GMT.

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- The *weather measurements* are supplied by the Meteorological Office.
- The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at [] and which are available from the Meteorological Office.
[to be agreed on a project specific basis]

Where no recorded data are available:

- Assumed values for the ten year return *weather data* for each *weather measurement* for each calendar month are: does not apply.

7. Number not used.

8. Risks and Insurance

- Subject to Part 5, Schedule 1, the minimum limit of indemnity for insurance in respect of loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury or to death of a person (not an employee of the *Contractor*) caused by activity in connection with this contract for any one event [REDACTED]
- Subject to Part 5, Schedule 1, the amount of the minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract for any one event [REDACTED]
- Subject to Part 5, Schedule 1, the minimum level of indemnity for insurance for claims made against him arising out of the *Contractor's* failure to use the skill and care normally used by professionals providing services similar to the Services in respect of each claim is [REDACTED]
- **[DN: the insurances will also include Contractor's All Risks for the full reinstatement value]**

Optional statements

If the *Employer* has decided the completion date for the whole of the *works*

- The Completion Date for the whole of the works is ***[to be agreed on a project specific basis]***.

If the *Employer* is not willing to take over the works before the Completion Date

- The *Employer* is not willing to take over the *works* before the Completion Date.
[To be agreed on a project specific basis]

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

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- The *Contractor* is to submit a first programme for acceptance within [] of the Contract Date.

If the *Employer* has identified work which has to meet a stated *Clause* by a *key date*

- The *key dates* and *Clauses* to be met are:

Clause to be met	key date
1
2
3

[To be agreed on a project specific basis]

If Y(UK)2 is used and the final date for payment is not 14 days after the date when payment is due.

- The period for payment is [].

If there are additional *Employer's risks*

- These are additional *Employer's risks*

1
2
3

[To be agreed on a project specific basis]

If the *Employer* is to provide Plant and Materials

- The insurance against loss or damage to the *works*, Plant and Materials is to include cover for Plant and Materials provided by the *Employer* for an amount of £.....

[To be agreed on a project specific basis]

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

- The *Employer* provides these insurances from the Insurance Table

1	insurance against	.....
	Cover/indemnity is	.....
	The deductibles are	.....
2	Insurance against	.....
	Cover/indemnity is	.....
	The deductibles are	.....
3	Insurance against	.....
	Cover/indemnity is	.....
	The deductibles are	.....

[To be agreed on a project specific basis]

If additional insurances are to be provided

- The *Employer* provides these additional insurances
 - 1 insurance against
Cover/indemnity is
The deductibles are
 - 2 Insurance against
Cover/indemnity is
The deductibles are
 - 3 Insurance against
Cover/indemnity is
The deductibles are

[To be agreed on a project specific basis]
- The *Contractor* provides these additional insurances
 - 1 insurance against
Cover/indemnity is
The deductibles are
 - 2 Insurance against
Cover/indemnity is
The deductibles are
 - 3 Insurance against
Cover/indemnity is
The deductibles are

[To be agreed on a project specific basis]

If Option X7 is used

Delay damages for Completion of the whole of the *works* are:

- [REDACTED] per day for the first day after planned Completion until the 7th calendar day after planned Completion;
- [REDACTED] per day for the 8th day after planned Completion until the 28th calendar day after planned Completion; .
- [REDACTED] per day for the 29th day after planned Completion and for each subsequent until Completion.

If Option X16 is used

- The *retention free amount* is [REDACTED]
- The *retention percentage* is [REDACTED]
- [DN: bidders may submit proposals for a retention bond]

Option Z

- The additional Clauses of contract are identified by this contract apply and take priority over the standard form Engineering and Construction Contract Option A.

Contract Data

Part 2 - Data provided by the Contractor

Statements given in all contracts

- The *Contractor* is:
Name
Address
.....
- The *direct fee percentage* is []
- The *Sub-contracted fee percentage* is []
- The *working areas* are the Site and
- The key people are:
 - (1) Name
 - Job
 - Responsibilities
 - Qualifications
 - Experience
- The following matters will be included in the Risk Register
.....

Optional statements

If the *Contractor* is to provide Works Information for his design

- The Contractor's design is the entire of the Works Information

If a programme is to be identified in the Contract Data

- The programme identified in the Contract Data is
.....

If the *Contractor* is to decide the *completion date* for the whole of the works

- The completion date for the whole of the works is
- The activity schedule is

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- The tendered total of the Prices is

Data for the Shorter Schedule of Cost Components

- The percentage for people overheads is%
- The published list of Equipment is the last edition of the list published by the
- The percentage for adjustment for Equipment in the published list is% (plus/minus)
- The rates for other Equipment are

Equipment	size or capacity	rate
.....
...
.....
...
- The hourly rates for Defined Cost of design outside the Working Areas are

category of employee	hourly rate
.....
.....
- The percentage for design overheads is %
- The categories of design employees whose travelling expenses to and from the Working Areas are
 -
 -
 -
 -

FORM OF GUARANTEE

[INSERT THE NAME OF THE GUARANTOR]

- AND -

[INSERT THE NAME OF THE BENEFICIARY]

DEED OF GUARANTEE

DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the day of 20[]

BETWEEN:

- (1) [Insert the name of the Guarantor] [a company incorporated in England and Wales] with number [insert company no.] whose registered office is at [insert details of the Guarantor's registered office here] [OR] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] ("**Guarantor**"); in favour of
- (2) [The *Employer*] [Insert name of Contracting *Employer* who is Party to the Guaranteed Agreement] whose principal office is at [] ("**Beneficiary**")

[Guidance note: Where this deed of guarantee is used to procure a Framework Guarantee in favour of the Employer, this paragraph numbered (2) above will set out the details of the Employer. Where it is used to procure a Call Off Guarantee in favour of a Contracting Employer this paragraph numbered (2) above will set out the details of the relevant Contracting Employer]

WHEREAS:

- (A) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Agreement.
- (B) It is the intention of the Parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

1. DEFINITIONS AND INTERPRETATION

In this Deed of Guarantee:

- 1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
- 1.2 the words and phrases below shall have the following meanings:

[Guidance Note: Insert and/or settle Definitions, including from the following list, as appropriate to either Framework Guarantee or Call Off Guarantee]

" Employer "	means the <i>Client</i> or an <i>Additional Client</i> as defined in the <i>Framework Alliance Contract</i> ;
" Beneficiary "	means [the <i>Employer</i>] [insert name of the <i>Additional Client</i> with whom the Supplier enters into a Project

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Contract] and "Beneficiaries" shall be construed accordingly;

"Project Contract" means a *Project Contract* as defined in the *Framework Contract*;

"Framework Alliance Contract" means the FAC-1 *Framework Alliance Contract* dated on or about the date hereof made between the *Employer* and the *Supplier* and other parties;

"Guaranteed Agreement" means [the *Framework Alliance Contract*] [the *Project Contract* made between the *Beneficiary* and the *Supplier* on [insert date];

"Guaranteed Obligations" means all obligations and liabilities of the *Supplier* to the *Beneficiary* under the *Guaranteed Agreement* together with all obligations owed by the *Supplier* to the *Beneficiary* that are supplemental to, incurred under, ancillary to or calculated by reference to the *Guaranteed Agreement*;

"Project" has the meaning given to it in the *Framework Alliance Contract*.

1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the *Guaranteed Agreement*) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;

1.14 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;

1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;

1.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;

1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;

1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;

1.9 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;

1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and

- 1.11 references to liability are to include any liability whether actual, contingent, present or future.

2. GUARANTEE AND INDEMNITY

- 2.1 The Guarantor irrevocably and unClauseally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
- 2.2 The Guarantor irrevocably and unClauseally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.
- 2.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unClauseally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
- 2.3.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
 - 2.3.2 as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.
- 2.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unClauseally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3. OBLIGATION TO ENTER INTO A NEW CONTRACT

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- 3.1 If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

4. DEMANDS AND NOTICES

- 4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

[Address of the Guarantor in England and Wales]

[Facsimile Number]

For the Attention of [insert details]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

- 4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

- if delivered by hand, at the time of delivery; or
- if posted, at 10.00 a.m. on the second Business day after it was put into the post; or
- if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Business day, and in any other case at 10.00 a.m. on the next Business day.

- 4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.

- 4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

5. BENEFICIARY'S PROTECTIONS

- 5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or

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indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:

5.3.1 it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;

5.3.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;

5.3.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and

5.3.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.

5.4 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non-performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.

5.5 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.

5.6 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.

5.7 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and Clauses, if any, on which it is given.

5.8 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be Clauseal upon no security, disposition or payment to the Beneficiary by the

Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such Clause shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

6. GUARANTOR INTENT

6.1 Without prejudice to the generality of Clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

7. RIGHTS OF SUBROGATION

7.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

7.1.1 of subrogation and indemnity;

7.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and

7.1.3 to prove in the liquidation or insolvency of the Supplier,

only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand.

7.2 The Guarantor hereby acknowledges that it has not taken any security from the Supplier and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

8. DEFERRAL OF RIGHTS

8.1 Until all amounts which may be or become payable by the *Contractor* under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:

8.1.1 exercise any rights it may have to be indemnified by the *Contractor*;

8.1.2 claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement;

- 8.1.3 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement;
 - 8.1.4 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or
 - 8.1.5 claim any set-off or counterclaim against the Supplier;
- 8.2 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

9. REPRESENTATIONS AND WARRANTIES

9.1 The Guarantor hereby represents and warrants to the Beneficiary that:

- 9.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
- 9.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
- 9.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:
 - the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
 - any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
 - the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
- all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

10. PAYMENTS AND SET-OFF

- 10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 10.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

11. GUARANTOR'S ACKNOWLEDGEMENT

- 11.1 The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

12. ASSIGNMENT

- 12.1 The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.
- 12.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

13. SEVERANCE

- 13.1 If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

14. THIRD PARTY RIGHTS

- 14.1 A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of

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Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

15. GOVERNING LAW

- 15.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.
- 15.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 15.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
- 15.5 [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

[Guidance Note: Include the above provision when dealing with the appointment of English process agent by a non-English incorporated Guarantor]

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by

[Insert name of the Guarantor] acting by [Insert/print names]

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Director

Director/Secretary

PART 5 - SCHEDULES

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1 Schedule 1 – Insurances

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84.1 Without prejudice to its obligation to indemnify or otherwise be liable to the *Employer* under this contract, the *Contractor* will, from the date of this contract, take out and maintain or procure the taking out and maintenance in full force and effect insurances in accordance with the requirements specified in the Insurance Table (at Clause 84.15) and any other insurances as may be required by law or relevant regulation (together the Required Insurances).

The *Contractor* will ensure that the Required Insurances are effective in each case not later than the date on which the relevant risk commences.

84.2 The Required Insurances referred to in Clause 84.1 will be taken out and maintained with insurers who (in the reasonable opinion of the *Employer*) are of good financial standing, appropriately regulated and of good repute in the United Kingdom insurance market.

84.3 The *Contractor* will not (and the *Contractor* will procure that none of its Subcontractors of any tier will not) take any action, or permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person.

84.4 The Insurances referred to in Clause 84.1 will:

- a) Where specified in the Insurance Table (at Clause 84.15) name the *Employer* as co-insured for its separate interest.
- b) Where specified in the Insurance Table (at Clause 84.15) provide for non-vitiation and severability of interests protection in respect of any claim made by the *Employer* as a co-insured.
- c) Where specified in the Insurance Table (at Clause 84.15), include an undertaking from the relevant insurer to waive all rights of subrogation howsoever arising and/or claims against the *Employer*, its employees, servants or agents which they may have or acquire, arising out of any occurrence in respect of which any claim is admitted and is insured under the Required Insurances. The provisions of this Clause 84.4c) will not apply against any *Employer* officer, director, employee, agent and assign who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate nondisclosure or deliberate breach of policy Clause,
- d) Where specified in the Insurance Table (at Clause 84.15), contain an indemnity to principals Clause under which the *Employer* is indemnified in respect of claims made against the *Employer* arising from death or bodily injury or third party property damage for which the *Contractor* is legally liable in respect of this contract.
- e) Be maintained from the date referred to in Clause 84.1 above and until at least the expiry or termination of this contract and for such further period as may be specified in the Insurance Table (at Clause 84.15) subject to the terms, cover features and extensions and principal exclusions as specified in the Insurance Table (at Clause 84.15).
- f) Be maintained from time to time (as far as is reasonably practicable), on terms no less favourable than those generally available to a contractor in respect of the risks insured in the United Kingdom insurance market from time to time.

84.5 The *Contractor* will:

- a) Without limiting any specific requirements in this contract, take or procure the taking of all reasonable risk management and risk control measures in relation to this contract as it would be reasonable to expect of a contractor, acting in accordance with industry best practice, including but not limited to the investigation and reporting of its claims to insurers.
- b) Discharge all its obligations under the Insurance Act 2015 when placing, renewing, amending or maintaining any insurances required by this contract including complying with the duty of fair presentation to insurers and taking the actions needed to protect the *Employer's* separate interests.
- c) Use reasonable endeavours to procure that all insurance brokers through whom any Required Insurances to be effected by the *Contractor* are effected or maintained will maintain intact their files (including all documents disclosed and correspondence in connection with the placement of those Required Insurances and the payment of premiums and claims under such Required Insurances).

84.6 The *Contractor* will provide, on request, to the *Employer*:

- a) Evidence of the Required Insurances, in a form satisfactory to the *Employer*, and
- b) Evidence, in a form satisfactory to the *Employer*, that the premiums payable under the Required Insurances have been paid and that the insurances are in full force and effect and meet the insurance requirements of the *Contractor* in respect thereof.
- c) Neither inspection, nor receipt of such evidence, will constitute acceptance by the *Employer* of the terms thereof, nor be a waiver of the *Contractor's* liability under this contract.

84.7 Evidence, in a form satisfactory to the *Employer*, of the insurances required by Clause 84.1 (Requirement to Maintain) will be obtained as and when requested and certified copies will be forwarded to the *Employer* as soon as possible but in any event no later than two (2) weeks following the *Employer* request or the relevant insurance policy renewal date.

- 84.8**
- a) Where the insurers purport to cancel, suspend or terminate the Required Insurances, the *Contractor* will procure that the insurers will, as soon as is reasonably practicable, notify the *Contractor* in writing in the event of any such proposed suspension, cancellation or termination.
 - b) Where the *Contractor* receives notification from insurers pursuant to Clause 84.8a), the *Contractor* will promptly notify the *Employer* in writing of receipt of such proposed suspension, cancellation or termination

84.9 The *Contractor* will promptly notify to insurers any matter arising from or in relation to this contract from which it may be entitled to claim under any of the Required Insurances.

84.10 Except where the *Employer* is the claimant party and without limiting the other provisions of this Clause, the *Contractor* will notify the *Employer* immediately, (such notification to be accompanied by reasonable particulars of the incident or circumstances giving rise to such claim):

- b) Of any incident or circumstances which may give rise to any claim amounting to or in excess of [REDACTED] pounds [REDACTED] in connection with this contract under any of the Required Insurances.
- c) If the incident or circumstances may give rise to any claim in connection with this contract, which may be in excess of the limits of the Required Insurances.

84.11 If the *Contractor* is in breach of Clause 84.1 the *Employer* may pay (at its option) any premiums, Insurance Premium Tax and insurance broker costs required to keep such insurance in force or itself procure such insurance, and in either case, recover such amounts from the *Contractor* on written demand, together with all reasonable expenses incurred in procuring such insurance.

84.12 Where any policy requires the payment of a premium, the *Contractor* will be liable for such premium.

- 84.13**
- a) Where any insurance is subject to an excess or deductible below which the indemnity from the insurers is excluded, the *Contractor* will be liable for such excess or deductible.

- b) The *Contractor* will not be entitled to recover from the *Employer* any sum paid by way of excess or deductible under the insurances whether under the terms of this contract or otherwise.

84.14 All insurance proceeds received under the Construction "All Risks" Insurance referred to in the Insurance Table (at Clause 84.15), will be applied to repair, reinstate and replace each part or parts of the insured property in respect of which the proceeds were received.

84.15 1. Construction "All Risks" Insurance (CAR)

1.1 Insureds

1. *Contractor*
2. *Employer*

as appropriate, each for their respective rights and interests in this contract.

1.2 Insured property

The permanent and temporary works, materials, goods, plant and equipment for incorporation in the *works* plus Plant Materials and Equipment and all other property used or for use in connection with *works* associated with this contract.

1.3 Coverage

"All Risks" of physical loss, damage or destruction to the insured property (as specified in paragraph 1.2 above) unless otherwise excluded.

1.4 Sum insured

At all times an amount not less than the full reinstatement or replacement value of the insured property (as specified in paragraph 1.2 above), plus provision to include cover features and extensions (as specified in paragraph 1.8 below).

1.5 Maximum deductible threshold

Not to exceed £[To be determined by the parties] each loss in respect of claims for defective design, materials and workmanship and in respect of all other claims £[To be determined by the parties] each and every claim.

[Maximum deductible thresholds will need to be proposed as part of the call-off process.]

1.6 Territorial limits

United Kingdom including offsite storage and during inland transit.

1.7 Period of insurance

From the date of this contract until the completion of the *works* and thereafter in respect of defects liability until expiry of the defects liability period.

1.8 Cover features and extensions

1. Terrorism

2. Munitions of war Clause
3. Additional costs of completion Clause
4. Professional fees Clause
5. Debris removal Clause
6. Seventy two (72) hour Clause
7. Public authorities Clause
8. Free issue materials Clause
9. Ten percent (10%) escalation Clause
10. Automatic reinstatement of sum insured Clause
11. Loss minimisation
12. Plans and specifications Clause
13. Guarantee maintenance or extended maintenance to the extent available
14. Payments on account
15. Temporary repairs
16. Offsite storage and repairs
17. Fire Joint Code of Practice
18. *Employer* co-insured party status with attendant non vitiation, waiver of subrogation and notice of cancellation in accordance with Clause 84.4a), 84.4b), 84.4c and 84.8a) of this contract

1.9 Principal exclusions

1. War and related perils.
2. Nuclear/radioactive risks.
3. Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
4. Wear, tear and gradual deterioration.
5. Consequential financial losses.
6. Cyber risks.
7. Inventory losses, fraud and employee dishonesty
8. Faulty design, workmanship and materials DE5 or LEG3/06

2. Third Party Public and Products Liability Insurance

2.1 Insured

Contractor

2.2. Interest

To indemnify the insured (as specified in paragraph 2.1 above) in respect of all sums that the insured (as specified in paragraph 2.1 above) may become legally liable to pay whether contractually or otherwise (including claimant's costs and expenses) as damages in respect of accidental;

1. death or bodily injury, illness or disease contracted by any person;
2. loss or damage to property;
3. interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities;

happening during the period of insurance (as specified in paragraph 2.6 below) and arising out of or in connection with this contract.

2.3 Limit of indemnity

Not less than [REDACTED] pounds [REDACTED] in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but in the annual aggregate in respect of products or pollution liability (to the extent insured by the policy).

2.4 Maximum deductible threshold

Not to exceed £ [To be determined by the parties] each and every occurrence of third party property damage.

[Maximum deductible thresholds will need to be proposed as part of the call-off process.]

2.5 Territorial limits

United Kingdom and elsewhere in the world in respect of non manual visits.

2.6 Period of insurance

From the date of this contract until the completion of the *works* and thereafter in respect of defects liability until expiry of the defects liability period.

2.7 Cover features and extensions

1. Munitions of war
2. Cross liability Clause
3. Contingent motor vehicle liability
4. Legal defence costs
5. Waiver of subrogation in accordance with Clause 84.4(c)
6. Indemnity to principals Clause in accordance with Clause 84.4 (d).
7. Health & Safety at Work Act(s) Clause
8. Data protection legislation Clause
9. Defence appeal and prosecution costs relating to the Corporate Manslaughter and Corporate Homicide Act 2007

2.8 Principal exclusions

1. War and related perils.
2. Nuclear/radioactive risks.
3. Liability for death, illness, disease or bodily injury sustained by employees of the insured (as specified in paragraph 2.1 above) arising out of the course of their employment.
4. Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.
5. Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the insured (as specified in paragraph 2.1 above).
6. Liability in respect of loss or damage to property in the care, custody and control of the insured (as specified in paragraph 2.1 above) but this exclusion is not to apply to all property belonging to the *Employer* which is in the care, custody and control of the insured (as specified in paragraph 2.1 above).
7. Events more properly covered under a professional indemnity insurance policy (as specified in paragraph 3 below).
8. Liability arising from the ownership, possession or use of any aircraft or marine vessels.
9. Liability arising from pollution and contamination unless caused by a sudden, unintended, unexpected and accidental occurrence.
10. Losses indemnified under the Construction "All Risks" Insurance policy (as specified in paragraph 1 above).
11. Liability arising from toxic mould
12. Liability arising from asbestos
13. Cyber risks

3. Professional Indemnity Insurance

3.1 Insured

Contractor

3.2 Interest

To indemnify the insured (as specified in paragraph 3.1 above) for all sums which the insured (as specified in paragraph 3.1 above) may become legally liable to pay (including claimant's costs and expenses) as a result of any claim or claims first made against the insured (as specified in paragraph 3.1 above) during the period of insurance (as specified in paragraph 3.6 below) by reason of any act, error and/or omission arising from or in connection with professional services, advice, design and specification in relation to this contract.

3.3 Limit of Indemnity

Not less than [REDACTED] pounds [REDACTED] in respect of any one claim, and in the annual aggregate during the period of insurance (as specified in paragraph 3.6 below).

3.4 Maximum deductible threshold

Not to exceed £ [To be determined by the parties] each and every claim.

[Maximum deductible thresholds will need to be proposed as part of the call-off process.]

3.5 Territorial limits

United Kingdom.

3.6 Period of insurance

From the date of this contract for the duration of this contract renewable on an annual basis unless agreed otherwise by the parties and a period of twelve (12) years following the expiry or termination of this contract whichever occurs earlier.

3.7 Cover features and extensions

1. Loss of documents and computer records extension.
2. Legal liability assumed under contract, duty of care agreements and collateral warranties.
3. Retroactive cover from the date of this contract or retroactive date no later than the date of this contract in respect of any policy provided on a claims made form of policy wording.

3.8 Principal exclusions

1. War and related perils.
2. Nuclear/radioactive risks.
3. Insolvency of the insured (as specified in paragraph 3.1 above).
4. Bodily injury, sickness, disease or death sustained by any employee of the insured (as specified in 3.1 above).

4 **Contractors Pollution Liability**

4.1 Insured

Contractor

4.2 Interest

To indemnify the insured (as specified in paragraph 4.1 above) in respect of all sums that the insured (as specified in paragraph 4.1 above) may become legally liable to pay consequent to a pollution incident and/or action by a relevant authority (including but not limited to a local authority, Environmental Agency or any judicial authority) or a third party, including the *Employer*, and resulting in a claim or claims first made against the insured (as specified in paragraph 4.1 above) and reported to the insurer during the policy period. A pollution incident relates to either pollution in existence at the date of this contract disturbed or in some way aggravated, released or made worse by

the insured (as set out in paragraph 4.1 above) or pollution caused by the insured (as set out in paragraph 4.1 above) in connection with the execution of the *works* subsequent to the commencement of the relevant *works*.

4.3 Limit of indemnity

Not less than [REDACTED] in respect of any one occurrence and in the aggregate during the policy period, the policy period not to exceed three years unless agreed otherwise by the parties.

4.4 Maximum deductible threshold

Not to exceed [To be determined by the parties] for each and every loss.

[Maximum deductible thresholds will need to be proposed as part of the call-off process.]

4.5 Territorial limits

The site and off site migration of contamination from the site.

4.6 Period of insurance

From the date of this contract for the duration of this contract (the policy period not to exceed three years unless agreed otherwise by the parties).

4.7 Cover features and extensions

1. Regulatory or third party claims for on site clean-up of pre-existing and new Claims arising from the act or omission of the insured (as specified in paragraph 4.1 above).
2. Regulatory or third party claims for off-site clean-up of pre-existing and new Claims arising from the act or omission of the insured (as set out in paragraph 4.1 above).
3. Third party claims for on-site and off-site property damage from pre-existing and new Claims arising from the act or omission of the insured (as set out in paragraph 4.1 above).
4. Legal costs.
5. Retroactive cover from the date of this contract or retroactive date no later than the date of this contract in respect of any policy provided on a claims made form of policy wording.
6. Liability arising from the *works*, subject to their inclusion within the definition of covered operations under the policy.

4.8 Principal exclusions

1. War and related perils.
2. Nuclear/radioactive risks but this exclusion shall not apply to naturally occurring materials that may become a pollution Claim as a consequence of relocation.
3. Asbestos (exclusion not to extend to asbestos remediation costs with respect to soil and groundwater).

4. Deliberate, wilful and intentional non-compliance with any statutory regulation ordinance or instruction of any government agency or body, or executive, judicial or administrative order.
5. Criminal fines and penalties.
6. Terrorism.

5 Policies to be taken out as required by United Kingdom law.

Parties to this contract are required to meet their statutory insurance obligations in full. Insurances required to comply with all statutory requirements including, but not limited to, Employers' Liability Insurance and Motor Third Party Liability Insurance.

The limit of indemnity for the Employers' Liability Insurance shall not be less than [REDACTED] any one occurrence, the number of occurrences being unlimited during any annual period of insurance or such greater amount as is required by the applicable law for the duration of this contract or such greater period as is required by law.

The statutory insurances to contain an indemnity to principals Clause in respect of claims made against the *Employer* arising out of the performance of the *Contractor* of his duties under this contract in accordance with Clause 84.4 (d).

The insurance will be maintained from the date of this contract throughout the period of this contract.

2 Schedule 2 – Annex N JSP 440

1 Definitions

- 1.1 The term "*Authority*" for the purposes of the Annex means a Ministry of Defence (MOD) official acting on behalf of the Secretary of State for Defence.

2 Security Grading

- 2.1 All aspects associated with this contract are classified OFFICIAL. Some aspects are more sensitive and are classified as OFFICIAL-SENSITIVE. The Security Aspects Letter, issued by the Authority defines the OFFICIAL- SENSITIVE information that is furnished to the *Contractor*, or which is to be developed by it, under this contract. The *Contractor* shall mark all OFFICIAL SENSITIVE documents which it originates or copies during the contract clearly with the OFFICIAL-SENSITIVE classification. However, the *Contractor* is not required to mark information/material related to the contract which is only OFFICIAL.

3 Official Secrets Acts

- 3.1 The Contractor's attention is drawn to the provisions of the Official Secrets Acts 1911-1989 in general, and to the provisions of section 2 of the Official Secrets Act 1911 (as amended by the Act of 1989) in particular. The *Contractor* shall take all reasonable steps to make sure that all individuals employed on any work in connection with the contract (including Subcontractors) have notice that these statutory provisions, or any others provided by the Authority, apply to them and shall continue so to apply after the completion or earlier termination of the contract.

4 Protection of OFFICIAL and OFFICIAL- SENSITIVE Information

- 4.1 The *Contractor* shall protect OFFICIAL and OFFICIAL-SENSITIVE information provided to it or generated by it in accordance with the requirements detailed in this Security Clause and any other Clauses that may be specified by the Authority. The *Contractor* shall take all reasonable steps to prevent the loss or compromise of the information or from deliberate or opportunist attack.

- 4.2 The contractor shall apply Industry Security Notice (ISN) 2017/01 requirements to every industry owned IT and communication system used to store, process or generate MOD information including those systems containing OFFICIAL and/or OFFICIAL-SENSITIVE information. ISN 2017/01 details Defence Assurance and Risk Tool (DART) registration, IT security accreditation processes, risk assessment and risk management requirements. The ISN is available at:

4.2.1 [https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/594320/DART_ISN - V2_3.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/594320/DART_ISN_-_V2_3.pdf)

- 4.3 OFFICIAL and OFFICIAL-SENSITIVE information shall be protected in a manner to avoid unauthorised access. The *Contractor* shall take all reasonable steps to prevent the loss, compromise or inappropriate access of the information or from deliberate or opportunist attack.

OFFICIAL-SENSITIVE COMMERCIAL

- 4.4 All OFFICIAL and OFFICIAL-SENSITIVE material including documents, media and other material shall be physically secured to prevent unauthorised access. When not in use OFFICIAL and OFFICIAL- SENSITIVE documents/material shall be handled with care. As a minimum, when not in use, OFFICIAL-SENSITIVE material shall be stored under lock and key and in a lockable room, cabinets, drawers or safe and the keys/combinations are themselves to be subject to a level of physical security and control.
- 4.5 Disclosure of OFFICIAL and OFFICIAL-SENSITIVE information shall be strictly in accordance with the *"need to know"* principle. Except with the written consent of the Authority, the *Contractor* shall not disclose any of the classified aspects of the contract detailed in the Security Aspects Letter other than to a person directly employed by the *Contractor* or sub-*Contractor*, or Service Provider.
- 4.6 Any samples, patterns, specifications, plans, drawings or any other documents issued by or on behalf of the Authority for the purposes of the contract remain the property of the Authority and shall be returned on completion of the contract or, if directed by the Authority, destroyed in accordance with paragraph 32.

5 Access

- 5.1 Access to OFFICIAL and OFFICIAL-SENSITIVE information shall be confined to those individuals who have a *"need-to-know"*, have been made aware of the requirement to protect the information and whose access is essential for the purpose of his or her duties.
- 5.2 The *Contractor* shall ensure that all individuals having access to OFFICIAL-SENSITIVE information have undergone basic recruitment checks. Contractors shall apply the requirements of HMG Baseline Personnel Security Standard (BPSS) for all individuals having access to OFFICIAL-SENSITIVE information. Further details and the full requirements of the BPSS can be found at the Gov.UK website at:
- 5.2.1 <https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>

6 Hard Copy Distribution

- 6.1 OFFICIAL and OFFICIAL-SENSITIVE documents shall be distributed, both within and outside company premises in such a way as to make sure that no unauthorised person has access. It may be sent by ordinary post or Commercial Couriers in a single envelope. The words OFFICIAL or OFFICIAL-SENSITIVE shall not appear on the envelope. The envelope should bear a stamp or details that clearly indicates the full address of the office from which it was sent.
- 6.2 Advice on the distribution of OFFICIAL-SENSITIVE documents abroad or any other general advice including the distribution of OFFICIAL-SENSITIVE hardware shall be sought from the Authority.

7 Electronic Communication, Telephony and Facsimile Services

- 7.1 OFFICIAL information may be emailed unencrypted over the internet. OFFICIAL-SENSITIVE information shall normally only be transmitted over the internet encrypted using either a CESG Commercial Product Assurance (CPA) cryptographic product or a MOD approved cryptographic technique such as Transmission Layer Security (TLS). In the case of TLS both the sender and recipient organisations must have TLS enabled. Details of the required TLS implementation are available at:

7.1.1 <https://www.ncsc.gov.uk/guidance/tls-external-facing-services>

- 7.2 Details of the CPA scheme are available at:

7.2.1 <https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa>

- 7.3 Exceptionally, in urgent cases, OFFICIAL-SENSITIVE information may be emailed unencrypted over the internet where there is a strong business need to do so and only with the prior approval of the Authority.
- 7.4 OFFICIAL-SENSITIVE information shall only be sent when it is known that the recipient has been made aware of and can comply with the requirements of these Security Clauses and subject to any explicit limitations that the authority shall require. Such limitations, including any regarding publication, further circulation or other handling instructions shall be clearly identified in the email sent with the material.
- 7.5 OFFICIAL information may be discussed on fixed and mobile telephones with persons located both within the UK and overseas. OFFICIAL-SENSITIVE information may be discussed on fixed and mobile types of telephone within the UK, but not within earshot of unauthorised persons.
- 7.6 OFFICIAL information may be faxed to recipients located both within the UK and overseas, however OFFICIAL-SENSITIVE information may be faxed only to UK recipients.

8 Use of Information Systems

- 8.1 The detailed functions that must be provided by an IT system to satisfy the minimum requirements cannot all be described here; it is for the implementers to identify possible means of attack and ensure proportionate security mitigations are applied to prevent a successful attack.
- 8.2 The contractor shall ensure 10 Steps to Cyber Security is applied in a proportionate manner for each IT and communications system storing, processing or generating MOD UK OFFICIAL or OFFICIAL-SENSITIVE information. 10 Steps to Cyber Security is available at: <https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>. The contractor shall ensure competent personnel apply 10 Steps to Cyber Security.
- 8.3 As a general rule, any communication path between an unauthorised user and the data can be used to carry out an attack on the system or be used to compromise or ex-filtrate data.

OFFICIAL-SENSITIVE COMMERCIAL

8.4 Within the framework of the 10 Steps to Cyber Security, the following describes the minimum security requirements for processing and accessing OFFICIAL-SENSITIVE information on IT systems.

8.4.1 Access Physical access to all hardware elements of the IT system is to be strictly controlled. The principle of “*least privilege*” will be applied to System Administrators. Users of the IT System -Administrators should not conduct ‘*standard*’ User functions using their privileged accounts.

8.4.2 Identification and Authentication (ID&A). All systems shall have the following functionality:

- (i) Up-to-date lists of authorised users.
- (ii) Positive identification of all users at the start of each processing session.

8.4.3 Passwords. Passwords are part of most ID&A, Security Measures. Passwords shall be ‘strong’ using an appropriate method to achieve this, for example including numeric and “special” characters (if permitted by the system) as well as alphabetic characters.

8.4.4 Internal Access Control. All systems shall have internal Access Controls to prevent unauthorised users from accessing or modifying the data.

8.4.5 Data Transmission. Unless the Authority authorises otherwise, OFFICIAL-SENSITIVE information shall be transmitted or accessed electronically (e.g. point to point computer links) via a public network like the Internet, using a CPA product or equivalent as described in paragraph 13 above.

8.4.6 Security Accounting and Audit. Security relevant events fall into two categories, namely legitimate events and violations.

8.4.7 The following events shall always be recorded:

- (iii) All log on attempts whether successful or failed,
- (iv) Log off (including time out where applicable),
- (v) The creation, deletion or alteration of access rights and privileges,
- (vi) The creation, deletion or alteration of passwords

For each of the events listed above, the following information is to be recorded:

- (vii) Type of event,
- (viii) User ID,
- (ix) Date & Time,

(x) Device ID,

- 8.4.8 The accounting records shall have a facility to provide the System Manager with a hard copy of all or selected activity. There shall also be a facility for the records to be printed in an easily readable form. All security records are to be inaccessible to users without a need to know.

If the operating system is unable to provide this then the equipment shall be protected by physical means when not in use i.e. locked away or the hard drive removed and locked away.

- 8.4.9 Integrity & Availability. The following supporting measures shall be implemented:

- (i) Provide general protection against normally foreseeable accidents/mishaps and known recurrent problems (e.g. virus power supply variations),
- (ii) Defined Business Contingency Plan,
- (iii) Data backup with local storage,
- (iv) Anti-Virus Software (Implementation, with updates, of an acceptable industry standard Anti-virus software),
- (v) Operating systems, applications and firmware should be supported,
- (vi) Patching of Operating Systems and Applications used shall be in line with the manufacturers recommended schedule. If patches cannot be applied an understanding of the resulting risk will be documented,

Logon Banners Wherever possible, a “*Logon Banner*” shall be provided to summarise the requirements for access to a system which may be needed to institute legal action in case of any breach occurring.

- (i) suggested format for the text (depending on national legal requirements) could be:

“Unauthorised access to this computer system may constitute a criminal offence”

- 8.4.10 Unattended Terminals. Users are to be automatically logged off the system if their terminals have been inactive for some predetermined period of time, or systems must activate a password protected screen saver after 15 minutes of inactivity, to prevent an attacker making use of an unattended terminal.

- 8.4.11 Internet Connections. Computer systems shall not be connected direct to the Internet or ‘untrusted’ systems unless protected by a firewall (a software based personal firewall is the minimum but risk assessment and management must be used to identify whether this is sufficient).

OFFICIAL-SENSITIVE COMMERCIAL

- 8.4.12 Disposal Before IT storage media (e.g. disks) are disposed of, an erasure product shall be used to overwrite the data. This is a more thorough process than deletion of files, which does not remove the data.

9 **Laptops**

- 9.1 Laptops holding any MOD supplied or contractor generated OFFICIALSENSITIVE information are to be encrypted using a CPA product or equivalent as described in paragraph 14 above.
- 9.2 Unencrypted laptops not on a secure site¹² are to be recalled and only used or stored in an appropriately secure location until further notice or until approved full encryption is installed. Where the encryption policy cannot be met, a Risk Balance Case that fully explains why the policy cannot be complied with and the mitigation plan, which should explain any limitations on the use of the system, is to be submitted to the Authority for consideration. Unencrypted laptops and drives containing personal data are not to be taken outside of secure sites. For the avoidance of doubt the term “drives” includes all removable, recordable media (e.g. memory sticks, compact flash, recordable optical media e.g. CDs and DVDs), floppy discs and external hard drives.
- 9.3 Any token, touch memory device or password(s) associated with the encryption package is to be kept separate from the machine whenever the machine is not in use, left unattended or in transit.
- 9.4 Portable CIS devices are not to be left unattended in any public location. They are not to be left unattended in any motor vehicles either in view or in the boot or luggage compartment at any time. When the vehicle is being driven the CIS is to be secured out of sight in the glove compartment, boot or luggage compartment as appropriate to deter opportunist theft.

10 **Loss and Incident Reporting**

- 10.1 The contractor shall immediately report any loss or otherwise compromise of any OFFICIAL or OFFICIAL-SENSITIVE information to the Authority.
- 10.2 Accordingly, in accordance with Industry Security Notice 2014/02 as may be subsequently updated at:
- 10.2.1 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/293480/ISN_2014_02_Incident_Reporting.pdf
- 10.3 Any security incident involving any MOD owned, processed, or *Contractor* generated OFFICIAL or OFFICIAL-SENSITIVE information defined in the Contract Security Aspects Letter shall be immediately reported to the MOD Defence Industry Warning, Advice and Reporting Point (WARP), within the Joint Security Co-ordination Centre (JSyCC). This will assist the JSyCC in formulating a formal information security reporting process and the management of any associated risks, impact analysis and

¹² Secure Sites are defined as either Government premises or a secured office on the contractor premises

upward reporting to the MOD's Chief Information Officer (CIO) and, as appropriate, the company concerned. The MOD WARP will also advise the contractor what further action is required to be undertaken.

JSyCC WARP Contact Details

Email: For those with access to the RLI: [CIO-DSAS-JSyCCOperations](#)

Email: For those without access to the RLI: CIO-DSAS-JSyCCOperations@mod.gov.uk

Telephone: Working Hours: 0306 770 2187

Out of Hours/Duty Officer Phone: 07768 558863

Fax: 01480 446328

Mail: Joint Security Co-ordination Centre (JSyCC), X007 Bazalgette Pavilion, RAF Wyton, Huntingdon, Cambs, PE28 2EA.

11 Sub-Contracts

- 11.1 In accordance with Clause 26 (Sub-contracting) of the Engineering and construction contract and this Annex the *Contractor* may Sub-contract any elements of this contract to Subcontractors within the United Kingdom notifying the Authority. When Sub-contracting to a Subcontractor located in the UK the *Contractor* shall ensure that these Security Clauses shall be incorporated within the Sub-contract document. The prior approval of the Authority shall be obtained should the *Contractor* wish to Sub-contract any OFFICIALSENSITIVE elements of the contract to a Subcontractor located in another country. The first page of Appendix 5 (MOD Form 1686 (F1686)) of the Security Policy Framework Contractual Process chapter is to be used for seeking such approval. The MOD Form 1686 can be found at Appendix 5 at:

11.1.1 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367494/Contractual_Process_-_Appendix_5_form.doc.

- 11.2 If the Sub-contract is approved, the *Contractor* shall incorporate these security Clauses within the Sub-contract document.

12 Publicity Material

- 12.1 Contractors wishing to release any publicity material or display hardware that arises from this contract shall 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 MOD, Services or any other government department.

13 Private Venture

- 13.1 30. Any defence related Private Venture derived from the activities of this contract are to be formally assessed by the Authority for determination of its appropriate classification. Contractors are to submit a definitive product specification for PV Security Grading in accordance with the requirement detailed at:

13.1.1 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/414857/20150310_PV_Ex_Guidance_Document.pdf

14 Promotions and Potential Export Sales

- 14.1 Contractors wishing to promote, demonstrate, sell or export any material that may lead to the release of information or equipment classified OFFICIAL-SENSITIVE (including classified tactics, training or doctrine related to an OFFICIAL-SENSITIVE equipment) are to obtain the prior approval of the Authority utilising the MOD Form 680 process, as identified at:

14.1.1 <https://www.gov.uk/mod-f680-applications>.

15 Destruction

- 15.1 As soon as no longer required, OFFICIAL and OFFICIAL-SENSITIVE information/material shall be destroyed in such a way as to make reconstitution unlikely, for example, by burning, shredding or tearing into small pieces. Advice shall be sought from the Authority when information/material cannot be destroyed or, unless already authorised by the Authority, when its retention is considered by the *Contractor* to be necessary or desirable. Unwanted OFFICIAL-SENSITIVE information/material which cannot be destroyed in such a way shall be returned to the Authority.

16 Interpretation/Guidance

- 16.1 Advice regarding the interpretation of the above requirements should be sought from the Authority.
- 16.2 Further requirements, advice and guidance for the protection of MOD information at the level of OFFICIAL-SENSITIVE may be found in Industry Security Notices at:

16.2.1 <https://www.gov.uk/government/publications/industry-security-notices-isns>.

17 Audit

- 17.1 Where considered necessary by the Authority, the *Contractor* shall provide evidence of compliance with this Security Clause and/or permit the inspection of the Contractors processes and facilities by representatives of the Authority to ensure compliance with these requirements.

3 Schedule 3 (GDPR Schedule)

The following definitions shall apply to this Schedule.

“Party”: a Party to this contract

“Law”: means any law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply;

“Processor Personnel”: means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this contract.

GDPR CLAUSE DEFINITIONS:

“Data Protection Legislation”: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 subject to Royal

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Assent to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

“Data Protection Impact Assessment”: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR.

“Data Loss Event”: any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this contract, including any Personal Data Breach.

“Data Subject Request”: 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.

“DPA 2018”: Data Protection Act 2018

“GDPR”: the General Data Protection Regulation (Regulation (EU) 2016/679)

“Joint Controllers”: where two or more Controllers jointly determine the purposes and means of processing

“LED”: Law Enforcement Directive (Directive (EU) 2016/680)

“Protective Measures”: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule [x] (Security).

“Sub-processor”: any third party appointed to process Personal Data on behalf of that Processor related to this contract.

2 DATA PROTECTION

- 2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the *Employer* is the Controller and the *Contractor* is the Processor unless otherwise specified in Schedule.

The only processing that the Processor is authorised to do is listed in Schedule [X] by the Controller and may not be determined by the Processor.

- 2.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 2.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

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- 2.3.1 a systematic description of the envisaged processing operations and the purpose of the processing; an assessment of the necessity and proportionality of the processing operations in relation to the *works*;
 - 2.3.2 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 2.3.3 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 2.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this contract:
- 2.4.1 process that Personal Data only in accordance with Annex A of this Schedule unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - 2.4.2 ensure that it has in place Protective Measures, are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller 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;

(c) ensure that:

 - (v) the Processor Personnel do not process Personal Data except in accordance with this contract (and in Annex A of this Schedule);
 - (vi) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this Clause;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) 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 Controller or as otherwise permitted by this contract; and

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- (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 2.4.3 not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following Clauses are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor 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 Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- 2.4.4 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the contract unless the Processor is required by Law to retain the Personal Data.
- 2.5 Subject to Clause 1.6, the Processor shall notify the Controller immediately if it:
 - 2.5.1 receives a Data Subject Request (or purported Data Subject Request);
 - 2.5.2 receives a request to rectify, block or erase any Personal Data;
 - 2.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this contract;
 - 2.5.4 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
 - 2.5.5 becomes aware of a Data Loss Event.
- 2.6 The Processor's obligation to notify under Clause 1.5 shall include the provision of further information to the Controller in phases, as details become available.
- 2.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data

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Protection Legislation and any complaint, communication or request made under Clause 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- 2.7.1 the Controller with full details and copies of the complaint, communication or request;
 - 2.7.2 such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 2.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 2.7.4 assistance as requested by the Controller following any Data Loss Event;
 - 2.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 2.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- 2.8.1 the Controller determines that the processing is not occasional;
 - 2.8.2 the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - 2.8.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 2.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 2.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 2.11 Before allowing any Sub-processor to process any Personal Data related to this contract, the Processor must:
- 2.11.1 notify the Controller in writing of the intended Sub-processor and processing;
 - 2.11.2 obtain the written consent of the Controller;
 - 2.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 2 such that they apply to the Sub-processor; and

- 2.11.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 2.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 2.13 The Controller may, at any time on not less than 30 Business days' notice, revise this Clause 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).
- 2.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Business days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 2.15 Where the Parties include two or more Joint Controllers as identified in Annex A of this Schedule in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller contract based on the terms outlined in Schedule [Y] in replacement of Clauses 1.1-1.14 for the Personal Data under Joint Control.

Annex A - Schedule of Processing, Personal Data and Data Subjects

Schedule [X] Processing, Personal Data and Data Subjects

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are: [Insert Contact details]
2. The contact details of the Processor's Data Protection Officer are: [Insert Contact details]
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the <i>Contractor</i> is the Processor in accordance with Clause 1.1.</p> <p>[Guidance: You may need to vary this section where (in the rare case) the Customer and <i>Contractor</i> have a different relationship. For example where the Parties are Joint Controller of some Personal Data:</p>

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	<p>“Notwithstanding Clause 1.1 the Parties acknowledge that they are also Joint Controllers for the purposes of the Data Protection Legislation in respect of:</p> <p>[Insert the scope of Personal Data which the purposes and means of the processing is determined by the both Parties]</p> <p>In respect of Personal Data under Joint Control, Clause 1.1-1.15 will not apply and the Parties agree to put in place a Joint Controller Agreement as outlined in Schedule Y instead.”</p>
Subject matter of the processing	<p>[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.</p> <p>Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public.]</p>
Duration of the processing	[Clearly set out the duration of the processing including dates]
Nature and purposes of the processing	<p>[Please be as specific as possible, but make sure that you cover all intended purposes.</p> <p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]</p>
Type of Personal Data being Processed	[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]
Categories of Data Subject	[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ Employers, suppliers, patients, students / pupils, members of the public, users of a particular website etc.]

4 Schedule 4 – ANNEX A - Minimum Requirement - Financial Management Reports to be Provided by Suppliers (27D)

		DEFCON 647
		ANNEX A
		<u>Minimum Requirement - Financial Management Reports to be Provided by Suppliers</u>
1		Provision of Information

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	a	1st Report to be provided within 20 Business days of the start of the contract.
	b	Report to be provided as stated in the contract on UK MOD Business day 3 or by exception thereafter.
	c	Requirement does not substitute or replace any requirements under EVM, DEFCON 694 (GFA) or any other DEFCON, providing that delivery of that information is linked to key performance indicators and cash payments to the supplier.
	d	Financial Information to be provided VAT Exclusive.
	e	All reports to be endorsed by the contractor representative, recognising that accruals are estimates, but confirming that the report reflects their judgement of the activity on the contract
2		Contract Summary Information
	a	Contract Number.
	b	Contract Title.
	c	Supplier Name.
	e	Original Contract Price Excluding VAT (at contract start date).
	f	Revised Contract Price (to reflect any contract amendments) Excluding VAT.
	g	Nature of Pricing - e.g. firm, fixed, target cost incentive fee.
	h	Currency.
	i	Report Date.
3		Information to be Provided
	a	Minimum granularity is contract schedule lines. [May be extended to reflect, for example, KPI, Milestones, Activities, Items, NSNs.] It is noted that in some circumstances contract schedule lines may not be appropriate (e.g. commodity items) and may need to be grouped.
	b	Inventory information (if applicable) to separately identify service charge and purchases of inventory [required for all on-Statement of Financial Position, Off System Inventory CLS arrangements].
	c	Description.
	d	Value (Ex VAT) - contractual value of the activity.
	e	Progress % work completed on the activity as at report date.
4		Financial Profile - The report is to collect information on actual and planned accruals: that is the contractual value of work undertaken (earned value of work) within a period, for which the MOD will be [was] liable to pay. It includes work undertaken by Subcontractors. It includes work completed and invoiced. The total value of work [to be] completed is expected to be comparable to the contract price. If a fixed or firm price has been agreed for the contract then the value of work should be assessed on this basis.
	a	Prior Years: Work completed (value to sales) in previous financial years.

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	b	Earned Value: Work completed (value to sales) in month - this is the value of work done (accrued/earned value) during that calendar month.
	c	Earned Value: Cumulative Work Completed (value to sales) - this is the value of work done (accrued/earned value) on the activity to date.
	d	MOD Current Financial Year monthly - this will be a mix of actual completed to the end of the current period and forecast beyond that date.
	e	After the Current Financial Year an annual estimate by MOD Financial Year (Apr XX to Mar XY) until contract end date - Forecast periods show the expected work to be undertaken during each period on the activities in the contract. Insert additional years as required.
Note: Accruals represent the earned value or work the contractor has completed to date.		

Contract No:xxxxx

Description:xxxxxx

Supplier:xxxxxx

Original Contract price:xxxxxx

(Ex VAT) Revised Contract price:xxx

Report Date:02-Jul-13

Currency:£ UK Sterling

Nature of Pricing:e.g. firm/fixed

Financial Management Report (Work Completion Plan) - £

																			ETC Annual Financial Year Estimates until Contract End Date	
MILESTONE/ Activity/Item/NSN	Description	Value (Ex VAT)	Progress % Complete as at report date		Prior Years	Apr- 13	May-13	Jun-13	Jul- 13	Aug-13	Sep- 13	Oct- 13	Nov- 13	Dec- 13	Jan- 14	Feb- 14	Mar- 14	14/15		Total
1				Work completed in month																
				Cumulative Work completed																
2				Work completed in month																
				Cumulative Work completed																
Total Work Complete																				

Contractor representative:

This document is an estimate of work completed on this Contract, and is based on my best judgement reflecting the information available to me.

Name

Signature

Position

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Date

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202207 mclh pcsa nec3 ecc option a -
transparency

5 Schedule 5 – Accounting for Property of
the Authority – Data & Format Requirements for PSA Records Annex A to Clause 70.3

Format

The *Contractor* is not obliged to maintain and report on his PSA records in a format that is different from his original records. Electronic formats are the preferred format for reporting under Clause 1.b) of this Clause. If electronic formats are used for reporting, the following formats are acceptable:

Single MS Access Table

Unformatted MS Excel Spreadsheet

Other electronic formats may be suitable, subject to agreement with DBS Finance ADMT - see Box 8 of DEFFORM 111 (Part 6, Schedule 2 of this contract) for points of contact. Reports required under Clause 1.b) of this Clause are to be submitted to DBS Finance ADMT - see Box 8 of DEFFORM 111 (Part 6, Schedule 2 of this contract).

Item Record Information

A record is required for each item of GFA held by the *Contractor* from information available to the *Contractor* provided by the *Employer* and from the Contractor's own inventory management systems.

Serial	Name	Description	Comments
KEY DATA FIELDS			
1a	NATO Stock Number (NSN)	The NSN is to be provided in 3 separate fields, i.e.	The NSN is a 13 digit number assigned to an Item of Supply. It consists of the 4 digit NATO Supply Classification (NSC) and the 9 digit National Item Identification Number (NIIN) i.e. Nation Code (NC) + IIN.
1b		NSN (4 digits)	
1b		NC (2 digits)	
1c		IIN (7 digits)	
			"Dummy" reference numbers should not be used.
2	Contract Number	Contract Number under	If an item is issued

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	or identification of authorising document or responsible MOD official's details if there is no contract.	which the contractor holds GFA.	<p>against or</p> <p>transferred to a new Contract or other authorising document, Serial 2 details should be updated. The preceding Contract No field is to be completed at Serial 8.</p>
3	Terms of Issue / Loan Type	Contract Work Item (CWI); Contract Work Arising (CWA); Contract Support Item (CSI); Contract Embodiment Item (CEI).	This is the loan category indicating why industry is holding the asset.
4	Part Number	The Original Equipment Manufacturer's part number for the item	<p>Essential if Serial 1 information is not available. A serial number or unique sequence number should be identified for high value stock items.</p> <p>For JTTE insert Tool No.</p>
GENERAL DATA FIELDS			
5	Domestic Management Code/Inventory Management Code (DMC/IMC)	Unique Identifier used to further identify the main equipment to which an item belongs.	Domestic Management Code examples are; IMC(Sea): 0613 DMC (Land): 1VSM DMC Air): 10S Note – No DMC/IMC starts with a 0 (zero).

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6	Description	A description of the Asset	The description on the issuing paperwork should be used.
7	Unit Of Measure	Each, Pack, etc. for each line	Otherwise known as Denomination of Quantity
8	Preceding Contract No		To be completed if an item is transferred to a new-succeeding contract.
9	JTTE Indicator	"Yes" indicator to reflect that JTTE has passed from DEFCON 23 to DEFCON 611	This indicator is to be flagged when the contractor moves an item off the DEFCON 23 Register and lists the item in the PSA.
10	Prime Contractor	The Prime Contractor AAC Code should be detailed where the item is being reported by a self-accounting Subcontractor	
11	Disposal Indicator	Highlights an item which requires disposal: 1 – Obsolete 2 – Surplus 3 - Disposal instructions requested 4 – Disposal instructions received	May relate to an item identified as obsolete or surplus to requirements, or for which disposal instructions have been received.
12	Asset Location	The name of the Site where the contractor holds the item. This description only needs to detail the name of the site and should not exceed 30 characters.	This field only needs to be populated if the asset is held on a site other than the primary site as the primary site is fixed to the AIMS Number.
13	Remarks		Any remarks pertinent to the item or that will better identify ownership

Transactional Information

Transactional information enables Resource Accounting and Budgeting compliant accounting and informs decisions on future requirements and any assessment for disposal, either to scrap or return to a MOD Depot or Unit. A transactional information record is required for each item held by the *Contractor*, comprising Serial Nos 1, 2, 3 and 4 identified as the **Key Data Fields**, which will form the unique record identifier that will be used by the Assets in Industry Data Centre. No aggregation of individual line entries is required to be undertaken by the *Contractor* for transactional returns.

Serial	Name	Description	Comments
KEY DATA FIELDS			
14	Opening Balance Data	Reporting period start date.	
15	Quantity		Only to be recorded when the item has been embodied in the product, i.e. at the point in time when the item loses its own identity
	Embodied		
16	Quantity Returned to MOD		This is to include quantity of items returned to MOD under cover of MOD Form 640 or MOD Form 650.
17	Quantity Disposed		This is to include quantity of items scrapped on site or lost in shops (MOD Form 650A), and items authorised for disposal through DSA or otherwise.

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18	Quantity Issued - Other		Any other issue of items not covered by serial 14, 15 or 16. The reason for the issue / transfer is to be recorded in the remarks field.
19	Quantity Received		
20	Stocktaking	Stock Adjustments	
	Adjustments	(Qty) as a result of stocktaking losses or gains.	
21	Closing Balance	The total quantity in stock at the close of the reporting period	
22	Closing Balance	Reporting period end date.	
	date		

6 Schedule 6 – Security Measures – Provisions to be Included in Relevant Sub-Contracts – Clause 29A

Definition

1 In this Clause:-

- (a) 'Secret Matter' means any matter connected with the contract, or its performance which the First Party informs the Second Party in writing has been designated by the Authority 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;
- (b) 'Employee' shall include any person who is an employee or director of the Second Party or who occupies the position of a director of the Second Party, by whatever title given.
- (c) The 'Authority' means the Secretary of State for Defence.
- (d) 'Security Policy Framework' means the HMG Security Policy Framework relating to the Government Security Classification policy as published by the Cabinet Office.

The Official Secrets Acts

2 The Second Party shall:

- (a) Take all reasonable steps to ensure that all Employees engaged on any work in connection with the 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 the contract; and
- (b) b. If directed by the First Party or the Authority, ensure that any Employee shall sign a statement acknowledging that, both during the term of the contract and after its completion or termination, he is bound by the Official Secrets Acts 1911-1989 (and where applicable any other legislation).

Security Measures

3 Unless he has the written authorisation of the Authority to do otherwise, neither the Second Party nor any of his Employees shall, either before or after the completion or termination of the 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:

- (a) who is not a British citizen;

- (b) who does not hold the appropriate authority for access to the protected matter;
- (c) in respect of whom the Authority has notified the Second Party in writing that the Secret Matter shall not be disclosed to or acquired by that person;
- (d) who is not an Employee of the Second Party;
- (e) who is an Employee of the Second Party and has no need to know the information for the proper performance of the contract.

4 Unless he has the written permission of the Authority to do otherwise, the Second Party and his Employees shall, both before and after the completion or termination of the contract, take all reasonable steps to ensure that:

- (a) no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of the contract;
- (b) any Secret Matter is at all times strictly safeguarded in accordance with the Security Policy Framework (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 Second Party has taken or is taking reasonable steps as required by this Clause, shall be final and conclusive.

5 The Second Party shall:

- (a) 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 Sub-Clause 4.b.;
 - (ii) upon request, such information as the Authority may from time to time require so as to be satisfied that the Second Party and his Employees are complying with his obligations under this Clause, including the measures taken or proposed by the Second Party so as to comply with his obligations and to prevent any breach of them;
 - (iii) full particulars of any failure by the Second Party and his Employees to comply with any obligations relating to Secret Matter arising under this Clause immediately upon such failure becoming apparent;
- (b) ensure that, for the purpose of checking the Second Party's compliance with the obligation in Sub-Clause 4.b), a representative of the First Party or the Authority shall be entitled at any time to enter and inspect any premises used by the Second Party which are in any way connected with the contract and inspect any document or thing in any such premises, which is being used or made for the purposes of the contract.

Such representative shall be entitled to all such information as he may reasonably require.

- 6 If at any time either before or after the completion or termination of the contract, the Second Party or any of his Employees discovers or suspects that an unauthorised person is seeking or has sought to obtain information directly or indirectly concerning any Secret Matter, the Second Party shall forthwith inform the Authority of the matter with full particulars thereof.

Sub-Contracts

- 7 If the Second Party proposes to make a Sub-contract which will involve the disclosure of Secret Matter to the Subcontractor, the Second Party shall:
- (a) 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 Second Party which the Authority shall reasonably require;
 - (b) incorporate into the Sub-contract the terms of this Clause and such secrecy and security obligations as the Authority shall direct; and
 - (c) inform the Authority immediately he becomes aware of any breach by the Subcontractor of any secrecy or security obligation and, if requested to do so by the Authority, terminate the contract.

Termination

- 8 The First Party shall be entitled to terminate the contract immediately if:
- (a) the Second Party is in breach of any obligation under this Clause; or
 - (b) the Second Party is in breach of any secrecy or security obligation imposed by any other contract with the Crown;

where the Authority consider the circumstances of the breach jeopardise the secrecy or security of the Secret Matter and notifies its contractor accordingly.

7 **Schedule 7 - BIM**

Foreword

DIO's *Employer* Information Requirements

DIO's Employers Information Requirements (EIR) is a pre-tender cross organisation document that sets out the standards and processes for all information and data provision to DIO*; therefore the EIR details what is required of all suppliers as part of their delivery of information and data to DIO. Over time, as new contracts are procured, DIO's EIR will become applicable to all DIO contracts for the procurement of asset Information, including:

- Capital Frameworks;
- Capital Standalone Projects;
- Regional Delivery Frameworks.

A supplier is required to provide a tender response to DIO's EIR in the form of a BIM Execution Plan (BEP), which is a plan prepared by suppliers to explain how the information and data will be supplied to DIO in response to and in line with the EIR. The aim of the BEP is to give assurance to DIO that suppliers are able to meet DIO's standard information and data delivery requirements. Standard evaluation criteria have been developed to assess each supplier's BEP response as part of any DIO's EIR tender evaluation process.

DIO's Information Delivery Plans

As part of project delivery, including Post contract award Capital Framework call-off projects and Capital standalone projects, actual information and data to be delivered, and the stages at which it is required, will be listed in DIO's Information Delivery Plan (IDP) for Projects (IDP-Projects), which is prepared by DIO's Project Team and/or the appointed Technical Support Providers (TSP).

As part of Regional Delivery, including Regional Delivery Additional Work Services, information and data to be delivered, and when it is required, will be listed in DIO's IDP for Regional Delivery (IDP-Regional Delivery)**.

A supplier is required to provide a response to DIO's IDP in the form of a Master Information Delivery Plan (MIDP), a primary plan for when project information is to be prepared, by whom and using what protocols and procedures. The aim of the MIDP is to give assurance to DIO that suppliers are able to deliver DIO's specific information and data deliverables. The supplier's MIDP will be assessed by the appointed TSP.

* including any information and data provided by DIO internally

** General maintenance activities will be collected on DIO's Information Demand Matrix (see Annex C).

1 Introduction

1.1 Document Purpose

This document confirms DIO's Employer's Information Requirements (EIR). The EIR includes information requirements, reasons and purpose to the Supplier, along with technical and commercial requirements that need to be addressed.

DIO's EIR is an essential element of a DIO's BIM Implementation and is used to set out clearly to DIO's Suppliers the structure and format of information (models, documents and data) that is required to be procured and maintained within both the Capital (Projects) and Operational (Facilities Management) phases of an asset's lifecycle.

Whilst the EIR sets out in general terms the format of information, the Information Delivery Plan (IDP) contains the Information Requirements.

Where specific Information is required by DIO on a project, this is contained within a project specific IDP, giving details of information required at each project stage, via a stage based IDP.

DIO's EIR relates to all information deliverables (models, documents and data), including traditional project documents, surveys, reports and appraisals and these are included in DIO's IDP.

DIO's IDP schedules required information deliverables across DIO's eight stage plan of work, stages which align with the pan industry sector unified CIC/APM plan of work, to enable the *Employer* to answer project stage Plain Language Questions (PLQ), make project gateway decisions and to engage with the other project stakeholders.

DIO's Information (COBie) Demand Matrix (IDM) provides the basis for the collection and maintenance of DIO's Asset Information Model, as and when work in the procurement or maintenance of its assets are undertaken.

Note 1: The contents of this EIR shall apply to the procurement of asset information across all DIO's functional areas.

1.2 Responding to the EIR

1.2.1 Projects (Capital Phase) and Additional Work Services (Operational Phase)

a. The EIR, which includes an IDP long list at Project Initiation or Framework Level, referred to as the IDP Long List elsewhere in this document, shall be responded to and then implemented by use of a Supplier's BIM Execution Plan (BEP). A compliant BEP shall demonstrate how the requirements of each section of this EIR shall be met. The BEP and its response to the EIR will be evaluated using DIO's defined evaluation criteria, to assess that DIO's pre-tender, or Framework, minimum information standards will be met.

b. A separate Project EIR, for projects tendered as a result of a Framework agreement, will consist only of a project specific IDP, referred to as a Project IDP in the remainder of this

document, will be issued on each project and shall be responded to and then implemented by use of a Supplier's Project BEP and their Master Information Delivery Plan (MIDP).

Note 2: within 6 weeks following contract award any successful Supplier will provide a fully compliant Project BEP/MIDP which shall demonstrate how the requirements of each contracted section of the Project IDP will be met.

Note 3: For Projects, which sit outside the Framework approach an EIR and Project IDP will be issued on a phase by phase approach.

c. The aim of separating the EIR IDP Long List and Project IDP is to:

- 1) ensure those elements that are standard across all projects, have been agreed via the EIR and BEP; the aim being to substantially reduce the repetition of standard information in every Framework tender;
- 2) ensure that only those Employer's information requirements that are project specific require a project specific BEP response (on all projects irrespective of how procured);
- 3) ensure procurement of information at the appropriate phase of delivery for any project.

d. A BEP shall include the following content:

- 1) Confirmation of the Suppliers willingness to meet the Employers Information Requirements;
- 2) A single clear cross-referenced index must be provided by the Supplier in specific response to the EIR section by section (as required in DIO's BEP evaluation criteria) giving the:
 - (a) specific location title;
 - (b) section;
 - (c) page reference;
 - (d) and a brief (one short paragraph) summary explanation.

Note 4: On any project, if a Supplier, for whatever reason, believes they cannot deliver information as detailed within a compliant BEP, clarity should be sought during the Tender Phase.

Note 5: The detailed contents of the EIR shall be specifically responded to. Where in doubt the EIR takes precedence to PAS1192-2 which in turn shall take precedence over any BSI example BEPs utilised.

Note 6: In addition to the above, the 'Project specific' (Post-Contract) BEPs, together with the Information Deliverables, will need to fully meet DIO's Employers Information Requirements as provided in DIO's BEP evaluation guidance.

Note 7: Payment for any milestones is dependent on completion of works including the provision, updating and acceptance of information within the Employers Asset Information Model Common Data Environment (AIM CDE), as appropriate to those milestones.

1.2.2 Operational Phase

a. The Facilities Management (FM) Supplier shall throughout the course of the contract, as a result of their maintenance activities, update DIO's Asset Information Model Common Data Environment (AIM CDE) in accordance with DIO's Employers Information Requirements (EIR) with documents to meet the IDP and data as defined in the Asset Information Requirements (AIR) delivered via the IDM appropriate to those maintenance activities. The appropriate files and data scope to be provided for each intervention event type will be defined in collaboration with the FM Supplier to meet the particular EIR, IDP and AIR set;

b. The FM BEP shall include the following content:

- 1) Confirmation of the Suppliers willingness to meet the Employers Information Requirements;
- 2) A single clear cross-referenced index must be provided, giving the specific location title, section, page reference and summary explanation of the responses to each of the EIR sections of how they meet the requirements;
- 3) Specific response to the EIR section by section (as required in DIO's FM BEP evaluation criteria).

Note 8: Payment for any maintenance activities is dependent on completion of works including the provision, updating and acceptance of information within the Employers Asset Information Model Common Data Environment as appropriate with those maintenance activities

1.3 Procurement Routes, EIR and BEPs

The following table gives the various procurement routes and the relevant EIR and BEP documents / document titles

Procurement	EIR Title	BEP Title
Capital (or FM) Framework	EIR	BEP
Capital or FM Framework Project/Additional Works Services	Project IDP (forming an EIR addendum)	Project BEP (Post-BEP)
Capital (or FM) Standalone Project	EIR including Project IDP (forming a Project EIR)	Pre-BEP (pre-contract) Post-BEP (post-contract)

1.4 Project Specific Information

The following table is to be replicated in the Post Contract BEP with the fields filled out.

Project Name:	
Project Code:	
Project Location:	
Programme:	
Project Value:	
Notes:	

2 BIM Vision and Objectives

- 2.1 The Government Construction Strategy of May 2011 (GCS) set out a mandate for ‘collaborative 3D modelling (with all documentation and data being electronic) on all appropriate centrally procured projects by 2016’ and the current GCS 2016-20 continues to require Government Departments to deliver BIM with the aim of making BIM Level 2 business as usual (referred to as BIM throughout this document). DIO are continuing to evolve their BIM implementation, with the aim of enabling significant time, cost and quality improvements to the way that construction projects and importantly asset information is delivered to, by and also within the organisation. BIM processes will provide DIO with an approach that enables digital information to become a key enabler of stakeholder engagement, decision making, improved asset knowledge, capability and estate planning.
- 2.2 It is the vision that the use of BIM will enable the *Employer* to receive the required information deliverables (models, documents & data) at the appropriate time, in the right format, to engage with the appropriate stakeholders, drive project and operational delivery, inform management decisions, enable efficiencies, make the right project gateway decisions, to supply appropriate information at handover and through the whole asset lifecycle, in order to operate, maintain and assess the ongoing performance of the delivered asset, and then ultimately to integrate delivered assets and their information into the Employer’s asset estate Asset Information Model (AIM)
- 2.3 To ensure that DIO’s BIM Implementation Strategy is properly communicated to its Suppliers, it is necessary for DIO to provide a comprehensive EIR and IDP for each project and asset. There are a number of elements that form part of EIR production for DIO, the most important of which is drafting and sign off of project/asset specific IDPs with the support of DIO’s Client’s Technical Adviser and/or Information Manager, which provide full details of project/BIM information/data required against each project stage (including decision gateways) and in what format.

2.4 The production of DIO's Organisational Information Requirements (OIR), Asset Information Requirements (AIR), Plain Language Questions (PLQ), Information Delivery Plans (IDP) and Built Asset Security Information Requirements (BASIR), should be recognised as a lengthy process and therefore they will be incrementally informing revised future versions of the standard DIO EIR and IDP Long List.

2.5 DIO's initial BIM objectives include:

- (a) delivery of verified (eventually digitally validated) structured information and data to support project gateway decisions, including traditional project documents, surveys, reports and appraisals;
- (b) improved engagement with project stakeholders;
- (c) building the project information into the Employer's Asset Information Model at each stage;
- (d) linking and/or passing verified information held in the Asset Information Model to operational and line of business systems, or otherwise reporting, that will support strategic, operational and asset management decision-making and streamlining following the practical completion of the construction works and installations;
- (e) assessment and management of safety and security issues using BIM tools, and establishment of DIO's BIM requirements at Framework Level.

It is anticipated that DIO's future BIM objectives could at some point include:

- (f) authorisation of Supplier's Technical Design using BIM tools;
- (g) verification and validation of the proposed scope, compared to briefing requirements, using BIM tools;
- (h) understanding and confirmation of full programme, sequence and logistics implications using BIM tools (4D),
- (i) understanding and confirmation of project costs using BIM tools (5D);
- (j) help with stakeholder engagement as part of Government Soft Landing (GSL) and helping post-occupancy operational performance evaluation and learning, including Whole Life Costs and Sustainability.

3 Clients Strategic Purpose

2.6 The primary use of the information (models, documents & data) will be for the following purposes:

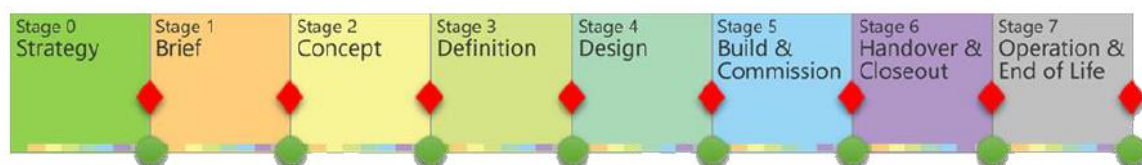
Ref	Purpose
01	Registration To allow accurate audit and reporting based on the assets registered.
02	Use and Utilisation

	To support comparison of actual utilisation with records of the intended use, capacity and planned utilisation of the Facility and to support Government Soft Landings usage reviews.
03	Operations To support the understanding of the anticipated cost of operations based on the normal operations of the Facility and to support Government Soft Landings operations reviews.
04	Maintenance and Repair To support the understanding of the anticipated resource load & cost of maintenance and repair based on the recommended maintenance tasks.
05	Replacement To support the understanding of the anticipated resource load & cost of asset replacement based on the expected service life of assets.
06	Assessment and Re-use To support the assessment of the Facility or Asset at the end of its planned use.
07	Impacts To support the management of the economic and environmental impacts of the Facility or Asset throughout its lifecycle.
08	Business Case To support the on-going evaluation of the business case, which is dependent upon the continual development of 01 and 07 above.
09	Security and Surveillance To support the assessment of security and surveillance and a security minded approach.
10	Regulation and Compliance To support the maintenance of the health and safety of the users of the Facility or Asset including maintenance of a digital record of identified risk and risk mitigation measures.
11	Program, Cost & Carbon To support the assessment, measurement and reporting of program (4D), cost (5D) and carbon.

Note 9: DIO owns the Intellectual Property Rights (IPR) for all information, including models, documents and data, and the supply chain use these under license.

- 2.7 Liability shall typically remain with the originator, and they will not be liable for unpermitted modification or amendment, or any transmission, copying or use of the Materials and the Models. This is in line with current procurement contracts, which should be referred to for additional IPR and liability.

4 Information Exchanges, Project Deliverables & Information



The purpose of this section is to communicate the timing and content of information exchanges between the Project Team/Supplier and the *Employer* and how information exchanges are aligned to work stages. Information may flow both ways.

To ensure that the industry as a whole adopts a common way of working for capital projects and that the unified CIC/APM 8 stage plan is adopted even if the stage names need to be 'localised' as with the adoption by the RIBA. This is shown in the figure here.

It is common to apply a stage decision gateway process to formally close a stage and commence another. Some gateways may be more significant in terms of project progression.

Each stage gateway should be advised by a developed set of *Employer* Plain Language Questions (PLQ). It is common to indicate these gateway decision points as red diamonds.

Whilst information can be shared at any time during the course of a stage, formal published information deliverables should be exchanged prior to the end of a stage to advise the decision gateways. These published information exchanges are referred to as Information Exchanges indicated by green circles or 'footballs'. These logical decision gateways and Information Exchanges are indicated on the above figure. On specific projects information exchanges, may not be required at every stage and this will be detailed in the Project IDP.

Deliverables required to inform the stage PLQ are scheduled in the Project IDP.

Note 10: The Project IDP is profiled by the EIM/TA from the standard Long List for the project and must be confirmed by the Supplier MIDP within six weeks of Supplier appointments as part of the Post Contract BEP.

Note 11 The stage plan may be extended to identify particular operational phase events and enable the use of the IDP to specify information deliverables at different operational stages or intervention events. In the absence of this extension operational deliverables shall be specified in Stage 7 Operation & End of Life

The Project IDP will include:

- (a) Confirmation of information deliverables from the Long List to answer Employer's 'Plain Language Questions' for that phase/stage of delivery;
- (b) Format requirements, constraints or scope for each deliverable at each stage
- (c) Where discipline native models/files are required;
- (d) Where open standard formats are required in addition to a pdf format;
- (e) Where federated models/visualisations are required to support stakeholder engagement;
- (f) The Level of Definition (Level of Detail and Level of Information) of each deliverable at each stage;
- (g) The intended role (pre-appointment) or appointed Supplier for each information deliverable at each stage;

BIM Level 2 information deliverables consist of:

- (h) 3D models - in their native discipline (un-federated) format;
- (i) drawings - cut from the models, and other documents, in PDF or other specified open standards format;
- (j) structured data - again cut from the models, in COBie UK 2012 format, all exchanged as files and referenced in the COBie file as a transmittal sheet, and
- (k) Open standard 2D/3D model equivalents such as federated visualisations shall also be provided where specifically required, in an agreed format, to assist stakeholder engagement.

DIO do not request specific proprietary format files, but within the Project IDP it may state the formats they, and their Client's Technical Adviser, are able to use/access, as a guide to inform Suppliers.

2.8 Information Delivery Plan (IDP) / Master Information Delivery Plan (MIDP)

The Supplier shall review the Project Information Delivery Plan (IDP) and confirm their ability to provide the information from the appropriate resources, in the required formats, at the designated stage decision gates. Any variation from or addition to the plan as proposed, shall be clearly noted and brought to DIO's attention in the responding Project BEP as part of the tender proposal. The Employer's IDP shall form the basis of the Suppliers Master Information Delivery Plan (MIDP) for preparation and submission of information to the *Employer* at the appropriate stages.

Note 12: DIO will issue a Template MIDP with the IDP which will contain the minimum information requirements to be provided and to be used for the published supplier MIDP.

2.9 Level of Definition, Detail and Information

Information delivery requirements are indicated using Level of *model* Detail (LOD) and Level of Information *maturity* (LOI) aligned to the normal delivery stage, e.g. LOD3 and LOI3 for stage 3, as defined in the RIBAE/NBS BIM Toolkit and indicated as D3I3 in the IDP. It is possible that the Employer's information LOD requirement may remain at D4 beyond stage 4, whilst the LOI requirement progresses in line with the stage, for example indicated by D4I6 in the IDP for stage 6.

2.10 Health & Safety / Construction Design Management (H&S/CDM)

The information deliverables in respect of the Employer's H&S/CDM duties shall be detailed in the IDP Long List and shall be used to manage/demonstrate the Employer's and Supplier's H&S/CDM obligations, specifically relating to residual risk scheduling/ management and providing supporting evidence for project gateways, as outlined in DIO's PLQs. In their BEP, the Supplier shall confirm how this information will be delivered in principle.

In line with PAS 1192-6:2018 'Specification for collaborative sharing and use of structured Health and Safety information using BIM', the *Employer* requires BIM model use for H&S/CDM

purposes; including, but not limited to, site orientation/welfare, temporary works, designer risk assessment and risk, residual risk and mitigation measure scheduling as part of the COBie submission at each project stage. If a model is not to be provided or used for this purpose, a clear statement or reasons why not shall be provided in the Project BEP.

5 Management

This section deals with setting the standards to be used for the definition and delivery of the project, along with how the co-ordination and review processes will be managed.

2.11 Standards

The *Employer* expects the Supplier to deliver BIM Level 2 on projects in line with the UK's BIM Level 2 standards, the core parts of which include:

- (a) PAS1192-2:2013 BIM Information Management Capital Phase;
- (b) PAS 1192-3:2014 BIM Information Management Operational Phase;
- (c) Both the above supported by BS1192:2007;
- (d) BS1192-4:2014 COBie Production;
- (e) PAS1192-5:2015 Specification for Security-Minded Building Information Modelling;
- (f) PAS 1192-6:2018 Specification for collaborative sharing and use of structured Health and Safety information using BIM.

The Supplier shall evidence that they have the ability to meet these standards in their BEP. Consideration shall be given to personal data that is held, in order to meet the requirements of the General Data Protection Regulation (GDPR) (EU) 2016/679.

2.12 Roles and Responsibilities

The purpose of this section is to bring to the attention of the Supplier the allocation of roles associated with the management of the model and project information.

PAS 1192-2:2013 provides a useful cross-tabulated summary of the roles as they apply to Suppliers, including:

- (a) Client's Technical Adviser (TA);
- (b) Project Delivery Manager (PDM);
- (c) Supplier Information Manager (IM);
- (d) Lead Designer (BIM Coordinator) (LD);
- (e) Task Team Manager (TTM).

The following roles in connection with BIM will be taken on directly by the *Employer*:

- (a) *Employer* Information Manager (EIM), who will also take responsibility for Built Asset Security Management (BASM) (see PAS1192-5);
- (b) *Employer* Project Manager (EPM).

The BEP is to include appropriate competence and experience of staff members who fill the above Supplier roles.

Note13: At Framework Level this can just be illustrative with specific details being provided as part of any subsequent Tender activities.

2.13 Collaboration Process

The purpose of this section is to define how, where and when information will be shared. The Supplier is expected to manage their own Common Data Environment (Supplier CDE), through the nominated Supplier Information Manager (IM) and in liaison with the Employer's Information Manager (EIM). Although it is recognised that the management and system providing this service may change with the appointment of different Suppliers for different stages or phases, there will only be one CDE in operation at any one time managing one version of the truth.

The BEP shall contain details and also evidence of the following:

- (a) Form and process of sharing information between Project Team members;
- (b) Form and process of publishing information to the *Employer*;
- (c) How the requirements of the IDP will be met and tracked;
- (d) Extent, form and frequency of model coordination and federation;
- (e) e. Frequency of collaboration and information exchange;
- (f) f. Details of model review workshops and other collaborative working practices e.g. use of model federation and coordination at design and/or site meetings.

It should be noted that:

- (g) Depending on the stage of the project and the Level of Definition (LOD), the *Employer* requires the federated discipline model to be made available at all design team meetings, so that it can be used to demonstrate the proposed design, progress and coordination. The *Employer* also expects the federated model to be used for stakeholder engagement;
- (h) The *Employer*, as an interim position, requires the Design Lead Supplier / Client's Technical Adviser to maintain *Employer* issued, shared and published information, in the Designer's Supplier CDE, with Client Shared and Client

Published states for access, mark-up and use, until the *Employer* CDE and AIM are available;

- (i) Construction phase shared and published information, shall similarly be maintained in the Constructor's Supplier CDE, with Client Shared and Client Published states, but also issued to the Designers Lead Supplier / Client's Technical Adviser CDE Client Shared and Client Published, which will act as *Employer* CDE in the interim position;
- (j) The *Employer* will require access to the information which is held on their behalf.

2.14 Planning the Work and Data Segregation

The purpose of this section is to set out requirements for the management of the modelling process. Information shall be managed in accordance with the processes described in PAS 1192-2:2013 and BS 1192:2007.

The Project/Asset IDP confirms the information delivery, information packaging and information exchange requirements for models, documents and data. All published transmittals shall be accompanied by a published COBie spreadsheet, confirming the included exchange files in the documents tab. However, in order to anticipate the requirements of project delivery, planning for delivery of the following is to be included in the BEP:

- (a) Model Management
 - (i) Detail of procedures co-ordinated by the Information Manager.
- (b) Volumes, Locations, Zones and Areas
 - (i) Definitions of zones and the management of adjacency within the discipline models
 - (ii) Confirmation of the definition of the project volume structure.
- (c) Naming Conventions

There will be a single project file name convention based on the BS1192:2007 & PAS1192-2:20013 but extended to include reference to the IDP deliverable and LOD as follows:

- 1) **Project Number:** the *Employer* project reference will be used in all cases;
- 2) **Originator:** as assigned by the *Employer* in the IDP;
- 3) **Volume:** Supplier assigned as PAS1192-2:2013 optional Volume/Zone or 00 for ALL volumes, ZZ for Multiple or XX if Omitted;
- 4) **Location:** Supplier assigned as PAS1192-2:2013 optional Level/Region/Location or 00 for All Locations, ZZ for multiple, or XX if Omitted;

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- 5) **Type:** Supplier assigned as PAS1192-2:2013 document/model/information type;
- 6) **Role:** Supplier assigned as PAS1192-2:2013 Role;
- 7) **Document Number:** Supplier assigned unique & sequential file alphanumeric document number;
- 8) **Status:** Supplier assigned as PAS1192-2 Status/Purpose of Issue but see below;
- 9) **Rev:** File revision;
- 10) **IDP Ref:** IDP Delivery Ref;
- 11) **LOD:** Level of Definition as LOD.LOI e.g. D3L4 (see section 4.3 above);
- 12) **Title:** Supplier assigned and optional free text descriptive title or name;

Note: fields 8-12 are an extension to BS1192/PAS1192-2.

- (a) Fields 1 & 2 are *Employer* assigned;
- (b) Fields 3 & 4 the Volume and Location naming strategy shall be confirmed in the Project BEP but integrated with and aligned to the strategy used previously on the project;
- (c) Fields 5 & 6 shall use *Employer* assigned values or failing that BS standard codes;
- (d) Field 8 Purpose of Issue;
- (e) For WIP & Shared issues use PAS1192-2:2013 Table 3 WIP & Shared status codes;
- (f) For Published use the following purpose codes for publishing of stage exchanges;

A0	Published Stage 0 Strategy
A1	Published Stage 1 Brief
A2	Published Stage 2 Concept
A3	Published Stage 3 Definition
A4	Published Stage 4 Design
A5	Published Stage 5 Build
A6	Published Stage 6 Handover
A7	Published Stage 7 Operation

Note14: Lookup values for these assigned values shall be contained in the Picklists tab of the stage COBie sheet and Project IDP as a master record.

(d) d. Publishing processes:

- 1. The contents of stage Information Exchanges will be defined in the IDP;
- 2. The stage Information Exchanges shall be published by the Supplier Information Manager from the Supplier CDE to complete the particular delivery stage;
- 3. All published file packages shall be accompanied by a COBie file which will be used to verify the delivery;

4. The Supplier Information Manager shall upload all information packages to the *Employer* CDE (Client's Technical Adviser provided) notifying the *Employer* Information Manager.
5. The *Employer* Information Manager shall verify the package and produce a Red Amber Green (RAG) acceptance report to the Supplier Information Manager.
6. Green packages shall be published into the *Employer* CDE AIM Published file area and the COBie data and file linkages published into the *Employer* CDE AIM data area for onward use.
7. Amber or Red package shall be remedied in the Supplier CDE and resubmitted for retest.
8. Detailed confirmation of use of these procedures, including specific definitions and details, shall be confirmed in the Project BEP.

2.15 Security

The purpose of this section is to communicate client specific security measures required in order to secure information, information access and information exchanges. Reference should be made to the DIO BIM Security Guidance Note version V3.0 dated 15 February 2015.

In line with PAS1192-5:2015 the Supplier shall consult with the *Employer* regarding the security requirements of the project and then respond appropriately to any project Built Asset Security Information Requirements (BASIR). All documents shall be marked with the appropriate baseline security. Particular attention must be given to ensuring any Common Data Environments (CDEs) used meet the security requirements in terms of both cyber security and access controls/protocols for users. An appropriate procedure must be established to ensure information transmitted outside CDEs is done so as per the relevant security requirements. Any file when uploaded to the Supplier CDE or otherwise disclosed, shared, published or exchanged is to be secure to the standard required.

Security is defined in accordance with Government Security Classifications (2014) as follows:

- (a) a. OFFICIAL (and its sub-set OFFICIAL – SENSITIVE);
- (b) b. SECRET;
- (c) c. TOP SECRET;

The information security strategy will be contained with a Project Built Assets Security Information Requirements document, which will be completed as part of the early stage information delivery by the *Employer* and made available, as appropriate, to the Project Security Manager and Supplier Information Manager.

The Supplier Information Manager shall ensure that all files held within the CDE are held with the appropriate visible security meta-data markings and that they are not disclosed, distributed, downloaded or otherwise accessed by CDE members with inappropriate security clearance or without justified need. The Supplier CDE system shall be procured and maintained to the appropriate security level, as required by the *Employer* for the project.

2.16 Coordination and Clash Detection Process

The purpose of this section is to ask the Supplier to define their co-ordination process, in order to meet *Employer* requirements for quality control. Details shall be given of how this process will align with the Employer's contractual and process requirements, such as on-going / periodic technical review.

Please note that the *Employer* will expect the most recent Clash Detection Report to be included with monthly project progress reporting.

The following details of the coordination and clash detection process shall be considered:

- a. Software;
- b. Process overview;
- c. Responsibilities;
- d. Outputs;
- e. Technical query workflow;
- f. Tolerance strategy;
- g. Clash resolution process.

The Supplier's BEP shall confirm coordination and clash avoidance processes, with reference to:

- h. Volume strategy;
- i. Tolerance strategy;
- j. Technical query workflows;
- k. Clash resolution;
- l. Responsibilities for coordination and clash avoidance;
- m. Software to support coordination and clash avoidance;
- n. Outputs from coordination and clash avoidance processes.

2.17 Quality Assurance Plan

The purpose of this section is to enable the Supplier to communicate how the integrity, and hence quality, of the model and other data sources will be maintained.

All published information exchanges shall be verified against the IDP for the stage information exchange, using the included COBie file. Only compliant exchanges will be accepted. For this reason all data provided is to be compliant with BS1192-4:2014 & COBie UK 2012.

The Supplier shall confirm their own internal model file, data standards and compliance procedures, including references to standards and compliance software, in their BEP.

The BEP should refer to:

- a. Quality assurance/control procedure, including data verification and validation;
- b. Associated software;
- c. Level of assurance.

The Employer's Information Manager must be given access to the Supplier CDE to enable compliance monitoring and audits.

2.18 Delivery Strategy for Information Exchanges and Asset Information

This section defines the information exchange standard for information and data, enabling the *Employer* to obtain asset information to align to the Employer's Asset Management processes at each stage. Information defined in the Project IDP, and proposed by the Supplier MIDP shall be confirmed in the published information exchange COBie file, together with the published information exchange files.

Currently the *Employer* requires all BIM Information Exchanges to include:

- a. Native authorised files – un-federated and attributable to the supply chain originator / author / contracted Supplier;
- b. 2D pdfs – standard drawing outputs from the BIM, as defined at tender issue stage.
- c. Federated models in IFC or other agreed format, including reference to constituent authored models and other content;
- d. COBie data as defined by an agreed project Information Delivery Plan (IDP) and Supplier Master Information Delivery Plan (MIDP), confirming delivery. The single COBie exchange spreadsheet shall contain data relating to the exchanged models and other project files, which will each be referenced in the spreadsheet and to a two-point geo positioned containing box/cube of Facility, Floor or Space object;
- e. Other files e.g. surveys, reports etc., in pdf or other agreed open standard format.
The BEP shall confirm that the Supplier intends to provide information in the above formats.
- f. Designers and Constructors shall align their model attribute data to be consistent with the data exchange format COBie as detailed in BS1192-4:2014;
- g. All object naming shall be in accordance with DIO Spec 024 including floor and space naming addendum;
- h. There shall be a single COBie sheet for each Spec024 level 2 building or infrastructure facility. This shall confirm Spec 024 naming for the facility – Building or Infrastructure including Establishment and Land Parcel references;
- i. The Establishment and Land Parcels shall additionally be defined in the first rows in the Floors tab and positioned as linked bounding box coordinates;
- j. The Attribute and other requirements for each Spec024 object/element will be confirmed in the Employer's Asset Information Requirements standard catalogue;
- k. Classification shall be to UNICLASS 2015, NRM and SFG20 in this order as appropriate for the project with multiple element classification to BS 1192-4;

l. The AIR, IDP and MIDP can be combined as a stage specific COBie Demand Matrix (CDM) for each project or contract. It is the Employer's intension to develop the use of the *Employer* CDE to enable the verification of published stage information and data delivery before acceptance;

m. The presented stage COBie sheet shall therefore contain reference to all exchanged published files and required data relating to the information exchange point;

n. The Employer's Asset Information Requirements is currently being developed and will be periodically updated as asset type and stage information and data requirements are developed;

o. COBie data shall meet the strategic purposes in section 3 appropriate to the stage.

p. The BEP shall confirm the process of data compilation between models and COBie. Individual authored model COBie sheets shall be coordinated and combined into a single federated COBie sheet for submission to the Client CDE by the Lead Supplier.

Note 15: Information will be progressively shared and published from the Supplier CDE to the nominated Client's Technical Adviser / Employer CDE, so that in normal circumstances the Client's Technical Adviser / Employer will not need access to the Supplier CDE other than for compliance purposes.

2.19 Project Implementation Plan (PIP)

A Project Implementation Plan is statement relating to the Supplier's IT and human resources capability to deliver the Project IDP and as such it shall form part of a Project BEP; the BEP shall confirm the Supplier's intention to provide this information for each project.

2.20 Master Information Delivery Plan (MIDP)

The Master Information Delivery Plan (MIDP) shall be prepared by the Supplier and included with the Project BEP. This will be in response to the specific Project IDP deliverables in the template format attached to the IDP. The MIDP shall detail the models, documents and data to be provided for each required Project IDP deliverable, in what stage, to what required level of detail/information (DXIX) and by which author. The BEP shall confirm the Supplier's intention to maintain an up to date MIDP meeting each IDP deliverable for each project stage.

The Supplier may produce additional Task Information Delivery Plans (TIDP) for their own purposes, but the *Employer* will not require this to be included in the Project BEP.

Note 16: A Template MIDP is attached to the Project IDP which will contain the minimum information requirements and format to be provided.

2.21 Training

The Supplier shall be responsible for maintaining and delivering appropriate information management and access training to all interfacing parties; working collaboratively across the delivery team, including with the Employer's staff and the supplier's own supply chain members. This shall include, but not be limited to:

- a. Key parts of the BIM Execution Plan;
- b. The Supplier's collaboration tool;
- c. Clash detection process and reporting;
- d. Model viewers;
- e. CDE.

Note 17: The Supplier shall undertake a collaborative approach and facilitate workshops to promote Building Information Modelling (BIM) Level 2 process, appropriate technologies and Government Soft Landing (GSL) with both Supplier and Employer staff and or the Employers representatives.

6 Technical

This section establishes technical information requirements, including the software, information exchange contents and level of detail.

All project team members shall agree their collective strategy regarding IT systems performance. It is acknowledged that due the Employer's current IT limitations, their members of staff may be excluded from accessing many software's and files; so for this reason the team should consider ways of accommodating this best they can, especially when it comes to reviewing, sharing and issuing BIM information to the client.

This may be by providing both file and model viewing and mark-up capability in the Supplier CDE to enable *Employer* and TA staff to access, mark-up and apply workflow to engage and collaborate. This provision shall be confirmed in the BEP.

2.22 Software Platforms and Programs

The purpose of this section is to communicate software platforms and versions where these are known and where they might influence the preparation of a bid.

Note 18: As yet the Employer's software platforms are not known and as a public body, OJEU rules preclude specification and selection based on proprietary systems use. Once identified the Supplier will publish and/or share Information into the Employers CDE. Until implemented Employer Shared and Published information deliverables shall be held in the Supplier CDE until the Employer CDE is implemented at which time, and on request, Information will be transferred to DIO.

2.23 System Performance

The purpose of this section is to communicate to bidders any constraints in the employer's systems or specific IT requirements which may need additional resources or non-standard solutions.

The Supplier shall confirm how data and information from their authoring tools will be prepared and published so that it can be used with the software platforms outlined. The Supplier's ability to work with any specified platforms shall be made clear.

The following employer-side IT system restrictions and requirements need to be taken into account when developing the BIM Execution Plan:

- a. Model size: 300Mb for 3D models and 100Mb for other documents (unless agreed by the Authority's BIM Team during project delivery);
- b. Software uses: Federated 3D models in open standard IFC;
- c. Access to viewers via DIO systems: to be provided in Supplier CDE without any requirement to download any additional software onto the DIO's systems;
- d. Security issues: As required in the security section of this document.

2.24 Data Exchange Format

The purpose of this section is to define the formats used to deliver the Information Exchanges. Information shall be required as defined in the Information Delivery Plan, in the following formats:

- a. Native – 3D discipline (un-federated) model files for all design and analysis models ;
- b. Federated – combined 3D discipline models in IFC format;
- c. COBie – COBie-UK-2012 version 2.4 to BS1192-4 & UNICLASS2015 complete with reference to the exchanges files;
- d. PDF files – no older than version 7.0 as a defaulting addition other open standard files as defined in the Information Delivery Plan.

Note 19: Drawings and Data should be generated from a single authored model. Drawings shall state the model ref they are generated from and note any non-derived or additional data.

2.25 Co-ordinates

This section defines requirements for a common coordinate system for all location and data. Eastings and Northings to Ordnance Survey National Grid as realised using OS Net and OSTN15 in decimal format 2.3.

Note20: 3D Co-ordinates to be no less accurate than 10mm in any direction (x,y,z). Where this accuracy cannot be achieved, this should be clearly stated in the Project BEP.

All geophysical features and buildings shall be referenced to an orthogonal bounding box defined by two coordinate triple points – easting, northing & elevation, the bottom left and top right containing the full extent of the object and its constituent elements e.g. piles or masts. Where an insertion or local coordinate system reference point is required this shall be the bottom left of the containing bounding box.

There are also situations where a local height datum is appropriate. If used the local datum should always be referenced back to the required standards and the containing bounding box presented in the standard datum for use in COBie.

Any use of local coordinate systems shall be agreed on a case by case basis with the TA, a qualified land surveyor and referenced back to the bounding box insertion point to the required standard.

Object, model, drawing and file contextual extents will be confirmed in the Volume & Location strategy as part of the Post BEP and referenced in the agreed file name Volume and Location strategy.

The minimum requirement is spatial coordination stated as follows:

- a. Intersection of grids XX and YY - [xxxxxx.xxxE and xxxxxx.xxxN];
- b. Intersection of grids AA and BB - [xxxxxx.xxxE and xxxxxx.xxxN];
- c. Ground floor FFL = [xxx.xxx].

Other coordination standards defined in the BIM Execution Plan shall include:

- d. Origin rotation;
- e. Offsets;
- f. Datum information;
- g. Units to be used.

7 Commercial

This section looks at the information requirements, defines purposes for data and the content of key deliverables.

2.26 BIM Execution Plans and Project BIM Execution Plans (BEP)

BEPs and Project BEPs are to be provided in response to the EIR identifying the Supplier's proposals.

A Project BEP shall be submitted to the *Employer* by the Supplier within six weeks of contract award, or as otherwise agreed.

The Supplier shall respond to the EIR directly, and in addition include any further information within the BEP that the supplier deems necessary in order to outline their delivery of BIM on the project.

The Supplier shall prepare, deliver and maintain BEPs and Project BEPs that respond to the respective EIRs and Project IDPs.

The Supplier shall review and maintain their BEP, including maintaining the MIDP, and additionally, when there is any change to their contract, they shall inform the *Employer* immediately of any changes to Information Deliverables as part of that change process.

2.27 Contractual Requirements

OFFICIAL-SENSITIVE COMMERCIAL

It is a contractual requirement that the Supplier provides the information/data deliverables, as per Terms and Clauses of their contract.

Appendix A. BEP Evaluation Criteria

When considering a compliant BEP response to this EIR the supplier should reference DIO's BEP Evaluation Criteria, which are contained in document 'DIO BEP Evaluation Criteria v2.0.

Appendix B. DIO Information Delivery Plan (IDP) Template

The Information Delivery Plan (Template) contains the following

a. Information Delivery Plan – Long List Template

To be profiled by the Projects Technical Support Provider (TSP) or Regional Delivery Team (with assistance by the FM Supplier) ahead of each stage or appointment to contractually confirm the information deliverables. This single project document develops as new suppliers are appointed and shall include deliverables required from all parties: Client, Supplier & Stakeholder

- a. Stage Plain Language Questions – to be met by profiled IDP deliverables
- b. Master Information Delivery Plan – Template

To be profiled by the TA and each appointed supplier or stakeholder to contain all documentation: models, drawings and other documentation to meet the specified IDP Deliverables

- a. Pick Lists – preset and developed project reference tables
- b. Guidance – general and specific guidance on completion of the IDP template*.

*Further information and guidance is available in the DIO BIM Manual

Appendix C. Information (COBie) Demand Matrix (IDM) Template

The Information Demand Matrix (IDM) is used to template the particular COBie information requirements for a single project stage (or operational event). This is template based on COBie UK 2012 but updated to include UNICLASS 2015 and BS1192 file name picklists particular for the project as developed in the IDP.

The IDM is defined from the Project IDP confirming the IDP Deliverables and MIDP documents to be delivered by all parties for a particular stage, and the Asset Data Requirement Library (ADRL) items appropriate for the stage and intervention scope.

This enables the information Suppliers to use a templated approach to COBie information (& data) delivery and both suppliers and the client to use the IDM to assure information pre and post-delivery, and before it is accepted for use by DIO.

The delivered IDM will include information to BS1192-4 and as defined in the EIR, IDP and ADRL for each item impacted for the exchange stage or intervention.

DIO will work with Suppliers to automate the generation of the IDM enabling the addition of the appropriate data content for delivery to DIO.

The IDM Template is a separate version-controlled document appended here*.

*Further information and guidance is available in the DIO BIM Manual.

Appendix D. Glossary

Full name	Abbr.	Explanation
3D Model		A model with objects having 3D dimensional properties which are dynamic in nature.
Asset Information Model	AIM	Maintained BIM used to manage, maintain and operate a built asset. The purpose of the asset information model (AIM) is to be the single source of approved and validated information related to the asset(s). This includes data and geometry describing the asset(s) and the spaces and items associated with it, data about the performance of the asset(s), supporting information about the asset(s) such as specifications, operation and maintenance manuals, and health and safety information.
Asset Information Requirements	AIR	Based on the OIR, specific AIR might be specified as part of a contract or as an instruction to in-house teams and may use data and information from the AIM relating to the asset management activities being carried out. The AIR shall also specify data and information to be captured and fed into the AIM.
BIM Execution Plan	BEP	Plan prepared by the supply chain to explain how the information modelling aspects of a project will be carried out.
Classification		Systematic arrangement of headings and subheadings for aspects of construction works including the nature of assets, construction elements, systems and products.

Common Data Environment	CDE	Enabling the process of creation, sharing and issuing of production information so that information is managed and delivered in a consistent, lean and timely manner (see PAS1192-2) A common data environment is a single secure source of information for any given project, used to collect, manage and disseminate all relevant approved project documents for multi-disciplinary teams in a managed process.
Construction to Operation Building Information Exchange	COBie	Structured information for the commissioning, operation and maintenance of a project often in a neutral spreadsheet format that will be used to supply data to the <i>Employer</i> or operator to populate decision making tools, FM and asset management systems.
Data Verification		Check that data is in the correct format.
Data Validation		Check that the data is accurate.
Employer's Information Requirements	EIR	Pre-tender document setting out the information to be delivered and the standards and processes to be adopted by the Supplier as part of the project delivery process.
Federated Model		Federated Model means a model consisting of linked but distinct component models, drawings derived from the models, texts, and other data sources that do not lose their identity or integrity by being so linked, so that a change to one component model in a federated model does not create a change in another

		component model in that federated model.
Geospatial Data		Geospatial data, GIS data or geo-data has explicit geographic positioning information included within it, such as a road network from a GIS, or a geo-referenced satellite image. Geospatial data may include attribute data that describes the features found in the dataset.
Information (COBie) Demand Matrix	IDM	An Information (COBie) UK 2012 template complete with IDP, MIDP and ADRL information & data object requirements appropriate for the Contract and stage or intervention event identifying which structured data about the facility, floors, spaces, zones, systems and building component should be delivered and when in accordance with the EIR.
Information Exchange		Structured collection of information at one of a number of pre-defined stages of a project, with defined format and fidelity (the degree of exactness with which something is copied or reproduced).
Industry Foundation Class	IFC	A platform neutral, open file format specification that is not controlled by a single vendor or group of vendors. Used as collaboration format for BIM. The Industry Foundation Classes (IFC) model is intended to describe construction industry data focusing on ease of interoperability between software platforms. It is a platform neutral, open file format specification which is object-based. IFC was developed by

		buildingSMART to facilitate interoperability in the architecture, engineering and construction (AEC) industry, and is a commonly used collaboration format BIM based projects
Level 0 BIM Maturity		Level 0 BIM maturity is unmanaged CAD, in 2D, with paper (or electronic paper) data exchange.
Level 1 BIM Maturity		Level 1 BIM maturity consists of managed CAD in 2D or 3D format with a collaborative tool providing a common data environment with a standardised approach to data structure and format. Commercial data will be managed by standalone finance and cost management packages with no integration.
Level 2 BIM Maturity		Level 2 BIM maturity is a series of domain and collaborative federated models, consisting of both 3D geometrical and non-graphical data, prepared by different parties during the project life-cycle within the context of a common data environment. The project participants provide defined, validated outputs via digital data transactions using proprietary information exchanges between various systems in a structured and reusable form.
Level of Development	LOD	Collective term used for and including 'level of model detail' (again LOD) and the 'level of information detail' (LOI) <ul style="list-style-type: none"> • Level of model detail = description of graphical content of models at each of the stages defined

		<ul style="list-style-type: none"> • Level of model information = description of non-graphical content of models at each of the stages defined.
Master Information Delivery Plan	MIDP	Project Delivery Manager level primary plan for when project information (files) are to be prepared, by whom and using what protocols and procedures, incorporating all relevant task information delivery plans. <i>(Also see TIDP) and meeting the individual delivery of the Project IDP</i>
Metadata		Metadata is data that describes other data. Meta is a prefix that in most information technology usages means "an underlying definition or description." Metadata summarizes basic information about data, which can make finding and working with particular instances of data easier.
Organisational Information Requirements	OIR	OIR data and information required to achieve the Organisation's objectives (see PAS1192-3).
Project Information Model	PIM	Information model developed during the design and construction phase of a project.
Project Information Plan	PIP	Statement relating to the Supplier's IT and human resources capability to deliver the EIR.
Plain Language Questions	PLQ	Large quantities of information is exchanged during a construction project and, given the potential for even more information to be exchanged through BIM, it is

		important for clients to identify their
Publicly Available Specification	PAS	Sponsored fast-track standard driven by the needs of the client organizations and developed according to guidelines set out by BSI (British Standards Institute). Key stakeholders are brought together to collaboratively produce a BSI-endorsed PAS that has all the functionality of a British Standard for the purposes of creating management systems, product benchmarks and codes of practice. After two years the PAS is reviewed and a decision is made as to whether it should be taken forward to become a formal British Standard.
Task Information Delivery Plan	TIDP	As MIDP, but at Delivery Team Level / Supply Chain level.
Uniclass (Unified Classification for the Construction Industry)	Uniclass	Uniclass (Unified Classification for the Construction Industry) Published by the Construction Project Information Committee (CPIC) this is a UK standard for classification.

8 Schedule 8 – Form of Collateral Warranty

WARRANTIES AND GUARANTEES

DATED _____ **[]**

(1)

(2) THE SECRETARY OF STATE FOR DEFENCE

(3)

SUPPLY CHAIN MEMBER'S COLLATERAL WARRANTY
in favour of THE SECRETARY OF STATE FOR DEFENCE (The
AUTHORITY)
relating to

OFFICIAL-SENSITIVE COMMERCIAL

THIS DEED is made on []

BETWEEN:-

- (1) [] (No []) of/whose registered office is at [] (the "**Supply Chain Member**");
- (2) **THE SECRETARY OF STATE FOR DEFENCE** (the "**Authority**"); and
- (3) [] (No []) of/whose registered office is at [] (the "**Contractor**").

NOW THIS DEED WITNESSES in consideration of the sum of £10.00 paid by the Developer, receipt of which the Supply Chain Member acknowledges, as follows:-

1. Interpretation

1.1 In this Deed:-

"Construction Contract"	means the contract dated [] made between (1) the Authority (2) the Contractor for the Works
"Property"	means []
"Supply Contract"	means a Supply Contract dated [] made between (1) the contractor (2) the Supply Chain Member for the carrying out of the Supply Contract Works
"Supply Contract Works"	means the works comprising [] more particularly described in the Supply Contract
"Works"	shall have the same meaning as in the Development Management Agreement

1.2 In interpreting this Deed:-

- 1.2.1 if any party to this Deed is a partnership then the provisions of this Deed will bind each and every such partner jointly and severally;
- 1.2.2 references to the singular shall be deemed to include the plural (and vice versa) and reference to a "person" shall be deemed to include any individual firm unincorporated association or body corporate;
- 1.2.3 references to the Authority shall be deemed to include its successors in title and assigns;
- 1.2.4 any reference to any enactment includes any consolidation, re-enactment, amendment or replacement of it and any subordinate legislation under it;
- 1.2.5 headings to Clauses shall be disregarded.

2. GENERAL

- 2.1 The Authority has by the Construction Contract employed the Contractor to carry out and complete the Works.
- 2.2 By the Supply Contract the Contractor has appointed the Supply Chain Member to carry out and complete the Supply Contract Works at the Property on terms set out therein.
- 2.3 The Supply Chain Member has agreed to enter into this Deed for the benefit of the Authority.

3. SKILL AND CARE

The Supply Chain Member undertakes with and warrants to the Authority that:-

- 3.1 it has observed and performed and will observe and perform its obligations under the Supply Contract and without prejudice to the generality of the foregoing insofar as the Supply Chain Member is required by the Supply Contract to:

- 3.1.1 design any part of the Works;
- 3.1.2 select materials for incorporation into the Works; or
- 3.1.3 ensure compliance of any part of the Works with a performance specification;

in so doing the Supply Chain Member has used and will continue to use all reasonable skill, care and diligence in conformity with the normal standards of the Supply Chain Member's specialist trade;

- 3.2 it has not specified or used nor will it specify for use or use any products or materials in the Works which at the time of use:-

- 3.2.1 do not conform with British and European Standards or Codes of Practice;
- 3.2.2 are generally known within the Supply Chain Member's trade to be deleterious in the particular circumstances in which they are used or specified for use to health and safety and/or the durability of the Works.

4. OBLIGATIONS PRIOR TO TERMINATION OF THE SUPPLY CONTRACT BY THE SUPPLY CHAIN MEMBER

- 4.1 The Supply Chain Member covenants with the Authority that it will not exercise nor seek to exercise any right of termination of its employment under the Supply Contract or to discontinue the performance of any of its obligations thereunder for any reason whatsoever (including any breach on the part of the contractor) without giving not less than 21 days written notice of his intention to do so to the Authority and specifying the grounds for the proposed termination or discontinuance.
- 4.2 Any period stipulated in the Supply Contract for the exercise of a right of termination by the Supply Chain Member of its employment under the Supply Contract or to discontinue the performance of any of its obligations thereunder shall, nevertheless, be extended as may be necessary to take account of the period of notice required under Clause 4.1.

- 4.3 The right of the Supply Chain Member to terminate its employment under the Supply Contract or to discontinue to discharge its obligations thereunder shall cease within the period of 21 days referred to in Clause 4.1 if the Authority shall give notice to the Supply Chain Member:-
- 4.3.1 requiring the Supply Chain Member to continue its obligations under the Supply Contract with the Authority or its nominee; and
 - 4.3.2 acknowledging that the Authority or its nominee will assume all the obligations of the Developer under the Supply Contract; and
 - 4.3.3 undertaking that the Authority or its nominee will discharge all payments which may subsequently become due to the Supply Chain Member under the terms of the Supply Contract and will pay to the Supply Chain Member any sums which have been due and payable to it under the Supply Contract but which remain unpaid.
- 4.4 Upon service by the Authority or its nominee of a notice complying with the requirements of Clause 4.3 the Supply Contract will continue in full force and effect as if the same had been entered into between the Supply Chain Member and the Authority to the exclusion of the Developer.
- 4.5 Compliance by the Supply Chain Member with the provisions of this Clause 4 will not be treated as a waiver of any breach on the part of the Developer giving rise to the right of termination nor otherwise prevent the Supply Chain Member from exercising its rights after the expiration of the notice issued pursuant to Clause 4.1 unless the rights of termination have ceased under the provisions of Clause 4.3.
- 4.6 This Clause 4 shall cease to have effect upon the prior exercise by any third person of any similar rights of substitution contained in any other agreement concerning the Works and entered into between the Supply Chain Member and such person at the request of the Authority.

5. AUTHORITY'S RIGHTS IN RELATION TO THE SUPPLY CONTRACT

- 5.1 Notwithstanding that as between the Contractor and the Supply Chain Member the Supply Chain Member's right of termination of its employment under the Supply Contract may not have arisen the provisions of Clause 4.4 shall also apply if the Authority gives notice to the Supply Chain Member and to the Contractor to the effect that the Authority wishes the provisions of Clause 4.4 to apply and the Authority or its nominee complies with the requirements of Clause 4.3.
- 5.2 The Supply Chain Member shall not be concerned, or required to enquire whether, and shall be bound to assume that as between the Contractor and the Authority the circumstances have arisen permitting the Authority to give notice under Clause 5.1.

6. SUPPLY CHAIN MEMBER'S POSITION

By acting in accordance with Clauses 4 and 5 the Supply Chain Member shall not incur any liability to the Contractor.

7. COPYRIGHT

- 7.1 The copyright in any drawings, reports, specifications, bills of quantities, calculations and other similar documents provided by the Supply Chain Member in connection with the Works shall remain vested in the Supply Chain Member but the Supply Chain Member grants to the Authority and its nominees with full title guarantee a non-exclusive irrevocable royalty free licence to copy and use such drawings and other documents and to reproduce the designs contained in them for any purpose related to the Works including (but without limitation) the construction, completion, maintenance, letting, promotion, advertisement, reinstatement,

extension and repair of the Works. Such licence shall include a licence to grant sub-licences and to transfer the same to third parties.

- 7.2 The Supply Chain Member shall not be liable for any such use by the Authority of any drawings and other documents for any purpose other than that for which they were originally prepared by the Supply Chain Member.
- 7.3 The Authority shall on written request and upon paying a reasonable copying charge therefor, be entitled to be supplied by the Contractor with copies of the drawings and other items referred to in Clause 7.1.

8. INDEMNITY INSURANCE

- 8.1 The Supply Chain Member shall maintain professional indemnity insurance covering (inter alia) all its design liabilities hereunder upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, in an amount of not less than £TBC (TBC pounds) for any one occurrence or series of occurrences arising out of any one event for a period beginning now and ending 12 years after the date of practical completion of the Works, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Supply Chain Member must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930, or any amendment or re-enactment thereof. The Supply Chain Member shall not, without the prior approval in writing of the Authority, settle or compromise with the insurers any claim which the Supply Chain Member may have against the insurers and which relates to a claim by the Authority against the Supply Chain Member, or by any act or omission lose or prejudice the Supply Chain Member's right to make or proceed with such a claim against the insurers.
- 8.2 Any increased or additional premium required by insurers by reason of the Supply Chain Member's own claims record or other acts, omissions, matters or things particular to the Supply Chain Member shall be deemed to be within commercially reasonable rates.
- 8.3 The Supply Chain Member shall immediately inform the Authority if such insurance ceases to be available at commercially reasonable rates in order that the Supply Chain Member and the Authority can discuss means of best protecting the respective positions of the Authority and the Supply Chain Member in respect of the Works in the absence of such insurance.
- 8.4 The Supply Chain Member shall fully co-operate with any measures reasonably required by the Authority, including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the Authority undertakes in writing to reimburse the Supply Chain Member in respect of the net cost of such insurance to the Supply Chain Member above commercially reasonable rates or, if the Authority effects such insurance at rates at or above commercially reasonable rates, reimbursing the Authority in respect of what the net cost of such insurance to the Authority would have been at commercially reasonable rates.
- 8.5 As and when reasonably requested to do so by the Authority the Supply Chain Member shall produce for inspection reasonable documentary evidence (including if required by the Authority, the originals of the relevant insurance documents) that its professional indemnity/product liability insurance is being maintained.
- 8.6 The above obligations in respect of professional indemnity/product liability insurance shall continue notwithstanding termination of this Deed for any reason whatsoever, including (without limitation) breach by the Authority.

9. LIABILITY PERIOD

No action or proceedings for any breach of this Deed shall be commenced against the Supply Chain Member after the expiry of 12 years from the date of practical completion of the Works.

10. ASSIGNMENT

10.1 The Supply Chain Member consents to the benefit of this Deed being assigned twice only.

10.2 The Supply Chain Member shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening), by reason that such person is an assignee and not a named promisee under this Deed.

11. NOTICES

Any notice required to be given under this Deed shall be in writing and shall be deemed to be properly given if given in compliance with section 196 of Law of Property Act 1925 (as amended).

12. EXTRANEIOUS RIGHTS

12.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Supply Chain Member to the Authority.

12.2 No approval or inspection of the Works or of any designs or specifications and no testing of any work or materials by or on behalf of the Authority and no omission to inspect or test shall negate or diminish any duty or liability of the Supply Chain Member arising under this Deed.

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

12.4 This Deed does not create any right enforceable by any person not a party to it (whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise) except that a person who is the successor to or the permitted assignee of the rights of the Authority is deemed to be a party to this Deed.

12.5 The Developer and the Supply Chain Member undertake to the Authority not to vary or depart from the terms and conditions of the Supply Contract without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed).

13. GOVERNING LAW

This Deed is subject in all respects to English law and the English Courts shall have jurisdiction with regard to all matters arising under or in connection with it.

14. DEVELOPER'S CONSENT

The Contractor has executed this Deed to signify consent to its terms.

EXECUTED AS A DEED by the parties on the date which first appears in this Deed.

PART 6 - DEFFORMS

1 Schedule 1 - DEFFORM 10B

Acceptance of Offer of Amendment to contract

Offer and Acceptance	
<p>Section A) Offer</p> <p>Contract Amendment [xx] to contract [insert reference] constitutes an offer by the Authority for the supplier to supply / provide the <i>Contractor</i> Deliverables. This is open for acceptance by the supplier until [insert date 10 Business days (or more) from date of signature].</p> <p>By signing this DEFFORM 10B the <i>Contractor</i> agrees to be bound by the attached contract amendment, and they acknowledge that all other terms and Clauses remain unchanged.</p> <p>Signed by:</p> <p>Name (Block Capitals):</p> <p>Position:</p> <p>For and on behalf of the <i>Employer</i></p> <p>Authorised Signatory</p> <p>Date:</p>	<p>Section B) Acceptance of Offer of Amendment</p> <p>I acknowledge receipt of the Departments Contract Amendment Letter No [].</p> <p>I confirm that I accept the Offer it contains and agree to be bound by its terms and I acknowledge that all other terms and Clauses of the contract remain unchanged.</p> <p>Signed by:</p> <p>Name (Block Capitals):</p> <p>Position:</p> <p>For and on behalf of</p> <p>Authorised Signatory</p> <p>Date¹³:</p>

¹ The date of unqualified acceptance by signature is the effective date of the amendment

Section C) **Tier 1 Subcontractor SME data:**¹⁴

Name value of work (£ ex VAT) SME Yes / No

Name value of work (£ ex VAT) SME Yes / No

Name value of work (£ ex VAT) SME Yes / No

Name value of work (£ ex VAT) SME Yes / No

2 Schedule 2 – DEFFORM 111

DEFFORM 111

(Edn 05/19)

Appendix - Addresses and Other Information

1. Commercial Officer

Name:

Address:

Email:



8. Public Accounting Authority

1. Returns under DEFCON 694 (or SC equivalent) should be sent to DBS Finance ADMT – Assets In Industry 1, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD

☎ 44 (0) 161 233 5397

2. For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD

☎ 44 (0) 161 233 5394

2. Project Manager, Equipment Support Manager or PT Leader (from whom technical information is available)

Name:

9. Consignment Instructions

The items are to be consigned as follows:

² The MOD is required to report to Government spend with Small and Medium-sized Enterprises (SMEs) including Subcontractors. This is currently required at Tier 1 only. SMEs are defined by the EU on <http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition/>

Address

Email:



3. Packaging Design Authority

Organisation & point of contact:

(Where no address is shown please contact the Project Team in Box 2)



4. (a) Supply / Support Management Branch or Order Manager:

Branch/Name:



(b) U.I.N.

10. Transport. The appropriate Ministry of Defence Transport Offices are:

A. DSCOM, DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JH

Air Freight Centre

IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

Surface Freight Centre

IMPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

EXPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

B. JSCS

JSCS Helpdesk No. 01869 256052 (select option 2, then option 3)

JSCS Fax No. 01869 256837

www.freightcollection.com

5. Drawings/Specifications are available from

11. The Invoice Paying Authority

Ministry of Defence ☎ 0151-242-2000

DBS Finance

Walker House, Exchange Flags Fax: 0151-242-2809

Liverpool, L2 3YL **Website is:**
<https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing>

6. Intentionally Blank

12. Forms and Documentation are available through *:

Ministry of Defence, Forms and Pubs Commodity Management

PO Box 2, Building C16, C Site

Lower Arcott

Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)

Applications via fax or email:

Leidos-FormsPublications@teamleidos.mod.uk

1. Quality Assurance Representative:

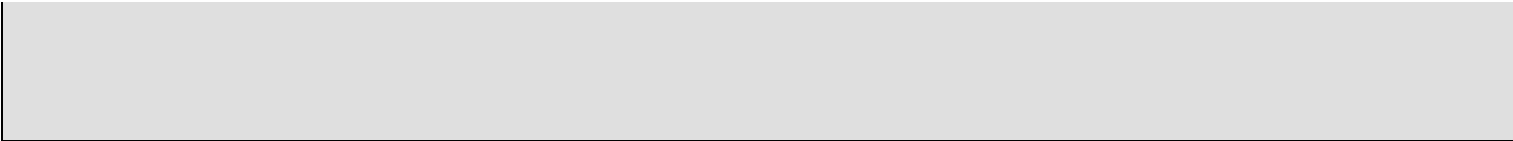
Commercial staff are reminded that all Quality Assurance requirements should be listed under the General Contract Clauses.

AQAPS and **DEF STANs** are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit <http://dstan.uwh.diif.r.mil.uk/> [intranet] or <https://www.dstan.mod.uk/> [extranet, registration needed].

*** NOTE**

1. Many **DEFCONs** and **DEFFORMs** can be obtained from the MOD Internet Site:
<https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm>



2. [If the required forms or documentation are not available on the MOD Internet site requests should be submitted through the Commercial Officer named in Section 1.](#)




3 **Schedule 3 - DEFFORM 129J**

Shipping Form Design

Use the following design and complete the fields in accordance with Annex A:

DEFFORM 129J		Edn 09/17	
From: 777 ANGEL ROAD St PAULS EDENVILLE HE6 40N		Unique Identifier:  823456-8234/823458234/82349245	
Via:		To:	
Demand / Task Reference:			
 *BC278787*			
Description:			
RDD:	SPC:	UN Haz Code:	

Date Shipped:		Batch Number:	Piece Number:
Weight:		Dimensions:	
NSN:			
IMC/DMC:	D of Q:	Qty in Package:	
Total this Delivery:			

ANNEX A TO DEFFORM 129J**Shipping Form Attributes**

The following table details the shipping form fields.

Field	Field Name	Field Description		Field Size	Data Type	Format	Mandatory for:
A	From	Details of the supplier providing the Goods or Service.		256	alphanumeric		Goods & Services
B	Unique Identifier (UOI, URR or EUP)	Unique Order Identifier (UOI) Produced by the Contracting, Purchasing and Finance (CP&F) electronic procurement tool for non inventory Purchase Orders	The identifier that CP&F uses to uniquely identify a specific shipment within a Purchase Order Line. These fields are joined together in the UOI. This field should be provided in both Bar Code Symbology 39 and human readable text.	30	Alphanumeric and Bar Code Symbology 39	The PO Number, PO Line Number and PO Shipment Number are separated by the forward slash character '/' If the PO Number is for a Blanket Purchase Agreement (BPA) then the format of the Number is: BPA Number and BPA Release Number delimited by the hyphen character '-'. Example of a UOI for a BPA: <i>123456-1234/12345/1234</i> If the PO Number is for a Standard PO and Contract Purchase Agreement (CPA) then the format of the Number is: Numeric	Goods & Services

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Field	Field Name	Field Description		Field Size	Data Type	Format	Mandatory for:
						Example of a UOI for a Standard PO or CPA: 23456/12345/1234	
		Unique Receipt Reference Identifier (URRI) Produced by CP&F for Inventory Orders	An alpha/numeric sequence that links the item received to original Purchase Order/Dues-In. For each full or part item delivery the Trading Partner will add an alpha suffix to the Unique Receipt Reference Number.	6	This attribute is provided in both Bar Code 39 and human readable text format.	5 or 6 alphanumeric in the following formats: For deliveries to Sea: Sxxxxxa e.g. S1234AA For deliveries to Land: Lxxxxxa e.g. L1234BA For deliveries to Air: xxxxxA e.g. 12345A	Goods and Services
		Electronic Business Capability Unique Package Identifier (EUPI)	An alphanumeric sequence generated by the supplier.	12	alphanumeric		Goods

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Field	Field Name	Field Description	Field Size	Data Type	Format	Mandatory for:
C	Via	Intermediate Address responsible for forwarding the package to the final destination. The address to which the supplier should send the delivery if filled in.	256	alphanumeric		Goods and Services
D	To	The Final Address to which the package shall be delivered or, in the case of a service, the address of the receipting authority. Unit name Delivery Address 1 Delivery Address 2 Delivery Address 3 Delivery Address 4	256	alphanumeric		Goods and Services

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Field	Field Name	Field Description		Field Size	Data Type	Format	Mandatory for:
		Delivery Address 5					
		Delivery Address Post Code					
		Country					
E	Demand / Task Reference	Orders from CP&F (Where the Unique Identifier is either the UOI or URRI)	Contract Number identifying the MoD contract placed on a supplier responsible for the supply of specific goods <i>And if an inventory order</i>	12	alphanumeric		Goods and Services
		Inventory Orders from CP&F (where the Unique Identifier is the URRI)	Order Number identifying Purchase Order / warrant Order / Requisition placed against an Enabling Contract for the delivery of goods against that Contract.	20	alphanumeric & Barcode 39		Goods

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Field	Field Name	Field Description		Field Size	Data Type	Format	Mandatory for:
			This attribute is provided in both Bar Code 39 and human readable test format.				
		Non CP&F electronic Orders (Where the Unique Identifier is the EUPI)	Demand Date + Serial Number + Line number + UIN	8+5+6+6	alphanumeric	DDMMYYYY + 12345678 + 12345 + 123456 + 123456	Goods
F	Description	Description of the item or service as defined in the Contract.		240	alphanumeric		Goods and Services
G	RDD	Required Delivery Date (RDD) that the package is required at the demander's point of delivery.		8	numeric	DD/MM/YYYY	Goods
H	SPC	The Standard Priority Code denoting at what speed the package should be handled within MoD Supply Chain.		2	numeric		Goods

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Field	Field Name	Field Description	Field Size	Data Type	Format	Mandatory for:
J	UN Haz Code	UN Hazard Class. Denotes the potential hazard of the items within the package References: DEFCON 68 and DEFCON 129	2	alphanumeric		Goods
K	Date Shipped	Date package dispatched from the supplier or service provided.	8	Numeric	DD/MM/YYYY	Goods and Services
L	Batch Number	Batch Production Number indicated on the goods if required				Goods
M	Piece Number	The specific number of the package as a constituent of a number of packages delivered to complete one order. i.e. 1 of 1, 2 of 2 or 4 of 10	6	alphanumeric		Goods

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Field	Field Name	Field Description	Field Size	Data Type	Format	Mandatory for:
N	Weight	The gross weight of the package in metric format.	8	numeric		Goods
P	Dimensions	The size of the package in L x B x H in metric format	15	alphanumeric		Goods
Q	NSN	<p>The NATO Stock number. The NATO supply Classification code (NSC), Nation Code (NC) and Item Identity Number (IIN) that denotes the unique identification of a line item within the inventory system.</p> <p>This 13 character attribute (NSC 4, NC2, IIN 7) is provided in both Barcode 39 and human readable test format.</p>	13	numeric & Barcode 39		Goods
R	IMC/DMC	The Inventory Management Code (IMC) / Domestic management Code (DMC) code given to a range of like or linked items managed by MoD Inventory manager	6	alphanumeric		Goods
S	DofQ	Denomination of Quantity of the items in the package	2	alphanumeric		Goods

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Field	Field Name	Field Description	Field Size	Data Type	Format	Mandatory for:
T	Qty in Package	The total quantity of the item contained within the package	7	numeric		Goods
T	Total This Delivery	The total quantity of the item being delivered for a specific order shipment	9	numeric		Goods

4 Schedule 4 – DEFORM 136

Ministry Of Defence QUARTERLY FINANCIAL REPORT (To be submitted IN TRIPLICATE within 21 days of the end of each quarter (one copy being sent <u>direct</u> to the Technical, Finance and Commercial contact points identified in the Appendix to Contract)		DEFFORM 136 (Edn 11/00) Report for quarter ending: Contract Number:	
To: (MOD contact)	From: (Contractor's name & address)	Contract Limit of Liability £ (Approval of the MOD commercial staff must be sought before expenditure (including estimated overheads and profit) is committed beyond the Contract limit of liability)	
1. Actual cost chargeable to Contract to end of quarter stated above and estimated cost to completion		ACTUAL	Estimated

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(see NOTES below)			
		Cost to the end of the quarter stated above £	Cost to completion (inclusive of costs to date) £
For A and B <u>include</u> progress payments as well as bills paid for delivered item.	) A. Materials and bought out items)		
For C <u>exclude</u> any salaries and wages covered in D below.) B. Sub-contracted work) C. Salaries and Wages:) (i) Design) (ii) Other		
	TOTAL (A, B & C)		

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	D. Overheads (Provisional) at %		
	E. Profit (Provisional) at %		
TOTAL (A, B, C, D & E)			
2. Outstanding Commitments (Value of orders placed for materials, bought out items and Sub-contracted work <u>less</u> bills already paid and progress payments made)		<u>Value</u>	
3. Further estimated costs inclusive of overheads and profit (The forecasts should not be restricted to the "limitation of liability" figure at present shown in the Contract if the ultimate costs are likely to be higher)			

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	<p>F. During the quarter following that covered by this report</p> <p>G. Thereafter to 31 March next (20)</p> <p>H. Thereafter to 31 March in succeeding year</p> <p>J. Thereafter to completion of work</p>		
	<p>Date by which work is expected to be completed</p>	Month	Year
Date:	Signature:	In the capacity of:	

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NOTES: (i) All figures must be VAT exclusive. Figures in section 1. should be cumulative from the start of the Contract.

(ii) It is most important that the report is submitted within 21 days mentioned above. When a contractor finds it impossible to provide precise figures within this time, provisional figures, annotated accordingly, should be given.

(iii) Where provisional figures are provided, actuals must be supplied as soon as possible, but with the following return at the latest, with an explanation for any discrepancies.

(iv) Please give overleaf or separately a brief explanation of any significant difference between the present estimate of total costs to completion of work and the corresponding estimate on last report.

MOD SME Spend Data Collection - Financial Year 01 April - 31 March

The MOD needs to understand how the money it spends flows through the economy and specifically how much is being shared with Small and Medium Enterprises (SMEs). Please complete and return this template by 30 June, to report your spend. Guidance is provided below, but in summary, you are required to provide for contracts with an average price above £5M per annum: the value of revenue derived from contracts with MOD, the value of Sub-contracted revenue and the value of revenues that you have passed to Small and Medium Enterprises. This will enable the MOD to measure progress towards the government's prosperity agenda.

- 1) When answering the survey please answer every section in full to the best of your knowledge. Please answer all fields highlighted in yellow on the 'Supply Chain Data Survey' tab.
- 2) Percentages will populate automatically, once you have entered the requested revenue figures.
- 3) Please see the definition of an SME (under 'Definitions and Interpretations') below.
- 4) If you are not best placed within your organisation to complete this survey, please forward to the correct contact and inform the MOD so records can be updated accordingly.

Questions A1-A3: Please specify the numbers in full. All figures should be in GBP pounds sterling. Please see an example of how to complete the questions below.

A1. Total contract revenue (£) received directly from MOD

Contractor X has received £1,200,000 revenue directly from MOD within the requested financial reporting period. Enter **£1,200,000** for question A1.

£1,200,000

£1.2m

£1.2m

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A2. Total value of Sub-contracted revenues (£)

(Please note that this is the total value of **all** Sub-contracted revenues for SMEs and non-SMEs.

Of the £1,200,000 *Contractor X* received directly from MOD, £50,000 was Sub-contracted to SMEs and £140,000 was Sub-contracted to organisations not covered by the definition of an SME. Enter **£190,000** for question A2.

£190,000

£190k

190k

Of the £1,200,000 *Contractor X* received from MOD, £50,000 was Sub-contracted to SMEs. Enter **£50,000** for question A3.

£50,000

£0.05m

0.05m

Data provided by

In the event we need to contact you about your return, please provide your full contact details.

Please also provide your DUNS Number. The Data Universal Numbering System (DUNS) is a system developed and regulated by Dun & Bradstreet which assigns a unique numeric identifier, referred to as a 'DUNS Number' to a single business entity.

Definitions and Interpretations:

1. SME – means an enterprise falling within the category of small, micro and medium-sized enterprises defined by the Commission

Recommendation of 6 May 2003 (link below). The organisation also has to be autonomous.

2. Autonomous – means that the SME does not have more than 25% of its capital or voting rights owned by an organisation or multiple organisations that themselves do not meet the definition of a SME.

3. Contract Revenue – means the aggregate revenue (excl VAT and before the application of any deduction, liability or set-off) that the contractor has received under the Contract with the MOD, in the financial year 01 April to 31 March

4. Sub-contracted Revenue – means the aggregate revenue (excl VAT and before the application of any deduction, liability or set-off) that any Subcontractor has received under the Sub-contract, in the financial year 01 April to 31 March.

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INSERT YOUR ORGANISATION / COMPANY NAME HERE

INSERT CONTRACT NAME and REFERENCE NUMBER HERE

INSERT FINANCIAL YEAR HERE

Financial 01 April - 31 March	Year	£	%
A1. Total contract revenue (£) received directly from MOD		£0.00	
A2. Total value of Sub-contracted revenues (£)		£0.00	
A3. Total value of Sub-contracted revenues to SMEs (£)		£0.00	

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Supplier Name	Name
DUNS Number	Position
Address Line 1	Email
Address Line 2	Phone
Town / City	Date
Post Code	

GUIDANCE FOR COMPLETION OF DEFFORM 528

For the purposes of this form no prioritisation of importance is implied in the ordering of the following sections.

For the purposes of this form “**Materiel**” means any Materiel (including hardware, information, software and/or services) which is regulated by any Export Control Regulations (e.g. International Traffic in Arms Regulations (ITAR), the Export Administration Regulations (EAR), etc.).

For the purposes of this form “**Data**” means the information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of controlled articles. This includes information in the form of blueprints, drawings, plans, instructions, diagrams, photographs, etc. It may take forms such as models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, or read-only memories.

For the purposes of this form “**Service**” means the intangible products such as training, technical support or provision of expertise.

For the purposes of this form “**Part Number**” means the part number of the Materiel that is being supplied under the contract.

1a - 1f Provide full correspondence name and address of the supplying organisation.

SECTION 1

For the purposes of this section of the form, each line item of Materiel listed should be at the level that is or will be managed and transacted within the MOD inventory system.

1a to 1i Identify to the best of your knowledge and belief the part number and NATO or National Stock Number (NSN), Manufacturer Name & Address, CAGE/NCAGE Code (NATO Commercial & Government Entity Code identifier), Country of Origin and Security Classification (Security Policy Framework on Gov.uk).

SECTION 2 - Complete this section if the Materiel is subject to US Trade Controls Regulations

2a Indicate whether the Materiel includes US components, parts, accessories, attachments, systems, software, or content or is based on, or derived from or manufactured pursuant to, export controlled technical data, technology, defence services or software.

2b - 2c Enter whether the Materiel exported / transferred is listed on US Munitions List (USML) and if so provide the USML Category Number. This information is covered under defense articles 22 U.S.C. 2778 of the Arms Export Control Act (§120.6), technical data (§120.10), software (120.45(f)) and defense services (§120.9). (Guidance is available on the US Directorate of Defense Trade Controls website at <http://www.pmddtc.state.gov>). For MOD personnel MOD Policy and Guidance on the application of the ITAR regulations within the MOD can be found in 2015DIN04-074 or further support, advice and guidance can be obtained by contacting the DE&S International Relations Group Email: DESIRG-2-AsstHD@mod.uk, Tel: 0117 91 30271 or Email: DESIRG-2d@mod.uk, Tel: 030 679 80868.

For *Contractor* personnel, they should contact their Business Export Compliance Teams for further guidance.

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2d Include all references of any applicable authorisations that accompany the Materiel and provide copies to the extent available to you.

2e - 2f Enter whether the Materiel exported / transferred is listed on the Commerce Control List (CCL) and if so provide the Export Control Classification Number (ECCN) listed on the CCL – EAR Part 774, including Materiel that falls into the catch-all categories in the CCL (guidance is available on the Bureau of Industry and Security, US Department of Commerce website at <http://www.bis.doc.gov>). Further support, advice and guidance of the application of the EAR regulations within the MOD can be obtained by contacting the DE&S International Relations Group Email: DESIRG-2-AsstHD@mod.uk, Tel: 0117 91 30271 or Email: DESIRG-2d@mod.uk, Tel: 030 679 80868.

2g Indicate whether the Materiel being supplied under EAR is authorised for export to the UK.

2h Details of the EAR Exceptions used.

SECTION 3 - Complete this section if the Materiel is subject to other countries Trade Controls Regulations

3a Indicate whether the Materiel being supplied is not of UK or USA origin, or is it based on, or derived from or manufactured pursuant to, export controlled technical data, technology, defence services or software.

3b Include all references of any applicable authorisations that accompany the Materiel and provide copies to the extent available to you.

SECTION 4 - Complete this section if the Materiel is subject to UK Trade Controls Regulations

4a Indicate whether the Materiel being supplied is derived from or manufactured pursuant to, export controlled technical data, technology, defence services or software for Military use.

4b - 4c Indicate whether the Materiel is listed on the UK Munitions List (UKML) and provide the reference UKML Number.

4d 4e Indicate whether the Materiel being supplied is listed of the UK/EU Dual Use List and if so provide the reference Dual Use Number.

4f Indicate whether the Materiel or Service being supplied is listed as 'No Authorisation Required'.

SECTION 5 - Complete this section if there is an End-Use / End-User Certificate requirement

5a - 5c Indicate whether the Materiel being supplied requires an End-User Certification or Transfer Authority and if so (or being obtained) include copies to the extent available to you.

PAGE 2 - Cell reference descriptors

2a - Does the Materiel originate in USA or contain any US sourced article or technology or have any US Person content contribution, including software?

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2b - USML Listed?
2c - USML Category Number:
2d - If answered Yes to 2a and 2b, please provide export authorisation reference, confirmation it is held or the duration to obtain it and provide a copy of the authorisation supplied by the OEM to the extent available to you (for each asset):
2e - CCL Listed?
2f - CCL ECCN:
2g - If answered Yes to 2e is an export authorisation required to export the Materiel to the UK?
2h - Exceptions used:
3a - For Materiel not of UK or USA origin, is an export authorisation required to move the Materiel to the U.K. from the country of origin?
3b - If answered Yes to 3a, please provide export authorisation reference, confirmation it is held or the duration to obtain it and provide a copy of the authorisation supplied by the OEM to the extent available to you (for each asset).
4a - Is the Materiel designed or modified for military use?
4b - UKML Listed?
4c - UKML category number:
4d - Is the Materiel UK/EU Dual Use Listed?
4e - UK/EU Dual Use Number:
4f - Is your product rated as "No authorisation Required"?
5a - For Materiel to be provided by a <i>Contractor</i> to MOD - Is an End-User Certificate required? If Yes MOD to provide.
5b - For Materiel to be provided by MOD to a <i>Contractor</i> - Is re-transfer authority required? If Yes MOD to obtain and the <i>Contractor</i> to provide all reasonable assistance (e.g. DSP-83, TAA).

5c - If answered Yes to 5a or 5b, please provide end-use certificate or re-transfer authority reference(s), confirmation it is held or the duration to obtain it and provide a copy of the authorisation held to the extent available to you (for each asset).

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Import and Export Control Information	
Contract No.	
1a: Supplier Name	
1b: Address	
1c: City/State	
1d: Post/Zip Code	
1e: Country	
1f: CAGE/NCAGE	

Page 2 - DEFFORM 528 - Edn 12/17

The recipient of the Materiel will require the information below for each item of Materiel supplied. Please record the information for all *Contractor* Deliverables. Assistance to complete the form will be provided by text prompts in certain cells and can also be found on the Guidance for Completion of Form page. Please use one row per *Contractor* Deliverable.

Please sign declaration on third tab and return with submission										US Trade Controls Applicable								Other Country Trade Controls Applicable		UK Trade Controls Applicable						End Use Certificate if required yes, attach		
Line item	Product Name 1a	Description 1b	Part Number 1c	NSN Part Number 1d	Manufacturer 1e	Address 1f	CAGE/NACAGE 1g	Country of Origin 1h	Security Classification 1i	2a	2b	2c	2d	2e	2f	2g	2h	3a	3b	4a	4b	4c	4d	4e	4f	5a	5b	5c
1																												

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Declaration	
<p>I certify that the information provided on this DEFFORM 528 is true, complete and accurate to the best of my knowledge. If there is any change that effects the control classification as described on this Form or I become aware of anything that causes the response to no longer be true, complete and accurate, or if any inaccuracies are identified, I will inform the other party in writing as soon as I become aware of such change.</p>	
Printed name	
Position or Job Title Held in Company / MOD	
Address	
E-Mail	
Telephone number	
Signed (Duly authorised person)	
Date of signature	
<i>Please print off this Declaration Sheet and provide a signed copy with your Tender submission</i>	

Personal Data Particulars

This Form forms part of the contract and must be completed and attached to each contract containing DEFCON 532B.

Data Controller	<p>The Data Controller is the Secretary of State for Defence (the <i>Employer</i>).</p> <p>The Personal Data will be provided by:</p> <p><i>[insert the delivery team name (or equivalent source), address and contact details]</i></p>
Data Processor	<p>The Data Processor is the <i>Contractor</i>.</p> <p>The Personal Data will be processed at:</p> <p><i>[insert address(es) and contact details]</i></p>
Data Subjects	<p>The Personal Data to be processed under the contract concern the following Data Subjects or categories of Data Subjects: <i>[please specify]</i></p> <p><i>[Examples include staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc.]</i></p>
Categories of Data	<p>The Personal Data to be processed under the contract concern the following categories of data: <i>[please specify]</i></p> <p><i>[Examples include name, address, telephone number, medical records etc.]</i></p>
Special Categories of data (if appropriate)	<p>The Personal Data to be processed under the contract concern the following Special Categories of data: <i>[please specify]</i></p> <p><i>[A Special Category of Personal Data is anything that reveals racial or ethnic origin, political opinions, religious or philosophical beliefs,</i></p>

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	<i>trade union membership, sex life or sexual orientation or genetic or biometric data]</i>
Subject matter of the processing	<p>The processing activities to be performed under the contract are as follows: <i>[please specify]</i></p> <p><i>[This should be a high-level, short description of what processing will be taking place and its overall outcome i.e. its subject matter]</i></p>
Nature and the purposes of the Processing	<p>The Personal Data to be processed under the contract will be processed as follows: <i>[please specify]</i></p> <p><i>[The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether by automated means or not) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]</i></p>
Technical and organisational measures	<p>The following technical and organisational measures to safeguard the Personal Data are required for the performance of this contract: <i>[please specify]</i></p> <p><i>[Provide an overview of the measures described in the System Requirements, Statement of Work and/or the controls required in accordance with the Cyber Risk Profile relevant to the contract, as detailed in Annex A to Def Stan 05-138. Examples include anonymisation, authorised access, data processed on closed/restricted systems]</i></p>
Instructions for disposal of Personal Data	<p>The disposal instructions for the Personal Data to be processed under the contract are as follows (where Disposal Instructions are available at the commencement of contract): <i>[please specify]</i></p> <p><i>[Describe how long the data will be retained and how it will be returned or destroyed]</i></p>

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OFFICIAL-SENSITIVE COMMERCIAL

Date from which Personal Data is to be processed	Where the date from which the Personal Data will be processed is different from the contract commencement date this should be specified here: <i>[please specify if applicable]</i>
---	---

The capitalised terms used in this form shall have the same meanings as in the General Data Protection Regulations.

Tenderer's Commercially Sensitive Information Form

ITT Ref No:
Description of Tenderer's Commercially Sensitive Information:
Cross Reference(s) to location of sensitive information in Tender:
Explanation of Sensitivity:
Details of potential harm resulting from disclosure:
Period of Confidence (if applicable):
Contact Details for Transparency / Freedom of Information matters: Name: Position: Address: Telephone Number: Email Address:

**HEAD AGREEMENT FOR LICENCE TERMS FOR COMMERCIAL SOFTWARE PURCHASED BY
THE SECRETARY OF STATE FOR DEFENCE**

This Agreement is made this day of in the year.....

BETWEEN

The Secretary of State for Defence, a corporation sole, (afterwards referred to as the EMPLOYER) as represented by the Directorate of Intellectual Property Rights, Poplar 2a #2218, MOD Abbey Wood, Bristol BS34 8JH

AND

[Insert company's name, registration number and corporate address] (afterwards referred to as the COMPANY);

each being referred to as a "Party" and collectively as the "Parties".

BACKGROUND

- I. The EMPLOYER wishes to agree standard terms of licence with the COMPANY which will apply to "Commercial Software" products it procures from the COMPANY in order to avoid the need to negotiate individual terms each time those products are purchased; and
- II. The COMPANY is prepared to agree standard terms of licence with the EMPLOYER in order to facilitate sales of Commercial Software to the EMPLOYER.
 - (e) For the purpose of this Agreement "Commercial Software" means software available commercially including that software modified on sale to suit the requirements of a customer.

THE HEAD AGREEMENT

1. The Parties agree that they will adopt the terms of licence set out in the Annex to this Head Agreement (the "Annex"), as the standard terms of licence for the procurement of Commercial Software by the EMPLOYER from the COMPANY and from any of its wholly owned subsidiaries for which the COMPANY is entitled to make this Head Agreement. This shall not imply that either Party may not propose other Clauses for any particular licence or that either Party shall be bound to accept any particular licence in the terms set out in the Annex.
2. Each software licence which is to be procured subject to the standard terms of licence set out in the Annex, shall be established by a schedule (the "Schedule") which incorporates those terms by making reference to this Head Agreement and the Annex. Each licence so concluded shall be legally separate from this Head Agreement.
3. Each Schedule will take the format provided in the Attachment to the Annex. Individual Schedules may include special Clauses adding to, varying, or setting aside any Clause set out in the Annex

and in the event of any conflict between the terms of the Annex and the special Clauses of a Schedule the latter shall prevail.

4. Either Party shall be entitled to terminate this Head Agreement at any time on written notice to the other Party but the termination shall not vary the Clauses of or terminate any extant Licences.
5. This Head Agreement shall be subject to and construed and interpreted in accordance with the Laws of England and shall be subject to the jurisdiction of the Courts of England. Other jurisdictions may apply solely for the purpose of giving effect to this Agreement and for the enforcement of any judgement, order or award given under English jurisdiction.

Signed for and on behalf of the Secretary of State for Defence

.....

[Print name]

In the capacity of*[Insert capacity of signatory]*

Signed for and on behalf of the COMPANY *[Insert name of company]*

.....

[Print name].....

In the capacity of*[Insert capacity of signatory]*

AGREED STANDARD CLAUSES

1 DEFINITIONS

- 1.1 "EMPLOYER" shall mean the Secretary of State for Defence.
- 1.2 "LICENSOR" shall mean the Company identified in the Head Agreement or the wholly owned subsidiary of the Company identified in the Schedule as being the Party granting the Licence to the EMPLOYER.
- 1.3 "Licensed Software" means the computer programs listed in Part I of the Schedule together with any user documentation, update programs and anything else furnished to the EMPLOYER by the LICENSOR under the Licence in connection with those listed programs, and any portion and copy of any of them.
- 1.4 "Use" (or "to Use") in relation to the Licensed Software means copying the software from a store unit or medium into equipment, customising it within its existing functionality and consistent with the user documentation, running or processing it, operating upon it, all of these acts either alone or with other programs, and producing copies including, where appropriate, in eye-readable form.
- 1.3 "Designated Equipment" means that equipment in respect of which Use of the Licensed Software is licensed. It shall be the equipment specified in Part II of the Schedule unless changed to alternative equipment in accordance with the provisions of Clauses 2.3 or 2.4.
- 1.4 "Designated Site" means that site for which the Licensed Software is licensed. It shall be the site specified at Part III of the Schedule unless changed to an alternative site in accordance with the provisions of Clause 2.3.
- 1.5 "Licence" means the rights granted by the LICENSOR to the EMPLOYER in respect of the Licensed Software and all the Clauses associated with it, as set out in the Standard Clauses in combination with a relevant Schedule.
- 1.6 "Schedule" means a schedule to the Head Agreement (in the format provided in the Attachment to this Annex) established by signature of the EMPLOYER and the LICENSOR, under which the LICENSOR undertakes to supply the Licensed Software for Use by the EMPLOYER under the Clauses of the Licence. Each Schedule, in combination with these Standard Clauses, constitutes a distinct Licence independent of any other Licence existing by operation of the Head Agreement.
- 1.7 "Standard Clauses" means the Clauses set out in this Annex to the Head Agreement, comprising Clauses 1 to 15.
- 1.8 "Special Clauses" means those Clauses (if any) specified in Part VIII of the Schedule.

2 LICENCE GRANT

- 2.1 The EMPLOYER may Use the Licensed Software on the Designated Equipment at the Designated Site in accordance with the Licence from the date of receipt of the Licensed Software by the EMPLOYER.

- 2.2 The EMPLOYER may allow contractors of the EMPLOYER and their Subcontractors to Use the Licensed Software on the Designated Equipment at the Designated Site on EMPLOYER contracts only, provided that the EMPLOYER ensures or procures that those contractors and Subcontractors are bound by the Clauses of the Licence and that, unless prevented by security considerations, the EMPLOYER shall notify the LICENSOR of the identity of those contractors or Subcontractors as soon as is reasonably practical. The EMPLOYER shall not charge for that Use.
- 2.3 The EMPLOYER may specify alternative Designated Equipment or an alternative Designated Site by notification to the LICENSOR, in which case Clause 2.1 shall apply only to the alternative Designated Equipment or Designated Site as notified. However, in the event that the alternative Designated Equipment shall be equipment of a greater processing capacity or capability or a different operating system outside the parameters of the original Designated Equipment the LICENSOR may require the EMPLOYER to pay a fair and reasonable additional fee which will not exceed the difference between the corresponding fees shown in respect of Use of the Licensed Software on the existing and alternative Designated Equipment respectively in the LICENSOR's price list current at the time when the EMPLOYER has specified the alternative Designated Equipment.
- 2.4 The EMPLOYER may Use the Licensed Software on alternative equipment if the Designated Equipment is temporarily inoperative until the Designated Equipment is again operative without notification or additional payment to the LICENSOR.
- 2.5 Notwithstanding the above, the EMPLOYER may copy the Licensed Software in machine-readable form for back-up purposes for Use of the Licensed Software. The EMPLOYER may also create eye readable copies of documentation solely for utilisation by operating personnel of the Licensed Software. All copyright in such copies shall remain the property of the LICENSOR.

3 DELIVERY AND ACCEPTANCE

- 3.1 The LICENSOR shall deliver the Licensed Software at a time and to a place agreed with the EMPLOYER.
- 3.2 The LICENSOR or the EMPLOYER as mutually agreed shall install each program of the Licensed Software on the Designated Equipment and test it against acceptance tests if agreed between the LICENSOR and the EMPLOYER.
- 3.3 The EMPLOYER may reject the Licensed Software within the acceptance period specified in Part IV of the Schedule only (which period starts on receipt of the Licensed Software by the EMPLOYER) if it fails an agreed acceptance test or if it does not perform on the Designated Equipment in accordance with the functionality set out in an agreed statement or user document provided by the LICENSOR. The EMPLOYER shall be understood to have accepted the Licensed Software if it has not been validly rejected before the expiry of the acceptance period.
- 3.4 If the EMPLOYER rejects the Licensed Software in accordance with Clause 3.3 the Licence for it shall terminate and the EMPLOYER shall be entitled to reimbursement of any fees paid in respect of the Licensed Software.
- 3.5 The EMPLOYER and the LICENSOR may mutually agree to extend the acceptance period, or to amend the Schedule appropriately, for any Licensed Software that would otherwise have been rejected under Clause 3.3.

4 PAYMENT

- 4.1 The LICENSOR will invoice the EMPLOYER for the agreed licence fees in the amount and in accordance with the invoice arrangements set out respectively in Parts V and VI of the Schedule on or after receipt by the EMPLOYER of the Licensed Software.

- 4.2 The EMPLOYER shall pay the invoice value within 30 days from the later of delivery of the Licensed Software or the date of receipt of a valid invoice related to that Licensed Software. Payment does not constitute acceptance of the Licensed Software.

5 CONFIDENTIALITY

- 5.1 Subject to Clause 5.2 and except as otherwise agreed in writing, the EMPLOYER and the LICENSOR shall each hold in confidence and shall not use, disclose or otherwise make available, except in accordance with the Licence, all the following information received from the other under or in connection with the Licence:

- a. the Licensed Software;
- b. details of the EMPLOYER's use and application of the Licensed Software;
- c. any other information which is identified as being disclosed in confidence at the time of disclosure

provided that:

- (i) the obligation for b. and c. relates only to information received in writing or other material form; and
- (ii) if such information is disclosed orally, the obligation shall apply for 30 days unless the discloser confirms such information in writing or other material form within 30 days when the obligation of confidence shall apply thereafter.

- 5.2 The obligations under Clause 5.1 shall not require the receiving Party to maintain confidence in, or refrain from using, any part of the information to the extent that the receiving Party can show that such part of the information:

- a. was already known to that Party, without restraint on use or disclosure, prior to the date of receipt or acquisition under or in connection with the Licence;
- b. has been received by that Party, without restraint on use or disclosure, from a third party having the right to disclose it;
- c. has entered the public domain otherwise than in breach of the Licence or any other agreement between the Parties;
- d. was generated by that Party independently of the information which is subject to Clause 5.1;

provided that the relationship of such part of the information to the remainder of the information which is subject to Clause 5.1 is not revealed.

- 5.3 The obligations under Clause 5.1 shall be perpetual.
- 5.4 The EMPLOYER shall ensure or procure that any individual to whom the Licensed Software is made available is made aware of, and complies with, the obligations as to confidentiality and other relevant Clauses of the Licence.
- 5.5 The EMPLOYER shall reproduce and maintain any copyright notices and trade marks on or in any of the copies of the Licensed Software made in accordance with the Licence, including partial copies, and on any software changed under the terms of the Licence.

6 IPR ACTIONS AND LIABILITIES FOR IPR INFRINGEMENT

- 6.1 The LICENSOR declares that he is entitled as either owner or licensee to provide the Licensed Software to the EMPLOYER on the terms and Clauses of the Licence.
- 6.2 Subject to the limitations imposed in Clauses 6.3 and 6.4, the LICENSOR shall assume all liability and indemnify the EMPLOYER against all costs or liabilities arising under any valid claim or action brought by a third party against either Party, or against any of its contractors (which expression shall include any Subcontractor) engaged in tasks relevant to the provision of the Licensed Software or to the EMPLOYER's exercise of the Licence, in respect of any third party intellectual property right, including a patent, registered or unregistered design right, trade mark, copyright, trade secret or confidential information, which relates to the supply of the Licensed Software or the Use of the Licensed Software in accordance with the Licence by the EMPLOYER or its contractor, then:
- (a) If the claim or action is brought against the LICENSOR he shall take full responsibility for dealing with settling or defending the claim or action;
 - (b) If any claim is made against the EMPLOYER or its contractors the LICENSOR shall be given full responsibility for dealing with settling or defending the claim as appropriate in his judgement;
 - (c) If legal action is taken against the EMPLOYER or its contractor that Party shall be entitled to join the LICENSOR in the action.
- 6.3 Clause 6.2 shall not apply, and the EMPLOYER shall assume all liability for and indemnify the LICENSOR and its contractors, against all costs and liabilities under the claim or action in the event that it arises as a consequence of any of :
- (a) Use of the Licensed Software by the EMPLOYER, or by a contractor permitted to use the Licensed Software pursuant to Clause 2.2, outside the LICENSOR's specification or user documentation on the Designated Equipment or in a manner outside the reasonable knowledge or expectation of the LICENSOR or in circumstances particular to the EMPLOYER as distinct from other customers for the equivalent Licensed Software;
 - (b) Use of modifications to the Licensed Software not provided or not approved in writing by the LICENSOR;
 - (c) infringement by the LICENSOR of any third party intellectual property right by reason only of use of any material provided by the EMPLOYER for the purposes of the Licence, but only to the extent that this material is held and used within the terms under which it was provided and used solely for the purposes of the Licence.
- 6.4 Clause 6.2 shall not apply in the event that, without the consent of the LICENSOR (which shall not be unreasonably withheld) the EMPLOYER:
- (a) has made or makes an admission of any sort to the third party relevant to the claim or action;
 - (b) the EMPLOYER has entered or enters into negotiations with the third party relevant to the claim or action;
 - (c) the EMPLOYER has made or makes an offer to the third party for settlement of the claim or action.
- 6.5 Each Party undertakes to notify and consult the other promptly in the event of any enquiry, claim or action brought or likely to be brought against it or its contractor or the Parties jointly, which relates to infringement of any third party intellectual property right in connection with the supply

or Use of the Licensed Software under the Licence. By joint agreement, the EMPLOYER may take the lead in dealing with settling and defending any such enquiry claim or action made against it directly in consultation with the LICENSOR and, subject to the LICENSOR's agreement as to the terms of any settlement, this shall not displace any liability of the LICENSOR arising under Clause 6.2. If any claim is made against the EMPLOYER under Section 55 of the Patents Act 1977 as a result of the EMPLOYER's use of the Software, and if the EMPLOYER offers a settlement of the claim, otherwise than as a result of a Court order and without the agreement of the LICENSOR, the LICENSOR shall be relieved of any liability which might otherwise arise under Clause 6.2.

- 6.6 In the event that any claim or action is made which is subject to Clause 6.2 or if in the LICENSOR's reasonable opinion such claim or action is likely to be made, the LICENSOR shall promptly utilise all reasonable endeavours to:
- (a) establish or secure the EMPLOYER's right to continue to Use the Licensed Software or, failing to do so;
 - (b) avoid that claim or action by, and after consultation with the EMPLOYER as to how to minimise the EMPLOYER's loss of Use of the Licensed Software, replacing or modifying the Licensed Software without significant change to the specification of the Licensed Software all at the LICENSOR's expense, including installation and testing.
- 6.7 In the event of the LICENSOR being unable to satisfy the requirements of sub-Clauses 6.6a. or 6.6b. the LICENSOR may terminate the Licence relating to the Licensed Software upon not less than three months written notice unless a lesser period is determined by any court order, and the LICENSOR shall make a refund of the licence fee to the EMPLOYER, either in full or with the agreement of the EMPLOYER (which shall not be unreasonably withheld) of a portion of the licence fee representing the lost portion of the Licence.
- 6.8 The Clauses set forth in clauses 6.2 to 6.7 represents the total liability and responsibility of each Party to the other under a Licence in respect of any actual or alleged infringement of any intellectual property right owned by a third party, and take precedence over any other liability Clause in the Licence.

7 WARRANTY

- 7.1 LICENSOR warrants that discrepancies between Licensed Software and the LICENSOR's specification or user documentation current at the time of delivery reported and demonstrated by the EMPLOYER during the warranty period stated in Part VII of the Schedule will be remedied by LICENSOR without unreasonable delay in a manner commensurate with good software industry practice and without payment by the EMPLOYER. During the warranty period the LICENSOR undertakes to provide to the EMPLOYER free of charge corrections to material errors known to the LICENSOR.
- 7.2 All warranties in the Licensed Software and its user documentation other than that given under Clause 7.1 are hereby excluded including, without limitation, the implied warranty and Clauses of satisfactory quality and fitness for a particular purpose, but this shall not prejudice the right of the EMPLOYER to reject the Licensed Software in accordance with Clause 3.3.
- 7.3 No oral or written information or advice given by the LICENSOR, its agents or employees shall create a warranty or extend the scope of the warranty given under Clause 7.1.
- 7.4 The LICENSOR shall utilise all reasonable endeavours to ensure that any Licensed Software supplied, irrespective of the mode of delivery, is free from any published computer virus. In the event that it can be shown that, at the time of delivery, the Licensed Software incorporated such a virus then the EMPLOYER may require the LICENSOR to remove the virus and within the limits of backup data provided by the EMPLOYER to restore any computer system incorporating the Designated Equipment to its pre-infected state or bear the cost of the necessary restoration work.

8 GENERAL LIABILITY CLAUSES

- 8.1 The LICENSOR shall have no liability to the EMPLOYER for any indirect or consequential damages or losses which might arise by reason of Use of the Licensed Software by or for the EMPLOYER including, without limitation, loss of profit, loss of revenue, loss of use, loss of business information produced by Use of the Licensed Software.
- 8.2 The exclusion provided under Clause 8.1 shall not apply where the EMPLOYER suffers loss because of a defect within the Licensed Software which defect is known to the LICENSOR at the time the Licensed Software is furnished to the EMPLOYER unless the EMPLOYER has previously been made aware of and accepted the presence of the defect and its relevance to the EMPLOYER's application of the Licensed Software.
- 8.3 The total of the LICENSOR's liability under or in connection with this Agreement (whether arising from contract, negligence or any other basis) is limited in respect of each event or series of connected events to the value given in Part IX of the Schedule, provided that no limitation shall apply in respect of liability for death of or injury to persons arising from the LICENSOR's negligence, as provided by the Unfair Contracts Act 1977, and, except in relation to sub-Clause 13.2.2, no limitation shall apply in respect of any liability arising under the provisions of Clause 6.2.

9 TERM AND TERMINATION OF THE LICENCE

- 9.1 Each Licence shall continue until the EMPLOYER terminates it by written notification to the LICENSOR, or it is terminated pursuant to Clauses 3.4 or 6.7.
- 9.2 The EMPLOYER shall within thirty days of termination of a Licence, through all reasonable endeavours and to the best of its knowledge, return or destroy, at the LICENSOR's option, all originals and destroy all copies of the Licensed Software including partial copies and modifications except that the EMPLOYER may on prior written authorisation from the LICENSOR retain one copy for archival purposes only. The EMPLOYER shall promptly certify in writing once it has so done.
- 9.3 In the event of the LICENSOR drawing the attention of the EMPLOYER to a breach of any Clause of a Licence then:
- (a) where the breach is of a nature that cannot be remedied, the EMPLOYER undertakes to settle with the LICENSOR on fair and reasonable terms and to utilise all reasonable endeavours to ensure that a further breach does not occur;
 - (b) where the breach is capable of being remedied, the EMPLOYER shall promptly remedy the breach and where appropriate put in place measures to ensure that a further breach does not occur. The EMPLOYER shall indemnify the LICENSOR for all loss and damage incurred by him as a result of the breach.
- 9.4 The termination of any Licence shall be without prejudice to the continuation of the Head Agreement or any other Licence under it.

10 COMBINATION OF SOFTWARE

- 10.1 The EMPLOYER may combine all or part of the Licensed Software with other materials to form a new work. Any portion of the Licensed Software included in a new work shall be Used only on Designated Equipment and shall be subject to the Clauses of the Licence. The LICENSOR shall be absolved from any obligation or liability under the Licence to the extent that this arises as a result of the creation or use of any new work not approved in writing by the LICENSOR.

11 OUTPUT

- 11.1 The EMPLOYER may freely copy and utilise any output resulting from Use in accordance with LICENSOR - supplied documentation of the Licensed Software.

12 DISPUTES

- 12.1 Other than for any claim arising from non payment of a valid invoice should any question, dispute or difference whatsoever arise between the EMPLOYER and LICENSOR in relation to or in connection with this Agreement or the Schedule of any Licence granted under it, the EMPLOYER or the LICENSOR may give notice to the other in writing of the existence of that question, dispute or difference and both Parties will attempt to reach a solution. If no mutually acceptable solution is found the EMPLOYER or the LICENSOR may give notice to the other in writing (the ADR notice) that the matter is to be referred to Alternative Dispute Resolution (ADR).
- 12.2 Upon receipt of the ADR notice and subject to sub-Clause 12.3, the Parties shall define the type of ADR to be adopted and the rules for its implementation. Failing agreement to adopt, or to achieve, resolution by one such type, the Parties may decide to adopt a second type of ADR. The Parties agree that after a period of two (2) months from the date of receipt of the ADR notice, or such other date as may be agreed by the Parties, and provided that the dispute remains unresolved, it shall finally be settled by arbitration by a sole arbitrator at the request in writing by either party to the other. Failing agreement on the appointment of the arbitrator within 14 days of receipt of such request, the arbitrator shall be appointed by the President for the time being of the Law Society, in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment of it. The costs of any ADR shall be shared equally by the EMPLOYER and the LICENSOR, however, the costs of arbitration shall be settled by the arbitrator.
- 12.3 Where a Party rejects the referral of the matter to ADR he shall promptly notify the other Party in writing of that rejection and the reasons for it.

13 TRANSFER

- 13.1 The LICENSOR shall not assign his interest in any Licence or the intellectual property licensed thereunder without providing for the continuance of the EMPLOYER'S rights under the Licence and without notifying the EMPLOYER in writing of the identity of the assignee.
- 13.2 Unless prevented by law or national regulation the EMPLOYER shall have the right to novate any Licence to a separate legal entity, without charge to itself or the legal entity, upon two months written notice to the LICENSOR, as provided below:
- 13.2.1 following a transfer from the EMPLOYER to the legal entity of any function of the EMPLOYER for which the Licensed Software has been obtained; or
- 13.2.2 on disposal to the legal entity of surplus Designated Equipment where the Licensed Software is essential to the running of that equipment, whether or not it is embedded in the equipment, provided that all warranties (whether express or implied) and all indemnities shall be void, the Licensed Software shall be supplied "as is", and the liability referred to in Clause 8.3 shall be ten pounds sterling only.

PROVIDED THAT the Licensed Software novated in accordance with this sub-Clause may only be used for the same purposes for which the *Employer* was licensed in accordance with Clause 2 and wider use shall require the written approval of, and the grant of a further licence by, the LICENSOR.

14 DISCONTINUANCE OF BUSINESS

- 14.1 The EMPLOYER shall have the right to secure from the LICENSOR, or from the authorised trustees or receivers acting on behalf of the LICENSOR, in the event of the LICENSOR permanently ceasing to maintain the Licensed Software or the LICENSOR permanently discontinuing in business

because of bankruptcy, receivership, dissolution, or other form of permanent business disruption and that business is not continued by a successor in interest to the LICENSOR to whom the benefits and obligations of this Agreement and any licence granted under it have been assigned, Licensed Software documentation including program source code in the possession and control of the LICENSOR, but no more than the LICENSOR uses himself, as the EMPLOYER shall consider necessary for it to maintain and continue its normal Use of the Licensed Software for the duration of the Licence but for no other purpose.

- 14.2 If so required by a Special Clause, the LICENSOR shall compile and maintain, at a price or in accordance with a price formula identified in the Special Clause, an up to date copy of the Licensed Software documentation to which the EMPLOYER is entitled under Clause 14.1 which copy shall be held by the LICENSOR as a bailee without lien for the EMPLOYER and be made available to the EMPLOYER without additional charge. In the absence of such a Special Clause, the copy shall be prepared on the EMPLOYER's demand and it shall be made available to the EMPLOYER at a fair and reasonable price based on the cost of compilation, reproduction and dispatch.
- 14.3 The EMPLOYER shall have the right to utilise the Licensed Software documentation to which it is entitled under Clause 14.1 for the purpose of maintaining its Use of the Licensed Software for the duration of the Licence but for no other purpose. The EMPLOYER shall hold in confidence all information in the documentation.

15 GENERAL

- 15.1 If any provision of this Agreement is held to be invalid, illegal or unenforceable to any extent then:
- (a) that provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be understood not to be included in the Agreement but without invalidating any of the remaining provisions of the Agreement; and
 - (b) the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable provision the effect of which is as close as possible to the effect of the invalid, illegal or unenforceable provision.
- 15.2 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.
- 15.3 No waiver of any right or remedy shall operate as a waiver in respect of any other right or remedy.
- 15.4 Neither the LICENSOR nor the EMPLOYER shall be liable for failure to perform any of its obligations under the Licence if that failure results from circumstances beyond its reasonable control.
- 15.5 Headings have been included for convenience only and shall not be used in construing any Clause of the Licence.
- 15.6 The Licence shall be subject to and construed and interpreted in accordance with the Laws of England and shall be subject to the non-exclusive jurisdiction of the Courts of England for the enforcement of any arbitral decision.
- 15.7 The Licence shall constitute the entire agreement between the Parties relating to the Licensed Software and supersedes any previous agreement.
- 15.8 No right is granted to any person who is not a Party to the Licence to enforce any term of the Licence in his own right and the Parties declare that they have no intention to grant any such right.

SAMPLE - ATTACHMENT TO ANNEX TO HEAD AGREEMENT – STANDARD FORM OF LICENSING SCHEDULE

SCHEDULE TO THE HEAD AGREEMENT BETWEEN THE EMPLOYER AND*[Insert name of Company]* **DATED:***[Insert date of Head Agreement]* Version Number:*[insert, if any]*

CONTRACT REFERENCE NUMBER:

By their respective signatures of this Schedule the Secretary of State For Defence (the “EMPLOYER”) undertakes to purchase and*[insert name of the LICENSOR which must be either the name of the COMPANY as recorded on the Head Agreement or the name of a legally entitled wholly owned subsidiary]* (the “LICENSOR”) undertakes to supply the Licensed Software for Use on the Designated Equipment at the Designated Site (all as identified below) under the Standard Clauses set down in the Annex to the Head Agreement and any Special Clauses set down in Part VIII below which may vary or add to those Standard Clauses.

PART I - LICENSED SOFTWARE PROGRAMS

Insert details of each program sufficient for unambiguous identification of nature and release standard

Indicate for each program whether these are supplied by the LICENSOR as owner or a licensee of the owner.

PART II - DESIGNATED EQUIPMENT

Insert identification details of the specific equipment on which the Licensed Software is licensed for use (which can be specified as an individual installation, or if the LICENSOR allows any installation of a particular type of processing characteristic) or else insert “not restricted” as a safe default.

PART III - DESIGNATED SITE

Insert identification details of the specific site or sites on which the Licensed Software is licensed for use, or else insert “not restricted” as a safe default.

PART IV – ACCEPTANCE PERIOD & TEST

Insert the acceptance period defined by duration and commencement event or defined by a specific end date.

Insert acceptance test documentation reference, if applicable.

PART V - LICENCE FEES

Insert the full details of the payments to be made by the EMPLOYER as licence fees and identify separately any payments to be made for software installation or support.

PART VI - INVOICE ARRANGEMENTS

Insert the EMPLOYER's address for submission of the Invoice and any special requirements for Invoicing

PART VII - WARRANTY PERIOD

Insert the warranty period defined by duration and commencement event or defined by a specific end date.

PART VIII - SPECIAL CLAUSES

Insert here any special Clauses. These can add to or vary the Standard Clauses contained in the Annex to the Head Agreement. If the Licensed Software comprises a library of routines, or a compiler or other software generating tool, incorporate and complete the appropriate provisions from below:

Provisions for library compiler or software generator.

PART IX – LIMITS OF LICENSOR's LIABILITY

Insert the LICENSOR's limit of liability consequent on matters arising in connection with the Licence (whether arising from contract, negligence or any other basis), other than through death, injury or infringement of third party intellectual property rights

In the event that no separate limit of liability is inserted in connection with the Licence the LICENSOR's liability under this PART IX shall not exceed five million pounds sterling.

FOR LICENSOR

FOR EMPLOYER

Signed

Signed

Name

Name

[Print Name]

[Print Name}

Appointment

Appointment

Date

Date

OFFICIAL-SENSITIVE COMMERCIAL

**ATTACHMENT TO ANNEX TO HEAD AGREEMENT – STANDARD FORM OF
LICENSING SCHEDULE**

SCHEDULE TO THE HEAD AGREEMENT BETWEEN THE EMPLOYER AND

..... DATEDVersion Number:

CONTRACT REFERENCE NUMBER:

By their respective signatures of this Schedule the Secretary of State For Defence (the “EMPLOYER”) undertakes to purchase and (the “LICENSOR”) undertakes to supply the Licensed Software for Use on the Designated Equipment at the Designated Site (all as identified below) under the Standard Clauses set down in the Annex to the Head Agreement and any Special Clauses set down in Part VIII below which may vary or add to those Standard Clauses.

PART I - LICENSED SOFTWARE PROGRAMS

PART II - DESIGNATED EQUIPMENT

PART III - DESIGNATED SITE

PART IV – ACCEPTANCE PERIOD & TEST

PART V - LICENCE FEES

PART VI - INVOICE ARRANGEMENTS

PART VII - WARRANTY PERIOD

PART VIII - SPECIAL CLAUSES

Provisions for library compiler or software generator.

PART IX – LIMITS OF LICENSOR’S LIABILITY

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OFFICIAL-SENSITIVE COMMERCIAL

In the event that no separate limit of liability is inserted in connection with the Licence the LICENSOR's liability under this PART IX shall not exceed five million pounds sterling.

FOR LICENSOR

FOR EMPLOYER

Signed

Signed

Name

Name

[*Print Name*]

[*Print Name*]

Appointment

Appointment

Date

Date

10 **DEFFORM 8 (Contract Issue Letter)**

Catherine Gregory

Head of Commercial Delivery
DE&S Logistics and Support Operating Centre
Ministry of Defence Abbey Wood,
Cedar 3A
#3362
Bristol, BS34 8JH

Email: Catherine.Gregory113@mod.gov.uk

McLaughlin & Harvey Construction

Heathfield House
Strathclyde Business Park
ML4 3NJ
McLaughlin & Harvey Construction

FAO: Martin Smith

Your Reference: [REDACTED], MOD
[REDACTED]

Our Reference: LSOC Storage
Expansion

Date: July 2022

Dear Martin,

Offer Of Contract for the Supply of Pre-Construction Services [REDACTED]

1. As you are aware, the Authority intends to enter into the above contract with you.
2. Please sign and return the enclosed final version of the Contract within 10 working days of the date of this letter to acknowledge your acceptance of the Terms and Conditions.
3. Please note that no Contract will come into force until both parties have signed it. The Authority will countersign the Contract and return a copy of the same to you.
4. Payment will be made in accordance with the attached Terms and Conditions. If your company has not already provided its banking details to the Defence Business Services (DBS) Finance Branch, please complete the Form CX723, which is available from the Gov.uk (<https://www.gov.uk/government/publications/dbs-finance-payments-nominate-a-bank-form>) and forward to DBS Finance, Walker House, Exchange Flags, Liverpool, L2 3YL.
5. The Authority may publish notification of the Contract and shall publish Contract documents under the FOI Act except where publishing such information would hinder

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law enforcement; would otherwise be contrary to the public interest; would prejudice the legitimate commercial interest of any person, or might prejudice fair competition in the supply chain.

6. If you wish to make a similar announcement you must seek approval from the named Commercial Officer.
7. Under no circumstances should you confirm to any third party that you are entering into a legally binding contract for [REDACTED] prior to both parties signing the Terms and Conditions, or ahead of the Authority's announcement of the Contract award.

Yours sincerely,

Catherine Gregory

Head of Commercial Delivery, DE&S Logistics and Support Operating Centre

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11 **DEFFORM 47 and Annex A**



DEFORM 47 and
Annex A.pdf