



Defence Science and Technology Laboratory

The R-Cloud (version 5) Agreement

Schedule 5: Conditions of Contract

Version 1.0 (September 2026)

CONTENTS

PART 1: PRELIMINARIES:	5
1 BACKGROUND	5
2 FORMATION OF CONTRACT	5
3 DEFINITIONS AND INTERPRETATION	5
4 WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS	6
5 ENTIRE AGREEMENT	6
6 DURATION OF CONTRACT	6
7 ORDER OF PRECEDENCE	6
8 TASK-SPECIFIC TERMS	7
PART 2: CONTRACT GOVERNANCE AND ADMINISTRATION	7
9 CONTRACTING AUTHORITY REPRESENTATIVES	7
10 CONFLICT OF INTEREST	7
11 PROHIBITED ACTS	8
12 CONTRACTOR CHANGE OF CONTROL	9
13 AMENDMENTS TO THE CONTRACT	10
14 PUBLICITY AND BRANDING	10
15 ENVIRONMENTAL REQUIREMENTS	11
PART 3: INFORMATION MANAGEMENT AND SECURITY	11
16 RECORD KEEPING AND AUDIT	11
17 DISCLOSURE OF INFORMATION	11
18 INFORMATION SECURITY REQUIREMENTS	13
19 CYBER	14
20 PROTECTION OF PERSONAL DATA	14
21 FREEDOM OF INFORMATION	14
22 TRANSPARENCY	15
PART 4: PROVISION OF CONTRACTOR DELIVERABLES	15
23 ASSIGNMENT OF PERSONNEL	15
24 SUPPLY OF CONTRACTOR DELIVERABLES AND QUALITY ASSURANCE	16
25 USE OF ARTIFICIAL INTELLIGENCE (AI)	16
26 ACCESS TO THE CONTRACTOR'S PREMISES	17
27 DELIVERY	18
28 IMPORT AND EXPORT LICENCES	18
29 ACCEPTANCE	19
30 REJECTION	19
31 CRITICAL PERFORMANCE FAILURE	20
32 SUB-CONTRACTING	22
33 SUPPLY CHAIN RESILIENCE AND RISK AWARENESS	22

34	EXPLOITATION OF CONTRACT OUTPUTS	23
35	CONTRACT DELIVERABLES INVOLVING THE PROVISION OF ARTICLES	23
PART 5: ACCESS TO CONTRACTING AUTHORITY PREMISES AND ISSUED PROPERTY		23
36	ACCESS TO THE CONTRACTING AUTHORITY PREMISES	23
37	SECURITY REQUIREMENTS AT CONTRACTING AUTHORITY PREMISES	24
38	HEALTH AND SAFETY AT CONTRACTING AUTHORITY PREMISES	25
39	OVERSEAS TRAVEL	25
40	LIABILITY FOR DAMAGE TO CONTRACTING AUTHORITY PROPERTY	25
41	ISSUED PROPERTY	26
42	REDUNDANT MATERIEL	27
PART 6: INTELLECTUAL PROPERTY RIGHTS		27
43	APPLICABLE INTELLECTUAL PROPERTY RIGHTS (IPR) CONDITIONS	27
44	MARKING REQUIREMENTS	28
45	CONTRACTOR NOTIFICATIONS AND THE BACKGROUND IPR NOTIFICATION FORM	28
46	PATENTS AND REGISTERED DESIGNS IN THE UK – COTS ARTICLES OR SERVICES	29
47	PATENTS AND REGISTERED DESIGNS IN THE UK - ALL OTHER ARTICLES OR SERVICES ..	29
48	PATENTS, UTILITY MODELS AND REGISTERED DESIGNS OUTSIDE THE UK	30
49	ROYALTIES AND OTHER LICENCE FEES	30
50	COPYRIGHT, DESIGN RIGHTS ETC.	30
51	AUTHORISATION AND INDEMNITY – GENERAL	31
PART 7: PRICING AND PAYMENT		32
52	CONTRACT PRICE	32
53	PRICING ON ASCERTAINED COSTS	32
54	PAYMENT AND RECOVERY OF SUMS DUE	34
55	PAYMENT OF TAXES	34
56	VALUE ADDED TAX (VAT)	35
57	PLASTIC PACKAGING TAX (PPT)	36
58	PROMOTING TAX COMPLIANCE	36
59	DEBT FACTORING	37
PART 8: LIABILITY		37
60	LIMITATIONS ON LIABILITY	37
PART 9: TERMINATION AND EXIT MANAGEMENT		41
61	TERMINATION FOR MATERIAL BREACH	41
62	TERMINATION BY THE CONTRACTING AUTHORITY	41
63	FAILURE OF PERFORMANCE UNDER RESEARCH AND DEVELOPMENT CONTRACTS	42
64	CONSEQUENCES OF TERMINATION	42
65	CONTINUING OBLIGATIONS	44
PART 10: GENERAL PROVISIONS		44
66	NOTICES	44

67	SEVERABILITY	45
68	WAIVER.....	45
69	ASSIGNMENT OF CONTRACT	45
70	THIRD PARTY RIGHTS	45
71	DISPUTE RESOLUTION.....	45
72	GOVERNING LAW	46
	CONTRACT SCHEDULE 1: DEFINITIONS	47
	CONTRACT SCHEDULE 2: SECURITY – SECRET MATTER	59
	CONTRACT SCHEDULE 3: CYBER SECURITY	64
	CONTRACT SCHEDULE 4: PROTECTION OF PERSONAL DATA	81
	CONTRACT SCHEDULE 5: CONTRACTS INVOLVING THE PROVISION OF ARTICLES.....	86
	CONTRACT SCHEDULE 6: INTELLECTUAL PROPERTY RIGHTS	89
	CONTRACT SCHEDULE 7: PRICING ON ASCERTAINED COSTS	102
	CONTRACT SCHEDULE 8: CONTRACT CHANGE CONTROL PROCEDURE.....	105
	CONTRACT SCHEDULE 9: CONTRACT SPECIFIC AMENDMENTS	108

PART 1: PRELIMINARIES:

1 BACKGROUND

Parties:	the “Contracting Authority”, as defined at Contract Schedule 1 (Definitions); and
	the “Contractor”, as defined at Contract Schedule 1 (Definitions).

2 FORMATION OF CONTRACT

- 2.1 The Contractor agrees that submission of its Response constitutes an offer to enter into this Contract to provide the Contractor Deliverables in accordance with these Conditions of Contract.
- 2.2 The Contracting Authority may accept that offer by issuing an Acceptance Notice through the R-Cloud Portal (or otherwise in accordance with the Agreement). This Contract shall be formed on the issue of the Acceptance Notice.
- 2.3 For the avoidance of doubt, no signature shall be required for the formation of this Contract.

3 DEFINITIONS AND INTERPRETATION

- 3.1 Unless the context otherwise requires:
 - 3.1.1 Capitalised terms have the meanings set out in Contract Schedule 1 (Definitions);
 - 3.1.2 References to this Contract include its Contract Schedules and Annexes;
 - 3.1.3 References to “Clauses”, “Contract Schedules”, “Annexes”, “paragraphs” and “Parts” are, unless otherwise stated, references to those elements of this Contract and, in any Contract Schedule or Annex, to the clauses, paragraphs and parts of that Contract Schedule or Annex (as applicable);
 - 3.1.4 References to any Law include any amendments, supplements, replacements, consolidations and subordinate legislation made under them;
 - 3.1.5 References to a person include any individual, firm, body corporate, unincorporated association, partnership, government, state, agency of a state or joint venture;
 - 3.1.6 References to the singular include the plural and vice versa;
 - 3.1.7 References indicating gender include all genders;
 - 3.1.8 The words “including”, “in particular”, “for example” and similar expressions are to be interpreted as being without limitation unless expressly stated otherwise;
 - 3.1.9 References to “writing” or “written” include any method of reproducing words in a legible and non-transitory form, including email and other electronic messaging, unless otherwise required by Law or expressly stated in this Contract; and
 - 3.1.10 Headings are for convenience only and do not affect the interpretation of this Contract.
 - 3.1.11 Where the Contract requires compliance with any Instruction issued by the Authority, references to that Instruction are to the version in force from time to time, as published by the Authority.
 - 3.1.12 The Authority may revise, replace or reissue any Instruction from time to time, provided that any such revision, replacement or reissue does not materially increase the Contractor's obligations or materially reduce the Contractor's rights under this Contract.

- 3.1.13 Any Instruction referred to in the Contract as an Instruction is incorporated into and forms part of the Contract and shall have contractual effect as if set out in full in the Contract.

4 WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

- 4.1 The Contractor shall comply with all applicable Law, whether specifically referenced in the Contract or not.
- 4.2 The Contractor warrants, represents and undertakes to the Contracting Authority that:
- 4.2.1 it has the full capacity and authority to enter into and perform its obligations under the Contract;
 - 4.2.2 as at the Effective Date, each of the warranties, representations and undertakings contained in Condition 3.2 of the Agreement is deemed repeated and is true, accurate and not misleading in all material respects by reference to the facts and circumstances then existing;
 - 4.2.3 it shall promptly notify the Contracting Authority of any litigation, arbitration (where not prohibited by law or confidentiality obligations), or other legal or regulatory proceedings involving the Contractor or any Sub-Contractor that could reasonably be expected to adversely affect its ability to perform its obligations under this Contract;
 - 4.2.4 as at the Effective Date, no proceedings have been commenced or other steps taken (and, to the best of the Contractor's knowledge, none are threatened) for its winding-up, dissolution, or the appointment of a receiver, administrator, liquidator, trustee or similar officeholder in relation to any of its assets or revenues; and
 - 4.2.5 it shall promptly notify the Contracting Authority if any proceedings are commenced or other steps taken (or, to the best of the Contractor's knowledge, threatened) for its winding-up, dissolution, or the appointment of a receiver, administrator, liquidator, trustee or similar officeholder in relation to any of its assets or revenues.
- 4.3 The Contractor shall bear the consequences of any error, omission or inaccuracy in information provided by it in connection with the award of this Contract and shall not be entitled to any adjustment to the Charges, Contract Price, delivery dates or any other term of this Contract solely as a result of such error, omission or inaccuracy.

5 ENTIRE AGREEMENT

- 5.1 This Contract and the applicable provisions of the Agreement in force on the Effective Date constitute the entire agreement between the Parties relating to the subject matter of the Contract.
- 5.2 The Contract supersedes, and neither Party has relied upon, any prior negotiations, representations and undertakings, whether written or oral, except that this clause 5 excludes liability for fraudulent misrepresentation.

6 DURATION OF CONTRACT

- 6.1 This Contract comes into effect on the Effective Date and will expire automatically on the date identified in the Tasking Form unless extended, varied or otherwise terminated in accordance with the provisions of the Contract or by Law.

7 ORDER OF PRECEDENCE

- 7.1 In the event and to the extent only of any conflict between the provisions of this Contract, the conflict shall be resolved in accordance with the following descending order of precedence:
- 7.1.1 Contract Schedule 9 (Contract Specific Amendments);

- 7.1.2 Key Contract Information;
 - 7.1.3 Contract Schedules 2 – 8, as applicable and in relation to the matters to which those Contract Schedules relate;
 - 7.1.4 the Conditions of Contract and Contract Schedule 1 (Definitions);
 - 7.1.5 the Statement of Requirements;
 - 7.1.6 the Response;
 - 7.1.7 any other documents expressly referred to in the Contract.
- 7.2 Where a document listed in clause 7.1 expressly incorporates another document, that other document shall be treated as forming part of the referring document for the purposes of this clause 7, unless expressly stated otherwise.
- 7.3 Where the Contractor includes in its Response provisions which are more favourable to the Contracting Authority than the corresponding provisions of this Contract, those provisions of the Response shall prevail. The Contracting Authority shall determine, acting reasonably, whether any provision of the Response is more favourable to it.
- 7.4 If either Party identifies any inconsistency in the documents listed in clause 7.1, it shall promptly notify the other Party. The Parties shall seek to resolve the inconsistency in accordance with the order of precedence set out in clause 7.1. If they cannot agree and the inconsistency is material, the matter shall be referred to dispute resolution under clause 71 (Dispute Resolution).

8 TASK-SPECIFIC TERMS

- 8.1 The Parties may include additional contract-specific terms, conditions, requirements or processes in the Tasking Form. Any such provisions shall supplement, and shall not amend, replace or take precedence over, the Conditions of Contract unless expressly provided for in Contract Schedule 9 (Contract Specific Amendments).

PART 2: CONTRACT GOVERNANCE AND ADMINISTRATION

9 CONTRACTING AUTHORITY REPRESENTATIVES

- 9.1 Any reference to the Contracting Authority in respect of:
- 9.1.1 the giving of consent;
 - 9.1.2 the delivering of any Notices; or
 - 9.1.3 the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the Contracting Authority,
- shall be deemed to be references to the Contracting Authority's Representative(s) in accordance with this clause 9.
- 9.2 Unless notified otherwise in writing, the Contractor may rely on any act, decision or instruction of the Contracting Authority's Representative, or any deputy expressly nominated by that representative from time to time, as having been duly authorised by the Contracting Authority and is not required to verify that authority.

10 CONFLICT OF INTEREST

- 10.1 The Contractor shall take all appropriate steps to ensure that neither the Contractor, any Contractor Personnel, any Sub-Contractor nor any Sub-Contractor Personnel is or is placed in a position where, in the reasonable opinion of the Contracting Authority, there is or may be an actual, potential or

perceived conflict of interest between their interests and the duties owed to the Contracting Authority under this Contract.

10.2 If any conflict referred to in clause 10.1 arises, or is anticipated to arise, the Contractor shall, as soon as reasonably practicable, notify and provide details to the Contracting Authority.

10.3 Where:

10.3.1 the Contractor has notified the Contracting Authority of an actual, potential or perceived conflict of interest in accordance with clause 10.2; or

10.3.2 the Contracting Authority has otherwise become aware of an actual, potential or perceived conflict of interest and has notified the Contractor in writing,

the Contractor shall provide a written proposal within fifteen (15) Business Days, or such other time as agreed in writing by the Parties, stating any proposed measures to manage, mitigate or avoid the conflict.

10.4 The Contracting Authority shall notify the Contractor if any additional measures are required to ensure that the conflict is appropriately managed. Where the conflict relates to a perceived conflict, the Contractor shall provide all reasonable support and assistance as may be required by the Contracting Authority to manage the conflict.

10.5 Where:

10.5.1 the Contractor has notified the Contracting Authority of an actual, potential or perceived conflict of interest in accordance with clause 10.2; or

10.5.2 the Contracting Authority has otherwise become aware of an actual, potential or perceived conflict of interest and has notified the Contractor in writing,

but in the reasonable opinion of the Contracting Authority there are insufficient measures available to manage the conflict of interest, then the Contracting Authority may, without prejudice to any other right or remedy available to it, exercise its rights of termination under this Contract.

10.6 If the Contractor:

10.6.1 fails to notify the Contracting Authority of an actual, potential or perceived conflict of interest in accordance with clause 10.2; or

10.6.2 fails to implement any measures reasonably required by the Contracting Authority to manage, mitigate or avoid a conflict of interest,

then the Contracting Authority may, without prejudice to any other right or remedy available to it, exercise its rights of termination under this Contract.

11 PROHIBITED ACTS

11.1 The Contractor shall ensure that neither the Contractor, any Contractor Personnel, any Sub-Contractor, any Sub-Contractor Personnel, nor any other person acting on behalf of or in connection with the Contractor or any Sub-Contractor does any of the Prohibited Acts or commits any offence under the Bribery Act 2010 in connection with this Contract.

11.2 If the Contractor fails to comply with this clause 11, the Contracting Authority may, without prejudice to any other right or remedy available to it, exercise its rights of termination under this Contract.

11.3 In exercising its rights or remedies under this clause, the Contracting Authority shall:

11.3.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act or committing of any offence under the Bribery Act 2010;

- 11.3.2 give all due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):
- (a) requiring the Contractor to terminate, or cause to be terminated, any Sub-Contract where the prohibited act or committing of any offence under the Bribery Act 2010 is that of a Sub-Contractor or anyone acting on their behalf;
 - (b) requiring the Contractor to dismiss, or cause the dismissal of, any employee (whether its own or that of a Sub-Contractor or anyone acting on their behalf) where the prohibited act or committing of any offence under the Bribery Act 2010 is that of such employee.

11.4 Without prejudice to any other right or remedy available to it, the Contracting Authority may recover from the Contractor:

11.4.1 the amount or value of any gift, consideration or commission constituting a Prohibited Act; and

11.4.2 any loss, liability, cost or expense sustained by the Contracting Authority as a consequence of the Contractor's breach of this clause 11,

whether or not the Contract is terminated.

11.5 Recovery action taken against any person in His Majesty's service shall be without prejudice to any recovery action taken against the Contractor pursuant to this clause 11.

12 CONTRACTOR CHANGE OF CONTROL

12.1 The Contracting Authority may act under this clause 12 in its sole discretion, having regard to its operational, commercial, security, policy and statutory requirements and interests.

12.2 The Contractor shall notify the Contracting Authority of any change of Control by issuing a Change of Control Notice:

12.2.1 as soon as it becomes aware of any intended, planned or proposed change of Control of the Contractor or any Sub-Contractor, including any Lower-Tier Sub-Contractor; and

12.2.2 immediately upon becoming aware of any actual change of Control of the Contractor or any Sub-Contractor, including any Lower-Tier Sub-Contractor.

12.3 Notwithstanding clause 66 (Notices), any notice relating to a change of Control shall be sent to the Change of Control Contact identified in the Tasking Form.

12.4 The Change of Control Notice shall be given in accordance with clause 66 (Notices) and shall include:

12.4.1 details of the change of Control; and

12.4.2 any concerns of which the Contractor is aware arising from the change of Control, including potential threats to national security and risks to security of supply.

12.5 The Contractor is not required to provide a Change of Control Notice where doing so would be unlawful or would breach a pre-existing confidentiality obligation, including any applicable regulatory requirement.

12.6 Unless otherwise agreed in writing by the Parties, a Change of Control Notice may be relied upon by the Contracting Authority for the purposes of any other contract between the Contractor and the Contracting Authority.

12.7 The Contracting Authority shall consider the Change of Control Notice and advise the Contractor of any concerns arising from it. Such concerns may include potential threats to national security, the

ability of the Contracting Authority to comply with its statutory obligations or matters covered by any declarations made by the Contractor prior to the Effective Date.

- 12.8 The Contractor shall submit a written response to the concerns raised by the Contracting Authority, including any proposed mitigation measures, within fourteen (14) calendar days (or other timeframe agreed in writing by the Contracting Authority).
- 12.9 To the extent the Contracting Authority considers appropriate, the Parties shall work together to address any concerns arising from the change of Control. The Contractor shall respond promptly to any reasonable request for information or clarification from the Contracting Authority.
- 12.10 Where the Contracting Authority considers that identified risks can be mitigated, the Contractor shall implement any agreed mitigation measures promptly and, in any event, within any timescales specified by the Contracting Authority.
- 12.11 If the Contracting Authority considers that the risks arising from a change of Control cannot be adequately mitigated, or the Contractor fails to implement agreed mitigation measures, it may, without prejudice to any other right or remedy available to it, exercise its rights of termination under this Contract and/or require the Contractor to terminate any relevant Sub-Contract by written notice within six (6) months of receipt of the Change of Control Notice.
- 12.12 Notification of a proposed or actual change of Control does not affect any existing rights of either Party or create any additional rights except as expressly provided in this clause 12.
- 12.13 The Contractor shall include provisions equivalent to those set out in this clause 12 in all relevant Sub-Contracts.

13 AMENDMENTS TO THE CONTRACT

- 13.1 Subject to clause 13.2, any amendment to this Contract must be agreed in writing by the Parties in accordance with Contract Schedule 8 (Contract Change Control Procedure).
- 13.2 Where required by the Contracting Authority, the Contractor shall:
 - 13.2.1 confirm that any existing Guarantee adequately covers the Contractor's liabilities and obligations under the Contract as amended; or
 - 13.2.2 provide a revised Guarantee to achieve the same effect.
- 13.3 The Contractor shall maintain a documented change control process for managing changes to the Statement of Requirements. Unless otherwise agreed in writing by the Contracting Authority, the process shall comply with ISO 9001 (latest published version).

14 PUBLICITY AND BRANDING

- 14.1 Except where the Contracting Authority has given its prior written approval, the Contractor shall not, and shall ensure that its Contractor Personnel, any Sub-Contractors and any Sub-Contractor Personnel do not:
 - 14.1.1 communicate with representatives of the press, television, radio, social media, or other media in relation to this Contract; or
 - 14.1.2 use the name, brand, logo or trademarks of any Contracting Authority in any promotion, publicity, marketing material or announcement, or in connection with any products or services; or
 - 14.1.3 make any statement, announcement or communication which suggests or implies that the Contracting Authority has endorsed the Contractor or its products or services.

- 14.2 If the Contractor fails to comply with this clause 14, the Contracting Authority may require the Contractor to take such remedial or mitigating action as the Contracting Authority reasonably requires within such timescales as the Contracting Authority may specify.

15 ENVIRONMENTAL REQUIREMENTS

- 15.1 In performing this Contract, the Contractor shall adopt a proactive and environmentally responsible approach to identifying, considering and, where reasonably practicable, mitigating the environmental impacts of its supply chain. The Contractor shall provide evidence of compliance with this clause 15 to the Contracting Authority on request.
- 15.2 The Contractor shall take reasonable steps to ensure that its Sub-Contractors adopt an equivalent approach in connection with the performance of their obligations relating to this Contract.

PART 3: INFORMATION MANAGEMENT AND SECURITY

16 RECORD KEEPING AND AUDIT

- 16.1 The Contractor and its Sub-Contractors shall maintain all records relating to, arising from, or required by this Contract (expressly or otherwise) and make them available to the Contracting Authority when requested on reasonable notice.
- 16.2 Subject to clause 17 (Disclosure of Information), the Contractor shall, and shall ensure that its Sub-Contractors shall, permit records relating to the Contract to be examined and, if necessary, copied by the Contracting Authority or any representative of the Contracting Authority, as the Contracting Authority may require.
- 16.3 The Contractor and its Sub-Contractors shall permit the Comptroller and Auditor General, their staff and any authorised representative of the National Audit Office access to any records relating to the Contract that are held or controlled by them and reasonably required by the National Audit Office, and shall provide such explanations and information as are reasonably required to enable the National Audit Office to:
- 16.3.1 carry out the Contracting Authority's statutory audits and examine and/or certify its annual and interim accounts; and
 - 16.3.2 carry out examinations under Part II of the National Audit Act 1983 concerning the economy, efficiency and effectiveness with which the Contracting Authority has used its resources.
- 16.4 Unless otherwise specified in this Contract, the records referred to in this clause 16 shall be retained for at least six (6) years from the later of:
- 16.4.1 the end of the Term;
 - 16.4.2 termination of the Contract; or
 - 16.4.3 the date of final payment under the Contract.
- 16.5 For the avoidance of doubt, any audit rights arising under this Contract are cumulative and may be exercised independently of one another.

17 DISCLOSURE OF INFORMATION

- 17.1 Subject to clauses 17.4 to 17.9, each Party shall:
- 17.1.1 treat in confidence all Information it receives from the other;
 - 17.1.2 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;

17.1.3 not use any of that Information otherwise than for the purpose of the Contract; and

17.1.4 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.

17.2 The Contractor shall take all reasonable precautions necessary to ensure that all Information disclosed by or on behalf of the Contracting Authority under or in connection with the Contract is:

17.2.1 disclosed to its Contractor Personnel and Sub-Contractors only to the extent necessary for the performance of the Contract; and

17.2.2 treated in confidence by them and not disclosed except with the prior written consent of the Contracting Authority or used otherwise than for the purpose of performing work or having work performed for the Contracting Authority under the Contract or any Sub-Contract.

17.3 The Contractor shall ensure that its Contractor Personnel, Sub-Contractors, and Sub-Contractor Personnel are aware of the Contractor's arrangements for discharging the obligations at clauses 17.1 and 17.2 before receiving Information and shall take such steps as may be reasonably practicable to enforce such arrangements.

17.4 A Party shall not be in breach of clauses 17.1 or 17.2 to the extent that either Party:

17.4.1 exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;

17.4.2 has the right to use or disclose the Information in accordance with other clauses of the Contract; or

17.4.3 can show:

- (a) 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;
- (b) that the Information was already known to it (without restrictions on disclosure or use) prior to receiving the Information under or in connection with the Contract;
- (c) that the Information was received without restriction on further disclosure from a third party which lawfully acquired the Information without any restriction on disclosure; or
- (d) from its records that the same Information was derived independently of that received under or in connection with the Contract;

provided that the relationship to any other Information is not revealed.

17.5 Neither Party shall be in breach of this clause 17 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 Contract.

17.6 The Contracting Authority may disclose the Information:

17.6.1 to any Central Government Body for any proper purpose of the Contracting Authority or of the relevant Central Government Body, which shall include disclosure to the Cabinet Office and/or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes. Where such a disclosure is

made the Contracting Authority shall ensure that the recipient is made aware of its confidentiality;

- 17.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 17.6.3 to the extent that the Contracting Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 17.6.4 subject to clause 17.7, on a confidential basis to a professional adviser, consultant or other person engaged by the Contracting Authority, any Central Government Body or any other public sector body entitled to participate in, use or rely on the Agreement, for any purpose relating to or connected with the Contract;
- 17.6.5 subject to clause 17.7 below, on a confidential basis for the purpose of the exercise of its rights under the Contract; or
- 17.6.6 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 Contracting Authority under this clause 17.

- 17.7 Where the Contracting Authority intends to disclose Information to a commercial entity in accordance with clauses 17.6.3 or 17.6, the Contracting Authority shall endeavour to provide the Contractor with three (3) Business Days' notice in advance of such disclosure. In relation to a disclosure of Information made under clause 17.6.3, if reasonably requested by the Contractor within two (2) Business Days of such notice being given, where the Contracting Authority has not already done so, it shall endeavour to obtain from the intended recipient of the Information an agreement containing confidentiality terms the same as, or substantially similar to, those placed on the Contracting Authority under this clause 17.
- 17.8 Before sharing any Information in accordance with clause 17.6, the Contracting Authority may redact the Information. Any decision to redact Information made by the Contracting Authority shall be final.
- 17.9 The Contracting Authority shall not be in breach of this Contract where it discloses Information solely and to the extent necessary to comply with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 (EIRs). Disclosures made pursuant to FOIA or the EIRs shall be governed by clause 21 (Freedom of Information).
- 17.10 Nothing in this clause 17 shall affect the Parties' obligations of confidentiality where information is disclosed orally in confidence.

18 INFORMATION SECURITY REQUIREMENTS

- 18.1 In this clause 18, "Information" means information recorded in any form disclosed or created in connection with the Contract.
- 18.2 The Contractor shall protect Information in accordance with the security requirements set out in the Contract and any security instruction issued by the Contracting Authority.
- 18.3 Where the Contracting Authority is the Secretary of State for Defence, the Contractor shall comply with any Security Aspects Letter and any Industry Security Notice applicable to the Contract, including the requirements of the document entitled "Security Aspects Letters and Contractual Security Conditions" (latest published version).
- 18.4 The Contractor shall include in any Sub-Contract placed in connection with or for the purposes of the Contract which:

- 18.4.1 requires disclosure of OFFICIAL-SENSITIVE Information to the Sub-Contractor; or
 - 18.4.2 involves the creation by the Sub-Contractor of Information relating to aspects designated as OFFICIAL-SENSITIVE,
- obligations requiring the Sub-Contractor to:
- 18.4.3 comply with the requirements of clause 18.2; and
 - 18.4.4 flow down the requirements of this clause 18 to its Sub-Contractors and through all levels of the supply chain to the lowest level at which any OFFICIAL-SENSITIVE Information is handled.
- 18.5 Where a Contract includes aspects designated as Secret Matter, the Contractor shall comply with the provisions of Contract Schedule 2 (Security – Secret Matter).

19 CYBER

- 19.1 The Parties shall comply with their respective cyber security obligations under this clause 19 and Contract Schedule 3 (Cyber Security).
- 19.2 The Contracting Authority may amend the Cyber Risk Profile or Cyber Security Instructions at any time by written notice to the Contractor. The Contractor shall comply with any such amendment from the date specified in the notice.
- 19.3 Where the Contracting Authority is the Secretary of State for Defence, the Contractor shall comply with all Industry Security Notices applicable to the Contract, including the requirements of the document entitled "Cloud Security Control Requirements for Handling OFFICIAL MOD Information" (latest published version), which shall apply to the use of cloud services.

20 PROTECTION OF PERSONAL DATA

- 20.1 The Parties shall comply with their respective obligations in relation to the Processing of Personal Data under Contract Schedule 4 (Protection of Personal Data).

21 FREEDOM OF INFORMATION

- 21.1 The Contractor acknowledges that, to the extent that the Contracting Authority is subject to the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIRs), the Contracting Authority shall comply with such obligations and the Contractor shall provide all reasonable assistance and cooperation required by the Contracting Authority to enable such compliance, including:
 - 21.1.1 promptly transferring to the Contracting Authority any request for information relating to this Contract and, in any event, within five (5) Business Days of receipt; and
 - 21.1.2 providing the Contracting Authority, within five (5) Business Days of the Contracting Authority's request or such other period specified by the Contracting Authority, with a copy of all information belonging to the Contracting Authority which is in the Contractor's possession or control, in such form as the Contracting Authority may reasonably require.
- 21.2 Nothing in this Contract, including clause 17 (Disclosure of Information), shall, to the extent that the Contracting Authority is subject to FOIA or the EIRs, prevent or restrict the Contracting Authority from disclosing any information where required to do so.
- 21.3 Where the Contracting Authority is subject to FOIA or the EIRs, it shall be responsible for determining, acting reasonably and in accordance with FOIA and the EIRs, whether information is exempt from disclosure and whether any exemption applies following any relevant public-interest test.

- 21.4 Where reasonably practicable and permitted by statutory timescales, the Contracting Authority may consult with the Contractor prior to disclosure of information which it considers may be commercially sensitive. Any views expressed by the Contractor are advisory only and failure to consult shall not invalidate any disclosure.
- 21.5 The Contracting Authority may lawfully redact information prior to disclosure. Any decision as to disclosure or redaction shall be final.
- 21.6 Whether or not the Contracting Authority is subject to FOIA or the EIRs, the Contractor shall, and shall ensure that its Sub-Contractors shall:
- 21.6.1 promptly notify the Contracting Authority of any request for information relating to this Contract received by the Contractor or any Sub-Contractor; and
 - 21.6.2 not respond to any such request except with the prior written approval of the Contracting Authority.

22 TRANSPARENCY

- 22.1 Notwithstanding any other provision of this Contract, including clause 17 (Disclosure of Information), the Contracting Authority may publish Transparency Information and Publishable Performance Information to the public.
- 22.2 Where the Contracting Authority intends to publish Transparency Information or Publishable Performance Information:
- 22.2.1 the Contractor shall provide all reasonable assistance required by the Contracting Authority, including complying with the requirements of clause 22.1; and
 - 22.2.2 the Contracting Authority shall redact any Sensitive Information and, where reasonably practicable, consult the Contractor before publication.
- 22.3 Where the Contracting Authority requires Publishable Performance Information, the Contractor shall prepare, submit and maintain such information in the format, at the frequency and within the timescales specified in the relevant Tasking Form. The Contractor shall revise any submission reasonably rejected by the Contracting Authority within five (5) Business Days of notification of the rejection.
- 22.4 The obligations in this clause 22 are in addition to any other reporting obligations under this Contract.

PART 4: PROVISION OF CONTRACTOR DELIVERABLES

23 ASSIGNMENT OF PERSONNEL

- 23.1 The Contractor shall ensure that the Contractor Personnel, any Sub-Contractors, and any Sub-Contractor Personnel engaged in the performance of the Contract are appropriately qualified, experienced and resourced having regard to the nature, complexity and requirements of the activities they are assigned to perform.
- 23.2 The Contractor shall ensure that Contractor Personnel and Sub-Contractor Personnel are deployed efficiently and at an appropriate level of seniority, without unnecessary duplication of effort, and in a manner that avoids actual or potential conflicts of interest, including the assurance or approval of their own work, unless otherwise agreed in writing by the Contracting Authority.
- 23.3 The Contractor shall ensure that any Sub-Contractors, including Lower-Tier Sub-Contractors, comply with the requirements of this clause 23.

24 SUPPLY OF CONTRACTOR DELIVERABLES AND QUALITY ASSURANCE

- 24.1 The Contractor shall provide the Contractor Deliverables in accordance with the Statement of Requirements.
- 24.2 The Contractor shall:
- 24.2.1 comply with any applicable quality assurance requirements specified in Statement of Requirements; and
 - 24.2.2 perform its obligations under this Contract with all due skill, care and diligence and in accordance with Good Industry Practice.
- 24.3 The Contractor shall:
- 24.3.1 comply, and ensure that its Contractor Personnel, Sub-Contractors and Sub-Contractor Personnel comply, with all applicable health, safety and security requirements at any premises or location used in connection with the performance of this Contract;
 - 24.3.2 notify the Contracting Authority as soon as it becomes aware of any health, safety, or security hazard, issue or incident arising in connection with this Contract; and
 - 24.3.3 before the date on which the Contractor Deliverables are to start, obtain and maintain, all licences, consents and permissions necessary to perform this Contract.
- 24.4 The Contractor Deliverables shall be marked in accordance with this Contract, including any requirements specified in the Tasking Form.
- 24.5 This clause 24 shall survive performance, acceptance and payment under this Contract and shall continue to apply to any Contractor Deliverables corrected, replaced, modified or re-performed by the Contractor.

25 USE OF ARTIFICIAL INTELLIGENCE (AI)

- 25.1 For the purposes of this clause 25, Contracting Authority Information means:
- 25.1.1 any Information disclosed by or on behalf of the Contracting Authority; and
 - 25.1.2 any information, data, records, materials or outputs generated, collected, created, developed or derived in connection with the Contract.
- 25.2 The Contractor shall only use AI in connection with this Contract where such use:
- 25.2.1 is expressly permitted by the Statement of Requirements;
 - 25.2.2 was disclosed in the Contractor's Response and agreed by the Contracting Authority before the Effective Date; or
 - 25.2.3 has been approved by the Contracting Authority in accordance with clause 25.3.
- 25.3 The Contractor shall not introduce any new or materially amended use of AI without:
- 25.3.1 notifying the Contracting Authority in writing of the proposed use and its anticipated impact on the Services and Deliverables; and
 - 25.3.2 obtaining the prior written consent of the Contracting Authority's Representative.
- 25.4 The Contracting Authority may withhold consent under clause 25.3 or impose such conditions as it considers appropriate.
- 25.5 Unless otherwise agreed by the Contracting Authority or specified in the Statement of Requirements, the Contractor shall ensure that AI-generated outputs are subject to appropriate human review and

validation before use, in accordance with clause 24 (Supply of Contractor Deliverables and Quality Assurance).

- 25.6 The Contractor shall not use AI in any manner that:
- 25.6.1 discloses or makes available any Contracting Authority Information to an unauthorised third party or otherwise breaches clause 17 (Disclosure of Information), clause 18 (Information Security Requirements), clause 19 (Cyber) or clause 20 (Protection of Personal Data);
 - 25.6.2 infringes, misappropriates or otherwise adversely affects any Intellectual Property Rights;
 - 25.6.3 fails to comply with applicable Law, regulatory requirements or government policy.
- 25.7 Unless disclosed to and approved by the Contracting Authority in accordance with clause 25.2, the Contractor shall not use AI in any manner that:
- 25.7.1 results in automated decision-making on behalf of the Contracting Authority;
 - 25.7.2 uses, or permits the use of, any Contracting Authority Information to train, fine-tune or otherwise improve any AI system;
 - 25.7.3 continues to use an AI system following any material change by the provider to its terms, policies or practices relating to the retention, processing, location, ownership or use of Contracting Authority Information or AI-generated outputs;
 - 25.7.4 creates a security, operational, legal, ethical, data protection, reputational or technical quality risk.
- 25.8 The use of AI shall not relieve the Contractor of any obligation, liability or responsibility under this Contract, including for any Services, Deliverables, outputs, decisions or actions arising from or assisted by the use of AI.
- 25.9 Upon request, the Contractor shall provide the Contracting Authority with:
- 25.9.1 such information regarding its use of AI as the Contracting Authority may reasonably require, including details of the relevant AI systems, governance arrangements and risk controls; and
 - 25.9.2 sufficient information to identify and assess any material contribution made by AI to the Services or Deliverables.
- 25.10 The Contractor shall notify the Contracting Authority immediately upon becoming aware of any material incident, error, malfunction, bias, harmful outcome or security issue arising from the use of AI.
- 25.11 The Contractor shall maintain, and shall ensure that its Sub-Contractors maintain, records sufficient to demonstrate compliance with this clause 25.
- 25.12 The Contractor shall ensure that any Sub-Contractor is bound by obligations equivalent to this clause 25 and shall remain responsible and liable for all acts and omissions of Sub-Contractors relating to the use of AI in connection with this Contract.
- 25.13 The Contracting Authority may, by written notice, require the Contractor to cease any use of AI that it reasonably considers presents a material security, operational, legal, ethical, data protection, reputational or technical quality risk.

26 ACCESS TO THE CONTRACTOR'S PREMISES

- 26.1 The Contractor shall, on reasonable notice and at no additional cost to the Contracting Authority, provide the Contracting Authority's Representatives and any other person authorised by the Contracting Authority with reasonable access to its premises, facilities and personnel for the purpose of monitoring the Contractor's performance of this Contract.

- 26.2 The Contractor shall, so far as reasonably practicable, ensure that any relevant Sub-Contracts include rights equivalent to those set out in clause 26.1.

27 DELIVERY

- 27.1 The Contractor shall comply with the delivery, collection and consignment instructions set out in the Tasking Form or otherwise notified by the Contracting Authority, including any requirements relating to transmission, document marking, transportation, customs, transit documentation, labelling, packaging or delivery.
- 27.2 Unless otherwise stated in this Contract, the Contractor shall be responsible for all costs associated with delivery of the Contractor Deliverables.
- 27.3 A Contractor Deliverable shall be treated as delivered only where it has been delivered in accordance with this Contract and the requirements of this clause 27 have been satisfied and:
- 27.3.1 in the case of a report, electronic file or other non-physical deliverable, when it is received by the Contracting Authority;
 - 27.3.2 in the case of an Article, when it is handed over by the Contractor to the Contracting Authority or its Representative; or
 - 27.3.3 in the case of a Service for which no separate Contractor Deliverable is required to be provided, when the Service has been completed in accordance with the Contract.
- 27.4 Unless otherwise provided in this Contract, title and risk in any Article shall pass to the Contracting Authority on delivery.
- 27.5 Where, in accordance with clause 27.1 or as otherwise stated in this Contract, any Contractor Deliverable is to be Delivered by the Contractor to their own premises, or to those of a Sub-Contractor, the risk in such a Contractor Deliverable shall remain vested in the Contractor until such time as it is handed over to the Contracting Authority.
- 27.6 Unless otherwise provided in this Contract, where a Contractor Deliverable is rejected in accordance with clause 30 (Rejection), it shall be treated as not having been delivered. In the case of an Article, title shall revert to the Contractor.
- 27.7 The Contracting Authority may issue or revise delivery instructions for one or more Contractor Deliverables from time to time. The Contractor shall comply with such instructions.
- 27.8 Where a revised delivery instruction would result in a change to the Contract Price, delivery schedule or any other material requirement of the Contract, the parties shall agree an amendment to the Contract in accordance with clause 13 (Amendments to the Contract).
- 27.9 Where the Contractor provides any property to the Contracting Authority which is not a Contractor Deliverable, title to that property shall remain with the Contractor unless otherwise expressly provided in the Contract.

28 IMPORT AND EXPORT LICENCES

- 28.1 The Contractor shall be responsible for obtaining any import or export licence required under the Law of the United Kingdom in respect of any goods, technology, software or information imported into or exported from the United Kingdom in connection with the performance of this Contract, other than where such goods, technology, software or information are supplied by or on behalf of the Contracting Authority.
- 28.2 The Contracting Authority shall provide such reasonable assistance as the Contractor may reasonably require in connection with any application for a licence referred to in clause 28.1.

- 28.3 To the extent not already notified to the Contracting Authority before the Effective Date, the Contractor shall notify the Contracting Authority as soon as reasonably practicable of:
- 28.3.1 any Import and Export Controls affecting any Contractor Deliverable; and
 - 28.3.2 any material change to any licence, authorisation, exemption, transfer control or notification previously disclosed to the Contracting Authority.
- 28.4 The Contractor shall complete and submit such declarations, forms and supporting information as the Contracting Authority may reasonably require in connection with clause 28.3.
- 28.5 The Contracting Authority may require the Contractor to comply with such additional terms, conditions, restrictions or control measures as the Contracting Authority reasonably considers necessary to address the relevant restriction or change. Any such amendment shall be made in accordance with clause 13 (Amendments to the Contract).
- 28.6 The Contractor shall use reasonable endeavours to obtain sufficient information from its supply chain to comply with its obligations under clauses 28.3 and 28.4 and shall notify the Contracting Authority as soon as reasonably practicable if it is unable to obtain such information.
- 28.7 Where the Contractor knew or ought reasonably to have known that any Contractor Deliverable was subject to Import and Export Controls and:
- 28.7.1 failed to notify the Contracting Authority either before the Effective Date or in accordance with clause 28.3;
 - 28.7.2 failed to comply with any requirement of the Contracting Authority under clause 28.4; or
 - 28.7.3 provided information to the Contracting Authority that was inaccurate or incomplete,
- then the Contracting Authority may, without prejudice to any other right or remedy available to it, exercise its rights of termination under this Contract.

29 ACCEPTANCE

- 29.1 Acceptance of the Contractor Deliverables shall take place in accordance with the procedure set out in the Tasking Form. If no acceptance procedure applies, acceptance shall occur when either:
- 29.1.1 the Contracting Authority does any act which is inconsistent with the Contractor's ownership of the Contractor Deliverable; or
 - 29.1.2 the period for rejection under clause 30 (Rejection) expires.
- For the avoidance of doubt, the use, review, evaluation or testing of a Contractor Deliverable by the Contracting Authority shall not of itself constitute acceptance.
- 29.2 Unless otherwise provided in this Contract, the Contracting Authority shall not be deemed to have accepted any Contractor Deliverable unless it has had a reasonable opportunity after delivery to examine it and determine whether it complies with this Contract.

30 REJECTION

- 30.1 If any Contractor Deliverable does not comply with this Contract, the Contracting Authority may reject that Contractor Deliverable, in whole or in part, without prejudice to any other rights or remedies available to the Contracting Authority.
- 30.2 The Contracting Authority may, at the Contractor's cost and risk, return any rejected Contractor Deliverable to the Contractor and may require the Contractor to correct, replace or reperform the rejected Contractor Deliverable.

- 30.3 Rejection shall take place within the period specified in the Tasking Form or, if no period is specified, within a reasonable period after delivery and before acceptance of the relevant Contractor Deliverable.

31 CRITICAL PERFORMANCE FAILURE

- 31.1 A Critical Performance Failure occurs where the Contractor commits any act, omission, default, negligence, breach of this Contract or failure to exercise the level of skill, care and diligence required under this Contract and the Contracting Authority reasonably considers such failure to be serious having regard to the nature of the Services.
- 31.2 A Critical Performance Failure may include:
- 31.2.1 a failure by the Contractor to perform the Services in accordance with the Contract, including the Statement of Requirements, including any failure to:
 - (a) perform the required activities;
 - (b) comply with any mandatory requirement or quality standard specified in the Statement of Requirements;
 - (c) follow any agreed methodology, process, project plan, risk assessment or technical approach;
 - (d) maintain sufficient appropriately qualified, experienced, trained or security-cleared personnel to perform the Services;
 - (e) provide any information, report, data, evidence, record or documentation required under this Contract; or
 - (f) comply with Good Industry Practice;
 - 31.2.2 the failure to deliver any Contractor Deliverables by the delivery date required under this Contract, where such failure is not attributable to a cause beyond the Contractor's reasonable control;
 - 31.2.3 any Contractor Deliverables:
 - (a) failing to satisfy the applicable criteria for Acceptance as specified at clause 29 (Acceptance); or
 - (b) being incomplete, inaccurate, unreliable, unsuitable or unusable for the purpose intended by this Contract;
 - 31.2.4 the Contractor fails to notify the Contracting Authority's Representative without undue delay of any matter, risk, incident, breach, conflict, investigation or circumstance which affects, or is reasonably likely materially to affect, the performance of the Services;
 - 31.2.5 a Data Loss Event or the loss, corruption, destruction, unauthorised disclosure of, or unauthorised access to, the Information or Intellectual Property Rights;
 - 31.2.6 the Contractor ceasing to hold, or failing to obtain, any licence, accreditation, approval, certification, security clearance or other authorisation required to perform the Services;
 - 31.2.7 a breach of any applicable Law, regulation, ethical approval, security requirement, Security Aspects Letter, Cyber Security Instructions, research governance requirement, funding condition or health and safety obligation;
 - 31.2.8 a failure to comply with any Key Performance Indicator, Service Level, milestone, performance measure or other contract management requirement specified in this Contract,

where such failure has not been remedied in accordance with any applicable performance management, escalation or rectification procedure; or

- 31.2.9 repeated failures by the Contractor to perform the Services in accordance with this Contract where multiple failures, which may not individually constitute a Critical Performance Failure, collectively demonstrate a persistent pattern of unsatisfactory performance and, following written notice from the Contracting Authority identifying such failures, the Contractor fails to:
- (a) remedy the failures within the period reasonably specified by the Contracting Authority; or
 - (b) implement any remediation or mitigation measures reasonably required by the Contracting Authority.

31.3 For the purposes of this clause 31, any act, omission or default of a Sub-Contractor shall be treated as an act, omission or default of the Contractor.

31.4 For the avoidance of doubt, a Critical Performance Failure shall not arise solely from the failure of research, experimentation, testing or development activities to achieve an anticipated research outcome where such failure results from scientific or technical reasons beyond the Contractor's reasonable control and the Contractor has otherwise complied with its obligations under this Contract.

31.5 Where the Contracting Authority considers that a Critical Performance Failure has occurred, it may give written notice to the Contractor specifying:

- 31.5.1 the Critical Performance Failure;
- 31.5.2 the matters giving rise to it;
- 31.5.3 any actions required to remedy or mitigate its effects; and
- 31.5.4 the period within which such actions are to be completed.

31.6 Following receipt of a notice under clause 31.5, the Contractor shall:

- 31.6.1 promptly investigate the Critical Performance Failure;
- 31.6.2 take all reasonable steps to remedy, mitigate and prevent recurrence of the Critical Performance Failure;
- 31.6.3 if reasonably requested by the Contracting Authority, prepare and submit a remediation plan, including timescales and responsible personnel; and
- 31.6.4 provide such information, reports and updates as the Contracting Authority may reasonably require.

31.7 The Contractor shall comply with any reasonable remedial action plan or performance improvement measures required by the Contracting Authority in connection with a Critical Performance Failure.

31.8 If:

- 31.8.1 the Contracting Authority reasonably determines that a Critical Performance Failure is incapable of remedy; or
- 31.8.2 the Contractor fails to remedy a Critical Performance Failure within the period specified by the Contracting Authority pursuant to clause 31.5, or such other period agreed between the Parties,

the Contracting Authority may, without prejudice to any other right or remedy available to it, exercise its rights of termination under this Contract

- 31.9 Nothing in this clause 31 shall prevent the Contracting Authority from exercising any immediate right of suspension, rejection or termination available to it under this Contract where the nature of the Critical Performance Failure reasonably requires urgent action.

32 SUB-CONTRACTING

- 32.1 Sub-Contracting any part of the Contract shall not relieve the Contractor of any of their obligations, duties or liabilities under the Contract.
- 32.2 Where the Contractor enters into a Sub-Contract, they shall ensure that each Sub-Contract includes provisions:
- 32.2.1 sufficient to enable the Contractor to comply with clause 12.13 (Contractor Change of Control);
 - 32.2.2 no less favourable to the Sub-Contractor than those set out in clauses 54.2 to 54.4 (Payment and Recovery of Sums Due) in relation to the consideration, verification and payment of invoices; and
 - 32.2.3 requiring the Sub-Contractor to include in any Sub-Contract it awards provisions which are no less favourable to the relevant sub-contractor than those set out in clauses 54.2 to 54.4, and to ensure that no less favourable provisions are included in each further tier of Sub-Contracting.
- 32.3 The Contractor shall not agree with the Sub-Contractor a payment date for a valid and undisputed invoice of more than 30 days.
- 32.4 The Contractor shall include in any Sub-Contract over £250,000 (exclusive of VAT) which it may enter into for the purpose of the Contract, the right to terminate the Sub-Contract equivalent to the terms of clause 62.1.1 (Termination by the Contracting Authority) and clauses 64.3, 64.8 and 64.10 (Consequences of Termination) except that:
- 32.4.1 references to the Contracting Authority shall be construed as references to the Contractor, except in relation to any unused and undamaged materials and any Contractor Deliverables as stated at clause 64.8.3;
 - 32.4.2 the notice period for termination shall be as specified in the Sub-Contract, or if no period is specified twenty (20) Business Days; and
 - 32.4.3 the Contractor's right to terminate the Sub-Contract shall not be exercised unless the main Contract, or relevant part, has been terminated by the Contracting Authority in accordance with the provisions of clause 62.1.1.

33 SUPPLY CHAIN RESILIENCE AND RISK AWARENESS

- 33.1 Where the value of work is likely to exceed five million pounds (£5,000,000) (exclusive of VAT), the Contractor shall complete the Supply Chain Resilience Intelligence Performance Tool (SCRIPT) Template or such other template as may be specified in the Tasking Form, so as to provide:
- 33.1.1 a list of each First-Tier Sub-Contractor; and
 - 33.1.2 to the extent they have the right to do so, a list of Second-Tier Sub-Contractors which they are aware of or ought reasonably to be aware of.
- 33.2 The information required at clause 33.1 shall be provided to the Contracting Authority:
- 33.2.1 in relation to First-Tier Sub-Contractors within 90 days of the Effective Date;
 - 33.2.2 in relation to the Second-Tier Sub-Contractors, within 90 days of the Effective Date (or other timeframe agreed in writing by the Contracting Authority). This information is provided to the

Contracting Authority for the purpose of undertaking supply chain risk and resilience management activities by the Contracting Authority only.

- 33.3 During the term of the Contract, the Contractor shall notify the Contracting Authority as soon as reasonably practicable of changes to the accuracy of the information by providing an updated SCRIPT Template. If the supply chain changes frequently or is likely to change frequently, a twice-yearly update shall be deemed sufficient.
- 33.4 The Contractor shall include provisions equivalent to those set out in clauses 33.1 to 33.3 in all First-Tier Sub-Contracts.

34 EXPLOITATION OF CONTRACT OUTPUTS

- 34.1 The Contractor may, within three (3) months of the Effective Date, or later where reasonably justified, submit proposals to the Contracting Authority for changes to the requirements of the Contract which, in the Contractor's opinion, would increase the potential for Exploitation of Contractor Deliverables or other outputs of the Contract, including by enhancing the benefits accruing to the Contracting Authority or the wider impact of such outputs.
- 34.2 Any proposal submitted under clause 34.1 shall include:
- 34.2.1 a description of the proposed change;
 - 34.2.2 an assessment of its impact on performance, reliability, delivery timescales, cost and any other relevant requirements of the Contract; and
 - 34.2.3 an explanation of why the proposed change would increase the potential for Exploitation of Contractor Deliverables or other outputs of the Contract.
- 34.3 This clause 34 does not commit the Contracting Authority to accept any proposal submitted by the Contractor.
- 34.4 Where the Contracting Authority wishes to implement all or part of a proposal submitted under this clause 34, any resulting change to the Contract shall be made in accordance with clause 13 (Amendments to the Contract).

35 CONTRACT DELIVERABLES INVOLVING THE PROVISION OF ARTICLES

- 35.1 Where the Contract includes the provision of Articles, Contract Schedule 5 (Contracts Involving the Provision of Articles) shall apply.

PART 5: ACCESS TO CONTRACTING AUTHORITY PREMISES AND ISSUED PROPERTY

36 ACCESS TO THE CONTRACTING AUTHORITY PREMISES

- 36.1 Unless otherwise stated in the Contract, where Contractor Representatives are required to access Relevant Premises in connection with the Contract, the following provisions shall apply:
- 36.1.1 The Contracting Authority shall provide such facilities as are necessary for the performance of the Contract.
 - 36.1.2 Any Relevant Premises made available to the Contractor shall, unless otherwise stated in the Contract:
 - (a) be provided free of charge;
 - (b) be used solely for the purpose of performing the Contract; and
 - (c) be vacated by the Contractor on completion, expiry or termination of the Contract.

- 36.2 The Contractor shall occupy such premises as a licensee. Any utilities supplied shall be charged in accordance with the Contract.
- 36.3 The Contractor shall have no claim against the Contracting Authority for any additional cost or delay arising from the closure of Relevant Premises where:
- 36.3.1 the closure was notified to the Contractor before the Effective Date; or
- 36.3.2 in respect of Services agreed after the Effective Date, the closure was notified to the Contractor before the date on which the Parties agreed that such Services should proceed.

37 SECURITY REQUIREMENTS AT CONTRACTING AUTHORITY PREMISES

- 37.1 Where access to Relevant Premises is required in connection with the Contract, the Contractor shall:
- 37.1.1 provide such information relating to any Contractor Representatives as the Contracting Authority may reasonably require or direct for security, vetting, identification and access purposes; and
- 37.1.2 ensure that only Contractor Representatives approved by the Contracting Authority are permitted access to Relevant Premises where such approval is required for the purposes of security or access procedures.
- 37.2 The Contracting Authority may refuse, suspend or withdraw access to Relevant Premises where reasonably necessary for security, safety or operational reasons.
- 37.3 The Contracting Authority may require the Contractor to remove any Contractor Representatives from work under the Contract where reasonably necessary for security, safety, operational or conduct reasons. The Contractor shall promptly comply with such requirement and, where necessary for the performance of the Contract, provide a suitable replacement.
- 37.4 The decision of the Contracting Authority upon any matter relating to the access to Relevant Premises shall be final and conclusive.
- 37.5 The Contractor shall ensure all Contractor Representatives who require access to Relevant Premises hold any personnel security clearances and satisfy any personnel screening requirements necessary for such access.
- 37.6 The Contractor shall:
- 37.6.1 on request, provide evidence reasonably required by the Contracting Authority to demonstrate compliance with clause 37.5;
- 37.6.2 comply, and shall ensure that any Contractor Representatives comply, with all security, safety and site requirements notified by the Contracting Authority and applicable to the performance of the Contract; and
- 37.6.3 where reasonably required to verify compliance with clause 37.5, permit the Contracting Authority to review the processes applied by the Contractor to meet applicable personnel security requirements.
- 37.7 In relation to any Relevant Premises which are not Contracting Authority Premises, the Contracting Authority may nominate a third party for the purposes of this clause 37 and shall notify the Contractor of any such nomination. The Contractor shall comply with the requirements of any nominated third party only to the extent that such requirements are consistent with this Contract and the Contracting Authority's notice of nomination.
- 37.8 In the event of any conflict or inconsistency between any instruction, direction or requirement of a nominated third party and that of the Contracting Authority, the Contractor shall promptly notify the Contracting Authority. Pending resolution by the Contracting Authority, the Contractor shall not

permit access to the Relevant Premises where entitlement to such access is affected by the conflict or inconsistency. The Contracting Authority's determination shall prevail.

38 HEALTH AND SAFETY AT CONTRACTING AUTHORITY PREMISES

- 38.1 Where the Contractor performs work on Relevant Premises, each party shall cooperate and exchange information necessary to identify and manage health and safety risks associated with the performance of the Contract.
- 38.2 The Contractor shall:
- 38.2.1 inform the Contracting Authority of any health and safety hazards or risks arising from its activities;
 - 38.2.2 ensure that any Contractor Representatives are appropriately informed, instructed and trained in relation to those hazards and risks; and
 - 38.2.3 provide such health and safety documentation as the Contracting Authority may reasonably require.
- 38.3 The Contracting Authority shall provide such health and safety information relating to Contracting Authority Premises as may reasonably be required to enable the Contractor to perform the Contract safely.
- 38.4 In relation to any Relevant Premises which are not Contracting Authority Premises, the Contracting Authority may nominate a third party for the purposes of this clause 38 and shall notify the Contractor of any such nomination. The Contractor shall comply with the health and safety requirements of any nominated third party to the extent that such requirements are consistent with this Contract and the Contracting Authority's notice of nomination.
- 38.5 In the event of any conflict or inconsistency between any instruction, direction or requirement of a nominated third party and that of the Contracting Authority, the Contractor shall promptly notify the Contracting Authority. The Contracting Authority's determination shall prevail.

39 OVERSEAS TRAVEL

- 39.1 Where any Contractor Representatives are required to work at or visit Contracting Authority Premises outside the United Kingdom, any arrangements relating to travel, security (including security briefings and instructions), accommodation, subsistence, medical support, financial support, expenses and associated costs shall be as specified in the Contract or otherwise reasonably notified by the Contracting Authority.

40 LIABILITY FOR DAMAGE TO CONTRACTING AUTHORITY PROPERTY

- 40.1 The Contractor shall, except as otherwise provided in the Contract, make good or, at the option of the Contracting Authority, pay compensation for all damage occurring to any property of the Contracting Authority or any other Central Government Body, including land or buildings, occasioned by the Contractor or any Contractor Representatives and arising from the presence of the Contractor or any Contractor Representatives at Contracting Authority Premises in connection with the Contract. The Contractor shall not be liable to the extent it can demonstrate that the damage was not caused or contributed to by matters within its reasonable control or that of any Contractor Representatives.
- 40.2 The total liability of the Contractor under clause 40.240.1 shall be subject to the liability limitations set out in clause 60 (Limitations of Liability), unless the Contract specifies an alternative liability cap that reflects the nature and risk profile of the Services being performed.
- 40.3 For the avoidance of doubt, nothing in this clause 40 limits, affects or otherwise prejudices the operation of clause 41 (Issued Property) or Contract Schedule 5, paragraph 2 (Loss of or Damage to

the Articles), and the liabilities arising under this clause 40 are in addition to those arising under clause 41 (Issued Property) and Contract Schedule 5, paragraph 2 (Loss of or Damage to the Articles).

- 40.4 All property of the Contractor and any Contractor Representatives shall be at the risk of the Contractor whilst on any Contracting Authority Premises, and the Contracting Authority shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby, except as follows:
- 40.4.1 the Contracting Authority shall accept liability for any loss or damage to the extent that it is caused or contributed to by the act, neglect or default of the Contracting Authority, its employees, agents or contractors; or
- 40.4.2 where the Contracting Authority has taken custody of the Contractor's property and provided a receipt for it, the Contracting Authority shall be liable for any loss of or damage to that property while it remains in its custody.

41 ISSUED PROPERTY

- 41.1 Where applicable to the performance of the Contract, the Contractor shall comply with the procedures set out in the Tasking Form relating to the receipt, inspection, custody, maintenance, accounting, audit, return and disposal of Issued Property.
- 41.2 Title to Issued Property shall remain vested in the Contracting Authority.
- 41.3 The Contractor shall use Issued Property solely for the performance of the Contract unless otherwise authorised in writing by the Contracting Authority.
- 41.4 The Contractor shall ensure that no lien, charge or other encumbrance is created over Issued Property and shall notify any person dealing with Issued Property of the Contracting Authority's ownership.
- 41.5 The Contractor shall inspect Issued Property promptly upon receipt and notify the Contracting Authority of any defect, deficiency or discrepancy within the period specified in the Contract.
- 41.6 Following notification under clause 41.5, the Contracting Authority shall, within a reasonable time, replace, re-issue, authorise the repair of, or otherwise deal with any defective or deficient Issued Property. Where appropriate, the parties shall agree any resulting adjustment to the Contract.
- 41.7 Where the Contracting Authority fails within a reasonable time to replace, re-issue or authorise the repair of defective or deficient Issued Property, the parties shall agree any fair and reasonable adjustment to the Contract Price, delivery schedule or both, provided that the Contractor has taken reasonable steps to mitigate the effects of such delay.
- 41.8 The Contractor shall be responsible for the safe custody, protection and return of Issued Property and shall be liable for any loss of or damage to Issued Property while it is in the Contractor's possession or control, except to the extent otherwise provided in this Contract.
- 41.9 The Contractor shall carry out any maintenance and calibration of Issued Property required by the Contract.
- 41.10 The Contractor shall not be liable for:
- 41.10.1 defects, deficiencies or latent defects properly notified to the Contracting Authority;
- 41.10.2 fair wear and tear arising from normal and proper use; or
- 41.10.3 Issued Property rendered unserviceable through the ordinary performance of the Contract.
- 41.11 The Contractor shall maintain records of all Issued Property in its possession and shall make those records available for inspection or audit by the Contracting Authority on reasonable notice.

- 41.12 On completion, expiry or termination of the Contract, the Contractor shall provide details of all remaining Issued Property and comply with the Contracting Authority's instructions regarding its return, transfer or disposal.

42 REDUNDANT MATERIEL

- 42.1 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 Contracting Authority under the Contract, or which is otherwise owned by the Contracting Authority, shall be dealt with in accordance with this clause 42.
- 42.2 On completion of the Contract, or earlier if appropriate, the Contractor shall prepare and submit to the Contracting Authority's Representative a list of all Redundant Materiel, identifying:
- 42.2.1 items considered to be serviceable or repairable, together with the condition of each item, its actual cost or estimated value and, where applicable, the estimated cost of repair; and
 - 42.2.2 items considered to be unserviceable, incapable of economic repair or otherwise suitable only for scrap.
- 42.3 Within three months of receiving the list, the Contracting Authority shall issue disposal instructions to the Contractor. Such instructions may require that the Redundant Materiel is:
- 42.3.1 transferred to other subsisting contracts;
 - 42.3.2 repaired or retained by the Contractor for use in the performance of future contracts with the Contracting Authority (subject to contract);
 - 42.3.3 sold by the Contractor, acting on behalf of the Contracting Authority, for the best price reasonably obtainable; or
 - 42.3.4 otherwise transferred or disposed of in accordance with the Contracting Authority's instructions.
- 42.4 The Contracting Authority may require Redundant Materiel to be dismantled and disposed of in a manner that precludes resale in its existing form.
- 42.5 Where Redundant Materiel is sold pursuant to clause 42.3.3, the Contractor shall:
- 42.5.1 provide the Contracting Authority's Representative with details of the items sold and the proceeds of sale; and
 - 42.5.2 credit the proceeds of the sale to the Contracting Authority in accordance with arrangements agreed by the Parties.

PART 6: INTELLECTUAL PROPERTY RIGHTS

43 APPLICABLE INTELLECTUAL PROPERTY RIGHTS (IPR) CONDITIONS

- 43.1 For each Technical Deliverable, one of the following sets of Intellectual Property Rights terms and conditions (IPR Conditions) shall apply, as specified in the Tasking Form:
- 43.1.1 Annex SV to Contract Schedule 6 - Supplier Vesting IPR Condition (with or without invoking one or more of the options set out within it);
 - 43.1.2 Annex AV to Contract Schedule 6 - Authority Vesting IPR Condition (with or without invoking the option set out within it); or
 - 43.1.3 a bespoke IPR Condition.
- 43.2 If the Tasking Form does not specify which IPR Condition applies for any Technical Deliverable, then Annex SV (Supplier Vesting IPR Condition) shall apply to that Technical Deliverable.

44 MARKING REQUIREMENTS

- 44.1 The Contractor shall comply with the marking requirements for Technical Deliverables, and the format and content requirements for reports, as set out in the Marking Requirements applicable to the relevant IPR Condition specified in the Tasking Form in accordance with clause 43 (Applicable Intellectual Property Rights (IPR) Conditions).
- 44.2 The Contractor is to supply, at no additional cost to the Contracting Authority, a minutes secretary and produce minutes of the meetings if necessary. In addition to any applicable Marking Requirements under clause 44.1, the front page of any minutes produced as a result of any meeting between the Contracting Authority and the Contractor shall state: "Nothing in these Minutes shall be construed as giving authority to proceed on work beyond that provided in the Contract or vary the terms and conditions of the Contract".
- 44.3 Reports shall be signed on the Contractor's behalf by a person authorised to commit the Contractor.

45 CONTRACTOR NOTIFICATIONS AND THE BACKGROUND IPR NOTIFICATION FORM

- 45.1 The Contractor shall promptly notify the Contracting Authority as soon as it becomes aware of:
- 45.1.1 any invention or design the subject of patent or registered Design Rights (or application thereof) owned by a third party which appears to be relevant to the performance of the Contract or to use by the Contracting Authority of anything required to be done or delivered under the Contract;
 - 45.1.2 any restriction as to disclosure or use, or obligation to make payments in respect of any other IPR (including Technical Information) required for the purposes of the Contract or subsequent use by the Contracting Authority 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; or
 - 45.1.3 any allegation of infringement of IPR made against the Contractor and which pertains to the performance of the Contract or subsequent use by the Contracting Authority of anything required to be done or delivered under the Contract.
- 45.2 Clause 45.1 does not apply in respect of Deliverables normally available from the Contractor as a commercial off the shelf ("COTS") item or service.
- 45.3 If the Information required under clause 45.1 has been notified previously, the Contractor may meet its obligations by giving details of the previous notification.
- 45.4 The Background IPR Notification Form included as part of this Contract (unless absent), constitutes the Contractor's initial notification of the Background IPR that it anticipates to be used and included in the production of the Technical Deliverables, relevant information to which it relates, and relevant restrictions on use and disclosure that apply to it, and it shall initially constitute the latest version.
- 45.5 At any time during the Term, the Contractor may submit a Background IPR Notification Form to the Contracting Authority as a Contractor Change Proposal in accordance with clause 13 (Amendments to the Contract) and, if accepted by the Contracting Authority in writing, it shall constitute the latest version.
- 45.6 The Contractor shall ensure that all Technical Information to be delivered to the Contracting Authority under the Contract is delivered without restrictions on use or disclosure, except in accordance with the latest version of the Background IPR Notification Form, or, in the absence of a latest version, without restrictions on use or disclosure.

46 PATENTS AND REGISTERED DESIGNS IN THE UK – COTS ARTICLES OR SERVICES

- 46.1 In the event an allegation is made (to the Contracting Authority or Contractor, or otherwise) that the manufacture or provision under the Contract of Deliverables 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 Contracting Authority, the Contractor shall:
- 46.1.1 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; and
 - 46.1.2 the Contractor shall indemnify the Contracting Authority, its officers, agents and employees against any liability and cost arising from such allegation.
- 46.2 Clause 46.1 shall not apply if:
- 46.2.1 the Contracting Authority has made or makes an admission of any sort relevant to such allegation;
 - 46.2.2 the Contracting Authority has entered or enters into any discussions on such allegation with any third party without the prior written agreement of the Contractor;
 - 46.2.3 the Contracting Authority 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;
 - 46.2.4 legal proceedings have been commenced against the Contracting Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.
- 46.3 The indemnity in clause 46.1.2 does not extend to use by the Contracting Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.
- 46.4 In the event that the Contracting Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Contracting Authority 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.

47 PATENTS AND REGISTERED DESIGNS IN THE UK - ALL OTHER ARTICLES OR SERVICES

- 47.1 For all Deliverables other than those covered by clauses 46.1 to 46.4 (Patents And Registered Designs in the UK – COTS Articles or Services), if a relevant invention or design has been notified to the Contracting Authority by the Contractor prior to the Effective Date, then, unless it has been otherwise agreed with the Contracting Authority in writing, 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 not authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a UK Patent or UK registered design, for the purpose of performing the Contract.
- 47.2 If, under clause 45 (Contractor Notifications and the Background IPR Notification Form), a relevant invention or design is notified to the Contracting Authority by the Contractor after the Effective Date, then:
- 47.2.1 if the owner (or his exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Contracting Authority 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

- 47.2.2 in any event, unless the Contractor and the Contracting Authority can agree an alternative course of action, the Contracting Authority 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.

48 PATENTS, UTILITY MODELS AND REGISTERED DESIGNS OUTSIDE THE UK

- 48.1 The Contracting Authority shall assume all liability and shall indemnify the Contractor, its officers, agents and employees against liability, including the Contractor's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of a Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of requirements or instruction in a Contract or using, keeping or disposing of any item given by the Contracting Authority for the purpose of a Contract in accordance with a Contract.
- 48.2 The Contractor shall assume all liability and shall indemnify the Contracting Authority, its officers, agents and employees against liability, including the Contracting Authority's costs, as a result of infringement by the Contractor or their 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 requirements or instruction in the Contract or using, keeping or disposing of any item given by the Contracting Authority for the purpose of the Contract in accordance with the Contract.

49 ROYALTIES AND OTHER LICENCE FEES

- 49.1 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:
- 49.1.1 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
- 49.1.2 any obligation to make payments for intellectual property has not been promptly notified to the Contracting Authority under clause 45 (Contractor Notifications and the Background IPR Notification Form).
- 49.2 Where authorisation is given by the Contracting Authority under clauses 46.4, 48.1 or 48.2 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:
- 49.2.1 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
- 49.2.2 authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.

50 COPYRIGHT, DESIGN RIGHTS ETC.

- 50.1 The Contractor shall assume all liability and indemnify the Contracting Authority and its officers, agents and employees against liability, including costs as a result of:

- 50.1.1 infringement or alleged infringement by the Contractor or its 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;
 - 50.1.2 misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract; or
 - 50.1.3 provision to the Contracting Authority of any information or material which the Contractor does not have the right to provide for the purpose of the Contract.
- 50.2 The Contracting Authority shall assume all liability and indemnify the Contractor, its officers, agents and employees against liability, including costs as a result of:
- 50.2.1 infringement or alleged infringement by the Contractor or their 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 Contracting Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract; and/or
 - 50.2.2 alleged misuse of any confidential information, trade secret or the like by the Contractor as a result of use of information provided by the Contracting Authority 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 Contracting Authority.

51 AUTHORISATION AND INDEMNITY – GENERAL

- 51.1 Clauses 45 – 50 (inclusive) represent 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 Rights (IPR) owned by a third party.
- 51.2 Neither Party shall be liable 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 IPR owned by a third party.
- 51.3 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 Contract 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.
- 51.4 Subject to the provisions of clause 47.1 (Patents and Registered Designs in the UK - All Other Articles Or Services), 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.
- 51.5 Following a notification under clause 51.3, 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.
- 51.6 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.
- 51.7 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 Contractor Deliverable by the Contractor to the Contracting Authority, 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. 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.

- 51.8 The Contractor shall secure from any Sub-Contractor the prompt notification to the Contracting Authority of the information required by clause 45 (Contractor Notifications and the Background IPR Notification Form). On receipt of any such notification, the Contracting Authority will issue a written authorisation to the Sub-Contractor in accordance with clause 47.2. Any such authorisation will be subject always to clauses 49.1, 49.2 and 51.1 as though the Sub-Contractor was the Contractor. If any claim or action relevant to such authorisation arises, it shall be promptly notified to the Contracting Authority. The Contractor is not authorised to enter into any substantive correspondence in such matter nor in any way to act on behalf of the Contracting Authority in such claim or action. Any arrangement between the Contractor and Sub-Contractor to enable the Contractor to underwrite its indemnities to the Contracting Authority under this clause 51 is a matter between the Contractor and the Sub-Contractor.
- 51.9 Nothing in clause 45 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

PART 7: PRICING AND PAYMENT

52 CONTRACT PRICE

- 52.1 The Contractor shall provide the Contractor Deliverables at the Contract Price. Unless otherwise specified in the Tasking Form, the Contract Price shall be Firm Price.
- 52.2 Subject to clause 52.1, the Contract Price includes any UK customs, excise or other duties payable. The Contractor shall not make any claim for drawback of UK import duty in relation to Contractor Deliverables supplied under this Contract.

53 PRICING ON ASCERTAINED COSTS

- 53.1 This clause 53 applies to any Contract priced, in whole or in part, on the basis of Ascertained Costs.
- 53.2 To the extent that any part of the Contract is priced on the basis of Ascertained Costs, and subject to clause 60 (Limitations on Liability), any maximum amount payable under this Contract, any cost overrun or underrun sharing arrangements, and the other provisions of this clause 53, the Contracting Authority shall pay the Contract Price agreed by the Parties and calculated on the basis of:
- 53.2.1 the costs properly incurred for the purposes of the Contract of:
- (a) wages and salaries constituting a direct charge to the work to be performed under the Contract, including work in respect of the provision of special jigs and tools;
 - (b) materials, bought-out parts and Sub-Contracted work including such costs in respect of the provision of special jigs and tools;
- 53.2.2 overhead and administration charges appropriate to the Contract; and
- 53.2.3 a sum for profit to be agreed and specified in the Contract.
- 53.3 The Contractor shall provide such cost information as the Contracting Authority may reasonably require in connection with the Contract and shall permit the Contracting Authority's Representatives to verify that information by inspecting the Contractor's books, accounts and other documents and records.

- 53.4 The Contractor shall maintain and provide, on request, such information as the Contracting Authority may reasonably require to satisfy itself that the prices paid by the Contractor to its subsidiary companies or firms, Sub-Contractors and suppliers are fair and reasonable.
- 53.5 Where the Contract requires interim Contract Costs Statements, or the Contractor submits a request for final settlement, the Contractor shall submit a completed Contract Costs Statement to the Contracting Authority's Representative.
- 53.6 The following provisions shall apply to Contract Costs Statements:
- 53.6.1 The Contractor shall submit its final Contract Costs Statement no later than nine months after completion of all work under the Contract, or such other period as may be specified in the Contract.
 - 53.6.2 If interim statements of cost are not provided within the time specified in the Contract the Contracting Authority may, after giving reasonable notice, defer any interim payment then due until the overdue statement has been provided.
 - 53.6.3 Contract Costs Statements, whether interim or final, may include declared estimated figures covering any reasonable amounts that cannot be determined accurately without undue delay. Estimated amounts shall not exceed 2% of the value of the Contract Costs Statement unless a higher percentage is reasonably necessary in the circumstances and has been agreed in writing by the Contracting Authority.
 - 53.6.4 The format of a Contract Cost Statement may only be modified with the prior written agreement of the Contracting Authority.
 - 53.6.5 Where a Sub-Contract is required under clause 53.10 to include Contract Schedule 7 (Pricing on Ascertained Costs - Provisions to be Included in Relevant Sub-Contracts), the Contractor shall include provisions equivalent to clauses 53.6.1 to 53.6.4 in that Sub-Contract.
- 53.7 The total amount payable under this Contract is subject to the Contracting Authority being satisfied, having regard to the provisions of clauses 53.3 to 53.6 and any applicable Annex of Contract Schedule 7, that the charges referred to in clauses 53.2.1 and 53.2.2 are fair and reasonable. If the Contracting Authority is not so satisfied, those charges shall be reduced to a fair and reasonable amount.
- 53.8 Until prices are agreed in accordance with clauses 53.2 to 53.6, the Contracting Authority may determine fair and reasonable provisional prices. The Contracting Authority reserves the right to vary those provisional prices from time to time.
- 53.9 Upon the fixing of the final prices or any revision to the provisional prices:
- 53.9.1 the Contracting Authority shall pay to the Contractor any amount by which the amount payable on that basis exceeds the amount already paid; and
 - 53.9.2 the Contractor shall repay to the Contracting Authority any amount by which the amount already paid exceeds the amount payable on that basis.
- 53.10 Unless otherwise agreed in writing by the Contracting Authority, where the Contractor enters into a Sub-Contract with a value of £100,000 or more other than following the acceptance of the lowest acceptable competitive tender, the Contractor shall:
- 53.10.1 include in the Sub-Contract the provisions of the applicable Annex of Contract Schedule 7 (Pricing on Ascertained Costs - Provisions to be Included in Relevant Sub-Contracts);
 - 53.10.2 take all reasonable steps to secure the due observance by the Sub-Contractor of their obligations under those conditions; and

53.10.3 notify the Contracting Authority:

- (a) when a Sub-Contract subject to Contract Schedule 7 Annex B or Annex C is placed, stating the name of the Sub-Contractor, the nature of the work and the expected completion date;
- (b) when a fixed or provisional price is agreed for the Sub-Contract; and
- (c) when delivery or work under the Sub-Contract is complete.

53.11 Where a notification is given under clause 53.10:

53.11.1 Contract Schedule 7, Annex B; or

53.11.2 Contract Schedule 7, Annex C, paragraph 2.4,

as applicable, shall cease to apply six months after the notification, or such other period as may be agreed, or on completion of the Sub-Contract, whichever is later. In any event, those provisions shall cease to apply on completion of the Contract.

53.12 The Contracting Authority shall not disclose any information obtained under this clause 53 to any person outside a Central Government Body except to the extent necessary for the purposes of resolving a dispute in accordance with clause 71 (Dispute Resolution).

54 PAYMENT AND RECOVERY OF SUMS DUE

54.1 Payments under this Contract shall be made by electronic transfer. Before submitting an invoice, the Contractor shall provide all information required by the Contracting Authority to enable its registration on the Contracting Authority's electronic system(s) for procurement and payment.

54.2 Where the Contractor submits an invoice to the Contracting Authority in accordance with clause 54.1, the Contracting Authority shall consider and verify any invoice submitted by the Contractor without undue delay.

54.3 The Contracting Authority shall pay any valid and undisputed invoice within 30 days of receipt or, if later, the date on which payment falls due under the invoice.

54.4 Where the Contracting Authority fails to comply with clause 54.2 and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of clause 54.3 after a reasonable period.

54.5 Payment of an invoice does not constitute acceptance of the Contractor Deliverables or a waiver of any rights or remedies under this Contract.

54.6 Without prejudice to any other right or remedy, the Contracting Authority may set off any amount owed by the Contractor against any amount payable to the Contractor under this Contract or any other contract between the Contractor and the Contracting Authority or another Government Department.

54.7 The Contractor shall comply with clause 32 (Sub-Contracting) in relation to prompt payment obligations owed to Sub-Contractors.

55 PAYMENT OF TAXES

55.1 The Contractor shall comply with all applicable tax Law and shall be responsible for the payment of any taxes, duties, levies and similar charges for which it is liable in connection with this Contract. The Contractor shall ensure that its Sub-Contractors comply with all applicable tax obligations.

55.2 The Contractor shall maintain, and shall ensure that its Sub-Contractors maintain, records relating to compliance with their tax obligations under this Contract.

56 VALUE ADDED TAX (VAT)

- 56.1 The Contract Price is exclusive of UK output VAT. Where UK VAT is properly chargeable on the supply of Contractor Deliverables, the Contracting Authority shall pay such VAT in addition to the Contract Price, subject to receipt of a valid VAT invoice.
- 56.2 The Contracting Authority shall not be required to pay any sum in respect of the Contractor's input VAT.
- 56.3 The Contractor shall be responsible for determining the VAT treatment of the Contractor Deliverables and for complying with all applicable VAT Law and VAT registration requirements. Where there is any uncertainty regarding the VAT treatment under this Contract, the Contractor shall seek clarification from HM Revenue & Customs (HMRC).
- 56.4 Where any Contractor Deliverables are within the scope of UK VAT but the Contractor is not required to be registered for UK VAT (and has not registered voluntarily), the Contracting Authority shall account for any VAT payable to HMRC in accordance with applicable Law.
- 56.5 The Contractor shall notify the Contracting Authority within twenty (20) Business Days of becoming aware of:
- 56.5.1 any change or potential change to the VAT treatment of this Contract; or
 - 56.5.2 any change to its VAT registration status that may affect the VAT treatment of this Contract.
- 56.6 The Contractor shall comply with any reasonable instructions of the Contracting Authority in relation to VAT and shall provide such information, assistance and evidence as the Contracting Authority may reasonably require within such timescales as the Contracting Authority may reasonably specify, including correspondence with HMRC, to demonstrate compliance with this clause 56 and establish the applicable VAT treatment. For the avoidance of doubt, compliance with any instruction of the Contracting Authority under this clause 56.6 shall not relieve the Contractor of its responsibilities under this clause 56.
- 56.7 If HMRC determines that the Contractor has incorrectly determined the VAT liability under this Contract:
- 56.7.1 the Contracting Authority shall pay any VAT properly assessed by HMRC; or
 - 56.7.2 the Contractor shall promptly credit or repay any VAT paid by the Contracting Authority in excess of the amount assessed by HMRC.
- 56.8 The Contractor shall be solely responsible for any interest, penalties or other charges imposed by HMRC to the extent arising from any incorrect determination of VAT liability, failure to comply with applicable VAT Law, or failure to comply with any applicable tax notification or reporting obligations. Unless expressly agreed in writing by the Contracting Authority, such amounts shall not be recoverable from the Contracting Authority under this Contract or otherwise.
- 56.9 Where the Contractor is required under applicable tax Law to notify HMRC of an uncertain tax treatment relating to this Contract, the Contractor shall notify the Contracting Authority in writing within twenty (20) Business Days of making that notification and provide reasonable details of the uncertain tax treatment and its potential impact on this Contract. The Contractor shall keep the Contracting Authority informed of any material correspondence with HMRC relating to that uncertain tax treatment and shall notify the Contracting Authority within twenty (20) Business Days of any material HMRC determination relating to that uncertain tax treatment.
- 56.10 Where Contractor Deliverables are deemed to be supplied to the Contracting Authority outside the UK, the Contractor may be required by the Laws of the relevant jurisdiction to register for tax purposes in that jurisdiction. In such circumstances, the Contractor shall be responsible for ensuring that the Contract Price adequately reflects any such tax liability.

57 PLASTIC PACKAGING TAX (PPT)

- 57.1 The Contract Price includes any PPT due in relation to this Contract. The Contractor shall ensure that any PPT due is paid in accordance with the PPT Legislation.
- 57.2 The Contractor shall notify the Contracting Authority, in writing, in the event that there is any adjustment required to the Contract Price in accordance with section 70 of the Finance Act 2021.
- 57.3 The Contractor shall provide, on reasonable notice:
- 57.3.1 any information the Contracting Authority requires in relation to any adjustment to the Contract Price;
 - 57.3.2 details of any PPT paid in relation to the Contract and such information and documentation as the Contracting Authority reasonably requires to carry out due diligence and verify the Contractor's compliance with the PPT Legislation; and
 - 57.3.3 any information the Contracting Authority may require for the Contracting Authority to comply with any obligations it may have under the PPT Legislation.
- 57.4 Where the Contractor is not required to register for PPT, the Contractor (and, where applicable, its Sub-Contractors) shall, on reasonable notice, provide the Contracting Authority with a statement confirming that position and such supporting evidence as the Contracting Authority may reasonably require.
- 57.5 The Contracting Authority may, on reasonable notice, inspect or audit the Contractor to verify the accuracy of any information provided under this clause 57.

58 PROMOTING TAX COMPLIANCE

- 58.1 This clause 58 shall apply if the Contract Price exceeds, or is reasonably likely to exceed, five million pounds (£5,000,000) (exclusive of VAT) during the Term.
- 58.2 If, at any point during the Term, an Occasion of Tax Non-Compliance (OOTNC) occurs, the Contractor shall:
- 58.2.1 notify the Contracting Authority in writing of such fact within twenty (20) Business Days of its occurrence; and
 - 58.2.2 promptly provide to the Contracting Authority:
 - (a) details of the steps that the Contractor is taking to address the OOTNC, together with any mitigating factors that it considers relevant; and
 - (b) such other information in relation to the OOTNC as the Contracting Authority may reasonably require.
- 58.3 For the avoidance of doubt, this clause 58 applies to OOTNC in non-UK jurisdictions. Where the OOTNC occurred in a non-UK jurisdiction, the notification shall include sufficient information about the OOTNC and the applicable tax Laws and administrative provisions to enable the Contracting Authority to understand its nature and seriousness.
- 58.4 If the Contractor:
- 58.4.1 fails to comply with clauses 58.2.1 to 58.2.2; and/or
 - 58.4.2 fails to provide mitigating factors which, in the reasonable opinion of the Contracting Authority, are acceptable; and/or
 - 58.4.3 gives, or is deemed to have given, any warranty, representation or undertaking under clause 4 (Warranties, Representations and Undertakings) relating to an OOTNC which proves to be materially untrue, inaccurate or misleading,

the Contracting Authority may, without prejudice to any other right or remedy available to it, exercise its rights of termination under this Contract

- 58.5 Without prejudice to any other right or remedy available to it, the Contracting Authority may recover from the Contractor:
- 58.5.1 where the Contract is terminated, the amount of any loss resulting from the termination; and
 - 58.5.2 where the Contract has not been terminated, any loss sustained by the Contracting Authority as a consequence of the Contractor's breach of this clause 58.
- whether or not the Contract is terminated.
- 58.6 In exercising its rights or remedies under this clause 58, the Contracting Authority shall:
- 58.6.1 act in a reasonable and proportionate manner taking into account, among other things:
 - (a) the gravity and duration of the OOTNC and any sanctions imposed by a court or tribunal; and
 - (b) any remedial action taken by the Contractor to prevent recurrence of the OOTNC;
 - 58.6.2 without prejudice to clause 58.4, consider, where appropriate, action other than termination of the Contract to deal with the failure by the Contractor to comply with this clause 58.

59 DEBT FACTORING

- 59.1 Subject to the Contractor obtaining the prior written consent of the Contracting Authority in accordance with clause 69 (Assignment of Contract), the Contractor may assign to a third Party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest payable under the Late Payment of Commercial Debts (Interest) Act 1998).
- 59.2 Where the Contracting Authority agrees to a request under clause 59.1, no such assignment shall take effect unless it is implemented by means of a formal amendment to this Contract made in accordance with clause 13 (Amendments to the Contract).
- 59.3 The provisions of this Contract shall continue to apply following any assignment under this clause 59 and shall not be amended or otherwise affected except as expressly provided for in the amendment entered into pursuant to clause 59.2.
- 59.4 The Contracting Authority shall have no obligation to agree to any request for assignment.

PART 8: LIABILITY

60 LIMITATIONS ON LIABILITY

- 60.1 Neither Party limits its liability for:
- 60.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
 - 60.1.2 fraud or fraudulent misrepresentation by it or its employees;
 - 60.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 60.1.4 any liability to the extent it cannot be limited or excluded by Law.
- 60.2 The financial caps on liability set out in clauses 60.3 and 60.4 shall not apply to the following:

- 60.2.1 for any indemnity given by the Contractor to the Contracting Authority under this Contract, including but not limited to:
- (a) the Contractor's indemnities in relation to Intellectual Property Rights under clauses 46, 50 and 51;
 - (b) the Contractor's indemnity in relation to any TUPE provisions under this Contract;
- 60.2.2 for any indemnity given by the Authority to the Contractor under this Contract, including but not limited to:
- (a) the Contracting Authority's indemnity under clause 63 (Failure of Performance under Research and Development Contracts);
 - (b) the Authority's indemnity in relation to any TUPE provisions under this Contract;
- 60.2.3 breach by the Contractor of Contract Schedule 4 (Protection of Personal Data) or Data Protection Legislation;
- 60.2.4 any liability arising from or in connection with a breach by the Contractor of clause 11 (Prohibited Acts); and
- 60.2.5 to the extent it arises as a result of a Default by either Party, any fine or penalty incurred by the other Party pursuant to Law and any costs incurred by such other Party in defending any proceedings which result in such fine or penalty.
- 60.2.6 For the avoidance of doubt, any payments due from either Party to the other pursuant to any single source pricing adjustment, profit sharing, loss sharing or equivalent contract pricing adjustment provisions included in this Contract, including payments due under the Defence Reform Act 2014 and/or the Single Source Contract Regulations 2014, shall not be excluded or limited by clauses 60.3 or 60.4.
- 60.3 Subject to clauses 60.1 and 60.2 and to the maximum extent permitted by Law:
- 60.3.1 [Throughout the Term] The Contractor's total liability in respect of losses that are caused by Defaults of the Contractor shall not exceed:
- (a) in respect of clause 40 (Liability for Damage to Contracting Authority Property), [] pounds (£[]) in aggregate;
 - (b) in respect of clause 61 (Termination for Material Breach), [] pounds (£[]) in aggregate;
 - (c) in respect of clause 41 (Issued Property), [] pounds (£[]) in aggregate; and
 - (d) in respect of Contract Schedule 5, paragraph 2 (Loss of or Damage to the Articles), [] pounds (£[]) in aggregate;
- 60.3.2 Without limiting clause 60.3.1 and subject always to clauses 60.1, 60.2, 60.3.3 and 60.3.4, the Contractor's total liability throughout the Term in respect of all other liabilities (but excluding any Service Credits paid or payable in accordance with [insert cross reference to service credit/performance provisions] and [insert cross reference to any other relevant provisions], whether in contract, in tort (including negligence), arising under warranty, under statute or otherwise under or in connection with this Contract shall not exceed [] pounds (£[]) in aggregate.
- 60.3.3 The caps on the Contractor's liability set out in clauses 60.3.1 and 60.3.2 shall not be reduced in respect of any loss to the extent that it is either:
- (a) insured pursuant to the terms of this Contract; or

- (b) a loss which the Contractor was required to insure pursuant to this Contract and/or by Law but which was either not so insured or is not recoverable under the terms of the relevant policy of insurance.

60.3.4 On the exercise of any and, where more than one, each option period or agreed extension to the Term, the limitation of the Contractor's total liability (in aggregate) set out in clauses 60.3.1 and 60.3.2 shall be fully replenished such that on and from each such exercise or extension of the Term, the Contracting Authority shall be able to claim up to the full value of the limitation set out in clauses 60.3.1 and 60.3.2.

60.4 Subject to clauses 60.1, 60.2 and 60.5, and to the maximum extent permitted by Law the Contracting Authority's total liability (in aggregate) whether in contract, in tort (including negligence), under warranty, under statute or otherwise under or in connection with this Contract shall in respect of all liabilities (taken together) be limited to the Charges paid by the Authority in the relevant Contract Year in respect of any and all claims in that Contract Year.

60.5 Clause 60.4 shall not exclude or limit the Contractor's right under this Contract to claim for the Charges.

60.6 Subject to clauses 60.1, 60.2 and 60.7, 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:

60.6.1 indirect loss or damage;

60.6.2 special loss or damage;

60.6.3 consequential loss or damage;

60.6.4 loss of profits (whether direct or indirect);

60.6.5 loss of turnover (whether direct or indirect);

60.6.6 loss of business opportunities (whether direct or indirect); or

60.6.7 damage to goodwill (whether direct or indirect),

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

60.7 The provisions of clause 60.6 shall not restrict the Contracting Authority's ability to recover any of the following losses incurred by the Contracting Authority to the extent that they arise as a result of a Default by the Contractor:

60.7.1 any additional operational and administrative costs and expenses arising from the Contractor's Default, including any costs paid or payable by the Contracting Authority:

(a) to any third party;

(b) for putting in place workarounds for the Contractor Deliverables and other deliverables that are reliant on the Contractor Deliverables; and

(c) relating to time spent by or on behalf of the Contracting Authority in dealing with the consequences of the Default;

60.7.2 any or all wasted expenditure and losses incurred by the Contracting Authority arising from the Contractor's Default, including wasted management time;

60.7.3 the additional cost of procuring and maintaining in place transitional assistance and replacement deliverables for the remainder of the Term and any option period or agreed extension to the Term (including legal and other consultants' fees, re-procurement project costs, other expenses associated with such exercise and any increase in the fees for the

replacement services over and above the Contract Price that would have been payable for the relevant Contractor Deliverables);

- 60.7.4 any losses arising in connection with the loss, destruction, corruption, inaccuracy or degradation of Contracting Authority data, or other data or software, including, to the extent the Authority data, other data or software can be recovered or reconstituted, the fees, costs and expenses of reconstituting such Contracting Authority data, data or software;
 - 60.7.5 damage to the Contracting Authority's physical property and tangible assets, including damage under clause 40 (Liability for Damage to Contracting Authority Property) or clause 41 (Issued Property);
 - 60.7.6 costs, expenses and charges arising from, or any damages, account of profits or other award made for, infringement of any third-party Intellectual Property Rights or breach of any obligations of confidence;
 - 60.7.7 any additional costs incurred by the Contracting Authority in relation to the Authority's contracts with a third party (including any compensation or interest paid to a third party by the Contracting Authority) as a result of the Default (including the extension or replacement of such contracts);
 - 60.7.8 any fine or penalty incurred by the Contracting Authority pursuant to Law and any costs incurred by the Contracting Authority in defending any proceedings which result in such fine or penalty; or
 - 60.7.9 any savings, discounts or price reductions during the Term and any option period or agreed extension to the Term committed to by the Contractor pursuant to this Contract.
- 60.8 If any limitation or provision contained or expressly referred to in this clause 60 is held to be invalid under any Law, it shall 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 shall be subject to the remaining limitations and provisions set out in this clause 60.
- 60.9 Without prejudice to any other rights or remedies the Contracting Authority may have under this Contract (including any indemnity under clauses 46, 50 or 51, or at Law), the Contracting Authority shall be entitled to make a claim under this Contract against the Contractor in respect of any losses incurred by the Contracting Authority which arise out of a claim made against the Contracting Authority by a third party under any contract with that third party provided that such third party claim:
- 60.9.1 arises naturally and ordinarily as a result of the Contractor's failure to provide the Contractor Deliverables or failure to perform any of its obligations under this Contract; and
 - 60.9.2 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 Contracting Authority or the Contractor), such claim to be construed as direct losses for the purpose of this Contract.
- 60.10 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 Contracting Authority shall be entitled to use (singly or together) such rights and remedies available to the Contracting Authority so as to recover the full extent of any recoverable losses suffered or incurred, including any remedies the Contracting Authority may have against any guarantor.

PART 9: TERMINATION AND EXIT MANAGEMENT**61 TERMINATION FOR MATERIAL BREACH**

- 61.1 Without prejudice to any of its other rights and remedies, the Contracting Authority 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 their obligations under this Contract (being a single event or a series of events which together amount to a material breach).

62 TERMINATION BY THE CONTRACTING AUTHORITY

- 62.1 The Contracting Authority may terminate this Contract (in whole or in part) by issuing a Termination Notice to the Contractor:
- 62.1.1 for convenience at any time by giving the Contractor not less than twenty (20) Business Days' written notice (or such other period specified in the Tasking Form);
 - 62.1.2 if a right of termination is expressly reserved elsewhere in this Contract, including:
 - (a) Clause 10 (Conflict of Interest);
 - (b) Clause 11 (Prohibited Acts);
 - (c) Clause 12 (Contractor Change of Control);
 - (d) Clause 28 (Import and Export Licenses);
 - (e) Clause 58 (Promoting Tax Compliance); and
 - (f) Contract Schedule 2 (Security - Secret Matter);
 - 62.1.3 Where the Contractor's level of performance constitutes a Critical Performance Failure and the Contracting Authority has become entitled to terminate the Contract pursuant to clause 31.8 (Critical Performance Failure).
 - 62.1.4 where the Contractor commits a Default and, following written notice from the Contracting Authority identifying that Default, fails within the period reasonably specified by the Contracting Authority to:
 - (a) remedy the Default; or
 - (b) implement any remediation or mitigation measures reasonably required by the Contracting Authority;
 - 62.1.5 if an Insolvency Event affecting the Contractor occurs or, in the reasonable opinion of the Contracting Authority, there is a material deterioration in the financial standing or credit rating of the Contractor which adversely affects, or could reasonably be expected to adversely affect, the Contractor's ability to perform its obligations under the Contract;
 - 62.1.6 if any warranty, representation or undertaking given by the Contractor pursuant to clause 4 (Warranties, Representations and Undertakings) proves to be materially untrue, inaccurate or misleading;
 - 62.1.7 if any Guarantee required under the Contract ceases to be valid or enforceable and is not replaced by a Guarantee acceptable to the Contracting Authority within a reasonable period; or
 - 62.1.8 if the Contractor commits two or more further Defaults within a period of six (6) months, or other such period stated in the Tasking Form, after the Contracting Authority has served a written warning notice stating that continued non-compliance may result in termination of the Contract

63 FAILURE OF PERFORMANCE UNDER RESEARCH AND DEVELOPMENT CONTRACTS

- 63.1 In addition to any other rights or remedies available to it, the Contracting Authority may terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Contractor where, for substantial scientific or technical reasons beyond the Contractor's reasonable control, the Contractor is unable to perform its obligations under the Contract.

64 CONSEQUENCES OF TERMINATION

- 64.1 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of either Party accrued before the date of termination.
- 64.2 This clause 64 is subject to any specific consequences of termination expressly provided elsewhere in the Contract.
- 64.3 Upon termination of the Contract, the Contractor shall:
- 64.3.1 immediately cease performance of the Contractor Deliverables, except to the extent otherwise directed by the Contracting Authority;
 - 64.3.2 take all reasonable steps to minimise any costs, liabilities, commitments and expenditure arising after the date of termination;
 - 64.3.3 provide all reasonable assistance, information, records and documents reasonably required by the Contracting Authority in connection with the termination;
 - 64.3.4 comply with any instructions issued by the Contracting Authority concerning the return, transfer, protection, retention or disposal of Information, Personal Data, and Contractor Deliverables;
 - 64.3.5 return all Issued Property and any other property belonging to the Contracting Authority in accordance with the Contract;
 - 64.3.6 deliver to the Contracting Authority all completed Contractor Deliverables and any partially completed Contractor Deliverables for which payment is properly due under the Contract;
 - 64.3.7 terminate on the best possible terms any relevant Sub-Contracts, taking into account any direction given under this clause 64.3; and
 - 64.3.8 provide any reasonable transitional assistance requested by the Contracting Authority for a period specified by the Contracting Authority, on terms to be agreed by the Parties or, failing agreement, on terms that are fair and reasonable.
- 64.4 Where the Contract is terminated pursuant to clause 12.11 (Contractor Change of Control), the Contractor may request payment for any reasonable and unavoidable commitments, liabilities or expenditure incurred as a result of the termination. Any request must be submitted promptly, supported by documentary evidence and demonstrate that the costs would otherwise represent an unavoidable loss. The Contracting Authority shall determine whether to approve or reject the request.
- 64.5 Where the Contract is terminated pursuant to clause 11 (Prohibited Acts) or clause 58 (Promoting Tax Compliance), the Contracting Authority may recover from the Contractor:
- 64.5.1 the amount of any loss resulting from the termination; and
 - 64.5.2 pursuant to clause 11 (Prohibited Acts), the amount or value of any such gift, consideration or commission.
- 64.6 Where the Contract is terminated pursuant to clause 61 (Termination for Material Breach), the Contracting Authority may:

- 64.6.1 procure replacement deliverables, works or services from a third party; and
- 64.6.2 recover from the Contractor any additional costs, losses, expenses and liabilities reasonably incurred as a consequence of the termination.
- 64.7 Following termination, the Contracting Authority shall pay the Contractor:
 - 64.7.1 any amounts properly due and payable in respect of Contractor Deliverables accepted by the Contracting Authority before the date of termination; and
 - 64.7.2 any amounts expressly payable following termination under the relevant termination provision,but shall not be liable to pay for any Contractor Deliverables not properly performed in accordance with the Contract.
- 64.8 Where the Contract is terminated pursuant to clause 62.1.1 (Termination by the Contracting Authority) and subject to the Contractor complying with any directions issued under clause 64.3:
 - 64.8.1 subject to clause 64.10, the Contracting Authority shall pay the Contractor a fair and reasonable price for all Services performed, including any partially completed Services, in accordance with the Contract;
 - 64.8.2 The Contractor shall provide details of any unused and undamaged materials and any Contractor Deliverables in progress held for the purposes of the Contract and shall comply with the Contracting Authority's reasonable instructions regarding them;
 - 64.8.3 The Contracting Authority may take over, at a fair and reasonable price, any such materials or Contractor Deliverables in progress, except those which the Contractor retains with the Contracting Authority's agreement; and
 - 64.8.4 subject to the Contractor taking all reasonable steps to mitigate its losses and providing reasonable supporting evidence, the Contracting Authority shall compensate the Contractor for any reasonable and unavoidable commitments, liabilities, expenditure or losses directly arising from the termination, to the extent not otherwise recovered under clauses 64.8.1 or 64.8.3.
- 64.9 Any claim under clause 64.8.4 shall be submitted in such form and within such timescales as the Contracting Authority may reasonably require.
- 64.10 The Contracting Authority's total liability under clause 64.8 shall not exceed the total price of the Contractor Deliverables under the Contract (or the relevant terminated part), taking into account any amounts paid, due or becoming due at the date of termination.
- 64.11 Where the Contracting Authority terminates the Contract under clause 63.1 (Failure of Performance Under Research and Development Contracts), the Contractor shall be entitled to fair and reasonable compensation for unavoidable costs and liabilities incurred as a result of the termination. Such compensation shall not include any allowance for profit and, when aggregated with all other amounts paid under the Contract, shall not exceed the Contract Price or the relevant proportion of the Contract Price.
- 64.12 Termination of the Contract shall not affect:
 - 64.12.1 any rights, remedies, obligations or liabilities accrued before the date of termination;
 - 64.12.2 any provision of the Contract which expressly or by implication is intended to come into force or continue in force after termination; or
 - 64.12.3 any claim in respect of any antecedent breach of the Contract.

- 64.13 Where only part of the Contract is being terminated, the Contracting Authority 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.

65 CONTINUING OBLIGATIONS

- 65.1 Without limitation, the following provisions shall survive termination of the Contract:
- 65.1.1 Clause 16 (Record Keeping and Audit);
 - 65.1.2 Clause 17 (Disclosure of Information);
 - 65.1.3 Clause 18 (Information Security Requirements);
 - 65.1.4 Clause 19 (Cyber Security);
 - 65.1.5 Clause 20 (Protection of Personal Data);
 - 65.1.6 Clause 22 (Transparency);
 - 65.1.7 Clauses 43 - 51 (Intellectual Property Rights) and any applicable provisions of Contract Schedule 6 (Intellectual Property Rights);
 - 65.1.8 Clause 60 (Limitations on Liability);
 - 65.1.9 Clause 64 (Consequences of Termination);
 - 65.1.10 Clause 70 (Third Party Rights);
 - 65.1.11 Clause 71 (Dispute Resolution); and
 - 65.1.12 Clause 72 (Governing Law),
- together with any other provision which expressly or by implication is intended to survive termination.

PART 10: GENERAL PROVISIONS

66 NOTICES

- 66.1 A Notice served under the Contract shall be:
- 66.1.1 in writing in the English language;
 - 66.1.2 authenticated by signature or such other method as may be agreed by the Parties;
 - 66.1.3 sent for the attention of the other Party's Representative and to the relevant address set out in the Tasking Form;
 - 66.1.4 marked with the number of the Contract; and
 - 66.1.5 delivered by hand, prepaid post (or airmail) or, where specified in the Tasking Form, by electronic mail.
- 66.2 Notices shall be deemed to have been received:
- 66.2.1 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;
 - 66.2.2 if sent by prepaid post, on the fourth Business Day (or the tenth Business Day in the case of airmail) after the day of posting;
 - 66.2.3 if sent by electronic means:

- (a) 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
- (b) 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 transmission from the receiving instrument.

67 SEVERABILITY

- 67.1 If any provision of the Contract is held to be invalid, illegal or unenforceable to any extent then:
- 67.1.1 such provision shall, to the extent that 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
 - 67.1.2 the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision with a valid, legal and enforceable substitute that, so far as possible, achieves the intended effect of the original provision.

68 WAIVER

- 68.1 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.
- 68.2 No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

69 ASSIGNMENT OF CONTRACT

- 69.1 Neither Party shall be entitled to assign, novate or otherwise dispose of any rights and obligations under this Contract without the prior written consent of the other Party.

70 THIRD PARTY RIGHTS

- 70.1 Except where expressly provided otherwise 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, and the Parties declare that they have no intention to grant any such right.

71 DISPUTE RESOLUTION

- 71.1 The Parties shall attempt in good faith to resolve any dispute or claim arising out of or relating to the 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 procedure on which the Parties may agree.
- 71.2 In the event that a dispute or claim is not resolved pursuant to clause 71.1 the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause 71.2 shall be governed by the Arbitration Act 2025. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 2025.
- 71.3 For the avoidance of doubt, anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

72 GOVERNING LAW

- 72.1 The Contract shall be considered as a contract made in England and subject to English Law.
- 72.2 Subject to clause 71, and without prejudice to the dispute resolution process set out in that Condition, each party hereby irrevocably submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the law of England to govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
- 72.3 Other jurisdictions may apply solely for the purpose of giving effect to this clause 72 and for the enforcement of any judgement, order or award given under English jurisdiction.
- 72.4 Where the Contractor's registered office is outside England and Wales, the Contractor shall irrevocably appoint solicitors or other persons in England and Wales to accept service of process in connection with any proceedings arising out of or in connection with this Contract.

CONTRACT SCHEDULE 1: DEFINITIONS

1 Application of this Contract Schedule

- 1.1 In this Contract, the following expressions and defined terms have the meanings given in this Contract Schedule 1 (Definitions).
- 1.2 Unless the context otherwise requires, words in the singular include the plural and vice versa, in accordance with clause 3 (Definitions and Interpretation).

[Note: Definitions in this Contract Schedule are generally arranged alphabetically. However, related definitions (for example, "Sub-Contractor", "First-Tier Sub-Contractor", "Second-Tier Sub-Contractor") may be grouped together to assist understanding of the relationship between the terms.]

Acceptance Notice	means the formal notification of Contract award issued by a Contracting Authority via the R-Cloud Portal, or otherwise in accordance with the Agreement, including any documents expressly referred to in it;
Agreement	means the R-Cloud (version 5) Agreement;
Articles	means all goods (excluding services) which the Contractor is required under the Contract to supply;
Artificial Intelligence (AI)	means any machine-based system, including machine learning systems, generative artificial intelligence systems, large language models, automated decision-making tools and similar technologies, that infers from the input it receives how to generate outputs such as predictions, content, recommendations or decisions for use in, or in connection with, the performance of this Contract;
Asbestos	shall have the meaning as defined in Regulation 2 of the Control of Asbestos Regulations 2012 (CAR);
Ascertained Costs	means the costs properly incurred by the Contractor for the purposes of performing the Contract, together with any overhead and administration charges appropriate to the Contract and any profit agreed in accordance with the Contract;
Authorised User Community	means a group of approved entities that are approved to make use of the U.S ITAR 126.7 exemption;
Authorised User Status	means an entity that has been approved to make use of the U.S ITAR 126.7 exemption;
Central Government Body	means any department, office or agency of the UK central government, and any arm's length body or other public body sponsored by or accountable to central government, including ministerial departments, non-ministerial departments, executive agencies and non-departmental public bodies;
Change of Control Notice	means a written notice issued by the Contractor under clause 12 (Contractor Change of Control) notifying the Contracting Authority of any proposed or actual change of Control of the Contractor and/or any Sub-Contractor and containing the information required under that clause;
Charges	means any of the charges for the provision of the Contractor Deliverables and the performance of any of the Contractor's other

	obligations under this Contract, as determined in accordance with this Contract;
Contract	means the Contract including its Contract Schedules and any amendments agreed by the Parties in accordance with clause 13 (Amendments to the Contract);
Contract Price	means the total amount payable by the Contracting Authority to the Contractor under this Contract (exclusive of any applicable VAT) for the full and proper performance of its obligations, including all costs, charges and expenses incurred in performing those obligations;
Contract Cost Statement	means the document required to be submitted under clause 53 (Pricing on Ascertained Costs), in the format specified by the Contracting Authority;
Contract Year	means: (a) a period of 12 months commencing on the Effective Date; or (b) thereafter a period of 12 months commencing on each anniversary of the Effective Date; provided that the final Contract Year shall end on the expiry or termination of the Term;
Contracting Authority	means the legal entity identified in the Tasking Form as the contracting authority for this Contract;
Contracting Authority Notice of Change	means a written notice issued by the Contracting Authority to the Contractor proposing one or more Changes to the Contract in accordance with Contract Schedule 8 (Contract Change Control Procedure);
Contracting Authority Premises	means any premises, site, establishment, facility or location owned, occupied or controlled by the Contracting Authority or any Central Government Body, but excluding any premises owned, occupied or controlled by the Contractor, a Sub-Contractor or any other third party;
Contracting Authority's Representative	means the person or persons identified as such in the Tasking Form or otherwise notified by the Contracting Authority to the Contractor in writing from time to time, who shall act as the Contracting Authority's representative for the purposes of the Contract;
Contractor	means the legal entity identified in the Tasking Form and which undertakes to provide the Contractor Deliverables to the Contracting Authority under this Contract;
Contractor Change Proposal	means a written proposal submitted by the Contractor to the Contracting Authority in accordance with Contract Schedule 8 (Contract Change Control Procedure) in response to, or proposing, a Change;
Contractor Deliverables	means the deliverables, outputs, goods, services and other items required to be provided under the Statement of Requirements;
Contractor Personnel	means all individuals employed by or otherwise directly engaged by the Contractor in connection with this Contract, including employees, workers, consultants, agents, secondees, students, supervisors, and other authorised representatives, but excluding any individuals who are personnel of a Sub-Contractor;

Contractor Representatives	means the Contractor Personnel, Sub-Contractors and any Sub-Contractor Personnel;
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 (a) by the means of holding shares, or possession of voting powers in, or in relation to the Contractor; or (b) by virtue of any powers conferred by the constitutional or corporate documents, or by 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;
Counterfeit Materiel	means any Article or any part thereof whose origin, age, composition, configuration, certification status or other characteristic (including whether or not such Article or part has been used previously) has been falsely represented by: (a) misleading marking of the materiel, labelling or packaging; (b) misleading documentation; or (c) any other means, including failing to disclose information; except where it has been demonstrated that the false representation was not the result of dishonesty by the Contractor or any party within the Contractor's supply chain;
Critical Performance Failure	means an event or circumstance which constitutes a Critical Performance Failure under clause 31 (Critical Performance Failure);
Cyber Risk Profile	has the meaning given at Contract Schedule 3: Cyber Security;
Cyber Security Instructions	has the meaning given at Contract Schedule 3: Cyber Security;
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 Impact Assessment	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
Data Protection Legislation	means all applicable Law in force from time to time in the UK relating to the processing of personal data and privacy, including but not limited to: (a) UK GDPR; (b) DPA 2018; and (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426), each to the extent that it relates to the processing of personal data and privacy;
DPA 2018	means the Data Protection Act 2018;
UK GDPR	means Regulation (EU) 2016/679 as retained in United Kingdom law by the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019;

	The terms "Controller", "Data Protection Officer", "Data Subject", "Personal Data", "Personal Data Breach" and "Processor" shall have the meanings given to them in Article 4 of the UK GDPR;
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;
Default	means any breach of the obligations of the relevant Party (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or Sub-Contractors in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other. In no event shall a failure or delay in the delivery of a Contracting Authority responsibility or an activity to be carried out by the Contracting Authority or its representatives in accordance with the Contract be considered a Default;
Deliver Delivered and Delivery shall be construed accordingly	means hand over the Contractor Deliverables to the consignee. This shall include unloading, and any other specific arrangements, agreed in accordance with clause 27 (Delivery);
Design Right	has the meaning given in Section 213 of the Copyright, Designs and Patents Act 1988;
Diversion Order	means a request for the urgent delivery of specified quantities of Articles to consignees other than those stated in the Contract;
DOTAS	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to: (a) tell HM Revenue & Customs of any specified notifiable arrangements or proposals; and (b) provide prescribed information on those arrangements or proposals within set time limits as: i. contained in Part 7 of the Finance Act 2004 and in secondary legislation made under powers contained in Part 7 of the Finance Act 2004; and as ii. extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
Effective Date	means the date on which the Acceptance Notice is issued by the Contracting Authority;
Employee	means 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;
Expiry Date	means the date specified in the Tasking Form, as amended in accordance with this Contract, or, if no date is specified in the Tasking Form, the date on which the final Deliverable is accepted or deemed accepted by the Contracting Authority in accordance with this Contract;
Exploitation	means the use, development, adaptation, publication, commercialisation, licensing, manufacture, supply or other utilisation

	of Contractor Deliverables or other outputs arising from the Contract in order to generate operational, capability, scientific, economic, societal or commercial benefit;
Explosives	shall have the same meaning as set out in the Recommendations on the Transport of Dangerous Goods (UN Orange Book) (latest edition), Volume 1, Chapter 2.1;
Firm Price	means a price (excluding VAT) which is not subject to variation;
Fixed Price Sub-Contract	means a subcontract in which the prices are fixed at the time the Sub-Contract is made, including those which contain provision for variation of any prices so fixed by reason only of changes in wage rates or prices of materials;
Foreground IPR	means all IPR in Foreground Technical Information, including patents for any inventions generated in the performance of work under the Contract, and patents for any inventions conceived out of the technical requirements of the Contract if these have been first enabled in the performance of work under the Contract;
Foreground Technical Information	means Technical Information which is generated in the performance of work under the Contract;
Full Rights Information	means Foreground Technical Information together with the following (which may not wholly consist of Foreground Technical Information): (a) data and information resulting from studies analyses or tests that are conducted in the performance of work under the Contract; (b) any item which is specifically required to be produced in the performance of work under the Contract, such as a mathematical model, algorithm or software program; and (c) a requirement document or specification which is specifically required to be produced in the performance of work under the Contract;
Full Rights Version	means a version of a Technical Deliverable which comprises Full Rights Information and which is coherent in itself;
GovS 007: Security	means the Government Functional Standard GovS 007: Security relating to the government's expectations for protecting: (a) the government's people, information and assets; (b) visitors to government property, and third-party suppliers while engaged on government business; and (c) citizen data;
Guarantee	means a guarantee, bond, indemnity, letter of credit or other form of financial security in favour of the Contracting Authority, issued by a Guarantor in a form specified by, or otherwise acceptable to, the Contracting Authority, as amended, replaced or renewed from time to time;
Guarantor	means a parent company, bank, financial institution, insurer, or other legal person approved in writing by the Contracting Authority to provide a Guarantee;

Hazardous Substance, Mixture or Article	means: (a) any Substance, Mixture or Article classified as hazardous in accordance with the GB Classification, Labelling and Packaging Regulation (GB CLP); (b) any Mixture containing a hazardous Substance, whether or not the Mixture itself is classified as hazardous under GB CLP; or (c) any Article, whether supplied separately or as part of an assembly, containing a Substance included on the UK REACH Authorisation List, Restriction List or Candidate List of Substances of Very High Concern (SVHCs) in a concentration greater than 0.1% weight by weight of the Article; For the purposes of this definition: "Substance" means a chemical element and its compounds in the natural state or obtained by any manufacturing process, including any additive necessary to preserve its stability and any impurity deriving from the process used, but excluding any solvent capable of being separated without affecting the substance's stability or composition; "Mixture" means a mixture or solution composed of two or more Substances; "Article" means an object which during production is given a special shape, surface or design which determines its function to a greater degree than its chemical composition;
Import and Export Controls	means any import, export, transfer, disclosure, end-use or end-user restriction, prohibition, condition, limitation, licence requirement, control measure or other control applicable to any goods, technology, software, information or data;
Industry Security Notice (ISN)	means Industry Security Notices issued by the Contracting Authority to the Contractor whether directly or by issue on the gov.uk website containing security requirements, instructions, guidance or other information relating to protective security;
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 as part of the Commercial Process preceding the award of this Contract;
Insolvency Event	with respect to any person, means: (a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or: i. (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or ii. (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986; (b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company,

	a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person; (c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person; (d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within fourteen (14) days; (e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; (f) where that person is a company, a LLP or a partnership: - a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person; - an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person; (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;
Intellectual Property Rights (IPR)	means all patents, utility models, rights (registered and unregistered) in any designs; applications for any of the foregoing; copyright; confidential information and trade secrets; and all rights and forms of protection of a similar nature to these or having equivalent effect anywhere in the world;
Issued Property	means any equipment (including fixed assets), stores, supplies and any other property issued or otherwise furnished to the Contractor in connection with the Contract by or on behalf of the Contracting Authority;
Key Contract Information	means the section of the Tasking Form containing the contract-specific commercial, administrative and operational information applicable to the Contract and any other information identified as Key Contract Information;
Know-How	means all information not in the public domain held in any form (including, without limitation, that comprised in or derived from oral and written instructions, diagrams, drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological

	materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods) used in connection with or arising as a result of a Contract;
Law	means any applicable law, statute, regulation, subordinate legislation, by-law, order, rule, mandatory guidance, code of practice, judgment of a court of competent jurisdiction, and any legally binding requirement, direction or notice of a regulatory body, in force from time to time;
Licence	means import licence, export licence or other import or export related authorisation, agreement, exception or exemption, including (but not limited to) the export licences required by the United States under the International Traffic in Arms Regulations (ITAR), Export Administration Regulations (EAR) and Foreign Military Sales (FMS), or those required as a result of any applicable UK-US agreements;
Limited Rights Information	means Technical Information which is neither in the public domain nor Full Rights Information, whether owned by the Contractor a Sub-Contractor or a third party, and which comprises details of any of the following: techniques of design or test or data management, manufacturing methods and processes, products (including software) or materials; and any other category specifically identified in the Contract as being Limited Rights Information when the requirements for Technical Deliverables are agreed;
Limited Rights Version	means a version of a Technical Deliverable specifically comprising or including Limited Rights Information;
Materiel	means information, technical data, and items, including Articles, components of Articles and software;
Notices	shall mean all Notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;
Occasion of Tax Non-Compliance	means: (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: i. a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; ii. the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; or (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the date this Contract came into effect or to a civil penalty for fraud or evasion;
Parties	means the Contracting Authority and the Contractor; and "Party" means either of them;

Plastic Packaging Component	shall have the same meaning as set out in Part 2 of the Finance Act 2021 together with any associated secondary legislation;
Plastic Packaging Tax (PPT)	means a tax called “plastic packaging tax” charged in accordance with Part 2 of the Finance Act 2021;
PPT Legislation	means the legislative provisions set out in Part 2 and Schedules 9-15 of the Finance Act 2021 together with any secondary legislation made under powers contained in Part 2 of the Finance Act 2021. This includes, but is not limited to, The Plastic Packaging Tax (Descriptions of Products) Regulations 2021 and The Plastic Packaging Tax (General) Regulations 2022;
Prohibited Act	means any act or omission which constitutes, whether directly or indirectly: (a) the offering, promising or giving to any Crown servant of any gift, or financial or other advantage of any kind, as an inducement or reward: i. for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other contract with the Crown; or ii. for showing or not showing favour or disfavour to any person in relation to this or any other contract with the Crown; (b) entering into this Contract or any other agreement with the Crown in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless, before the agreement is entered into, full particulars of any such commission and of the terms and conditions governing its payment have been disclosed in writing to the Contracting Authority;
Protective Measures	means appropriate technical and organisational measures which may include (as appropriate): (a) pseudonymising and encrypting Personal Data; (b) ensuring confidentiality, integrity, availability and resilience of systems and services; (c) 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;
Publishable Performance Information	means information relating to the Contractor's performance of this Contract, including performance measures, key performance indicators, performance assessments, supporting data and related explanatory information, which the Contracting Authority reasonably requires for any transparency, reporting or publication purposes pursuant to applicable law, government policy or the terms of this Contract;
Qualifying Defence Contract (QDC)	means a qualifying defence contract within the meaning of the Defence Reform Act 2014 and the Single Source Contract Regulations 2014;
Redundant Materiel	means any equipment (including fixed assets), stores, supplies and spares that is identified as surplus to the requirement of the Contract for whatever reason;

Relevant Premises	means Contracting Authority Premises and any other premises, site or location which the Contracting Authority requires, directs or designates the Contractor to access or use in connection with the Contract;
Relevant Tax Authority	means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established;
Response	means the Response submitted by the Contractor in accordance with the Tasking Procedure pursuant to which this Contract was awarded, including any clarifications, amendments and supplementary information accepted by the Contracting Authority, but excluding documents referred to in the Response unless expressly incorporated into this Contract;
Security Aspects Letter (SAL)	means the document issued by or on behalf of the Secretary of State for Defence which sets out the security requirements applicable to the Contract, including requirements relating to the protection, handling, storage, transmission and destruction of classified or sensitive information, personnel security, physical security, and information assurance, as may be amended or replaced from time to time;
Services	means the services (including any associated Articles) which the Contractor is required to perform or provide under the Contract;
Secret Matter	means any matter connected with the Contract or its performance that is designated by the Contracting Authority as "SECRET" or "TOP SECRET" in the Contract, a Contract Schedule, a Security Aspects Letter (if applicable) or otherwise in writing, and includes any information concerning the content of such matter and anything that contains or may reveal that matter;
Sensitive Information	means the information notified by the Contractor to the Contracting Authority, which is acknowledged by the Contracting Authority as being sensitive at the point at which the Contract is entered into or amended (as relevant) and remains Sensitive Information at the time of publication or disclosure, being information which, in the Contracting Authority's sole determination: (a) is exempt from disclosure: i. in accordance with the Freedom of Information Act 2000 (FOIA) ii. in accordance with the Environmental Information Regulations 2004 (EIR); or iii. on national security grounds; or (b) has been notified to the Contracting Authority by the Contractor as sensitive commercial information and which the Contracting Authority determines: i. constitutes a trade secret; or ii. would be likely to prejudice the commercial interests of the Contractor if it were published or disclosed, and there is an overriding public interest in withholding its publication;
Service Credits	means the amount that the Contractor shall credit or pay to the Contracting Authority in accordance with the Contract where the Contractor fails to achieve any performance standard, service level or key performance indicator specified in the Contract;

Sub-Contract and Sub-Contractor	means a contract entered into by the Contractor or any Sub-Contractor for the purpose of performing, or contributing to the performance of, any of the Contractor's obligations under this Contract; and "Sub-Contractor" means any person who enters into such a contract;
First-Tier Sub-Contractor and First-Tier Sub-Contract	means a Sub-Contractor engaged directly by the Contractor to provide Contractor Deliverables wholly or substantially for the purpose of performing, or contributing to the performance of, all or any part of this Contract; and "First-Tier Sub-Contract" shall be interpreted accordingly;
Second-Tier Sub-Contractor and Second-Tier Sub-Contract	means a Sub-Contractor engaged by a First-Tier Sub-Contractor to provide Contractor Deliverables wholly or substantially for the purpose of performing, or contributing to the performance of, all or any part of this Contract; and "Second-Tier Sub-Contract" shall be interpreted accordingly;
Lower-Tier Sub-Contractor	means a Sub-Contractor engaged at any level below a First-Tier Sub-Contractor, including any Second-Tier Sub-Contractor, to provide Contractor Deliverables wholly or substantially for the purpose of performing, or contributing to the performance of, all or any part of this Contract;
Sub-Contractor Personnel	means all individuals employed by or otherwise directly engaged by a Sub-Contractor in connection with this Contract, including employees, workers, consultants, agents, secondees, students, and other authorised representatives;
Sub-Processor	means any third party appointed to process Personal Data on behalf of the Contractor related to the Contract;
Supply Chain Resilience Intelligence Performance Tool (SCRIPT) Template	means the form issued by the Contracting Authority for the purpose of collecting supply chain information;
Statement of Requirements	means the description of the Contractor Deliverables and the requirements relating to their provision set out in the Tasking Form, including any specifications, performance requirements, milestones, and acceptance criteria;
Tasking Form	means the multi-part form setting out: (a) the Contracting Authority's requirements, including the Statement of Requirements; and (b) the Response submitted by the Contractor to those requirements, together with such other information as may be required by the Contracting Authority in relation to the Contract;
Tasking Procedure	has the meaning given at Schedule 1 of the Agreement (Definitions);
Technical Deliverable	means a document or product comprising Technical Information which is required to be provided to the Authority under the terms of the Contract;
Technical Information	means information of a scientific or technical nature (including information in the form of Know-How, inventions, designs, secret formula and processes, and other confidential information) which is recorded or documented in any medium and whether or not in human readable format, but excluding unrecorded information

	communicated solely by oral communications. It may be presented in the form of documents, pictorial reproductions, drawing and other graphical representations, disc and film recordings (magnetic, optical and laser), computer software both programmatic and data base, and computer memory printouts or data retained in computer memory, or other form;
Term	means the period commencing on the Effective Date and ending on the Expiry Date, unless terminated earlier in accordance with this Contract;
Termination Notice	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract (or any part thereof) on a specified date and setting out the grounds for termination;
Transparency Information	means any information, document, notice, report, data or other material relating to this Contract which the Contracting Authority is required or elects to publish, disclose or make available pursuant to applicable law, government policy or the terms of this Contract.
Use	means utilisation of Technical Deliverables and Technical Information in accordance with this Annex for the purposes provided hereunder and, within these limitations, shall include the reproduction and modification of Technical Deliverables.

CONTRACT SCHEDULE 2: SECURITY – SECRET MATTER**1 Application of this Contract Schedule**

- 1.1 This Contract Schedule 2 sets out the provisions applicable where any aspect of this Contract or its performance constitutes Secret Matter.

2 The Official Secrets Act and National Security Act

- 2.1 The Contractor shall:
- 2.1.1 take all reasonable steps to ensure that all Employees engaged on any work in connection with the Contract have notice that the Official Secrets Act 1989 and National Security Act 2023 apply to them and shall continue so to apply after the completion or termination of the Contract; and
 - 2.1.2 if directed by the Contracting Authority, ensure that any Employees shall sign a statement acknowledging that, both during the term of the Contract and after its completion or termination, they are bound by the Official Secrets Act 1989 and National Security Act 2023 (and where applicable any other legislation).

3 Security Measures

- 3.1 Unless they have the written authorisation of the Contracting Authority to do otherwise, neither the Contractor nor any of their 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:
- 3.1.1 who is not a British citizen;
 - 3.1.2 who does not hold the appropriate authority for access to the protected matter;
 - 3.1.3 in respect of whom the Contracting Authority has notified the Contractor in writing that the Secret Matter shall not be disclosed to or acquired by that person;
 - 3.1.4 who is not an Employee of the Contractor;
 - 3.1.5 who is an Employee of the Contractor and has no need to know the information for the proper performance of the Contract.
- 3.2 Unless they have the written authorisation of the Contracting Authority to do otherwise, the Contractor and their Employees shall, both before and after the completion or termination of the Contract, take all reasonable steps to ensure that:
- 3.2.1 no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of the Contract;
 - 3.2.2 any Secret Matter is at all times strictly safeguarded in accordance with the GovS 007: Security (as amended from time to time) and upon request, is delivered up to the Contracting Authority who shall be entitled to retain it.
 - 3.2.3 A decision of the Contracting Authority on the question of whether the Contractor has taken or is taking reasonable steps as required by this paragraph 3.2, shall be final and conclusive.
- 3.3 The Contractor shall:
- 3.3.1 provide to the Contracting Authority:

- (a) 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 paragraph 3.2.2.;
- (b) upon request, such information as the Contracting Authority may from time to time require so as to be satisfied that the Contractor and their Employees are complying with their obligations under this Contract Schedule 2, including the measures taken or proposed by the Contractor so as to comply with their obligations and to prevent any breach of them;
- (c) full particulars of any failure by the Contractor and their Employees to comply with any obligations relating to Secret Matter arising under this Condition immediately upon such failure becoming apparent;

3.3.2 ensure that, for the purpose of checking the Contractor's compliance with the obligation in paragraph 3.2.2, a representative of the Contracting Authority shall be entitled, at any time, to enter and inspect any premises used by the Contractor, 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 it may reasonably require.

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

4 Sub-Contracts

- 4.1 If the Contractor proposes to make a Sub-Contract which will involve the disclosure of Secret Matter to the Sub-Contractor, the Contractor shall:
- 4.1.1 submit for approval of the Contracting Authority the name of the proposed Sub-Contractor, a statement of the work to be carried out and any other details known to the Contractor which the Contracting Authority shall reasonably require;
 - 4.1.2 incorporate into the Sub-Contract the terms of Annex A to this Contract Schedule 2 (Security Measures - Provisions to be Included in Relevant Sub-Contracts) and such secrecy and security obligations as the Contracting Authority shall direct;
 - 4.1.3 inform the Contracting Authority immediately if they become aware of any breach by the Sub-Contractor of any secrecy or security obligation and, if requested to do so by the Contracting Authority, terminate the Sub-Contract.

5 Termination

- 5.1 The Contracting Authority shall be entitled to terminate the Contract immediately if:
- 5.1.1 the Contractor is in breach of any obligation under this Contract Schedule 2; or
 - 5.1.2 the Contractor is in breach of any secrecy or security obligation imposed by any other contract with the Crown; where the Contracting Authority consider the circumstances of the breach jeopardise the secrecy or security of the Secret Matter and claim such damages as may have been sustained as a result of the Contractor's breach of this Contract Schedule 2.

ANNEX TO CONTRACT SCHEDULE 2 - PROVISIONS TO BE INCLUDED IN RELEVANT SUB-CONTRACTS

1 Definitions

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

Contracting Authority	means [the Secretary of State for Defence];
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;
First Party	means the party awarding this Sub-Contract to the Second Party
GovS 007: Security	means the Government Functional Standard GovS 007: Security relating to the government's expectations for protecting: (a) the government's people, information and assets; (b) visitors to government property, and third-party suppliers while engaged on government business; and (c) citizen data.
Secret Matter	means any matter connected with the Sub-Contract, or its performance which the First Party informs the Second Party in writing has been designated by the Contracting 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;
Second Party	means the Sub-Contractor to this Sub-Contract with the First Party
Sub-Contract	means this Sub-Contract;

2 The Official Secrets Act and National Security Act

- 2.1 The Second Party shall:
- 2.1.1 Take all reasonable steps to ensure that all Employees engaged on any work in connection with the Sub-Contract have notice that the Official Secrets Act 1989 and National Security Act 2023 apply to them and shall continue so to apply after the completion or termination of the Sub-Contract; and
 - 2.1.2 If directed by the First Party or the Contracting Authority, ensure that any Employee shall sign a statement acknowledging that, both during the term of the Sub-Contract and after its completion or termination, they are bound by the Official Secrets Act 1989 and National Security Act 2023 (and where applicable any other legislation).

3 Security Measures

- 3.1 Unless they have the written authorisation of the Contracting Authority to do otherwise, neither the Second Party nor any of their Employees shall, either before or after the completion or termination of the Sub-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:
- 3.1.1 who is not a British citizen;

- 3.1.2 who does not hold the appropriate authority for access to the protected matter;
 - 3.1.3 in respect of whom the Contracting Authority has notified the Second Party in writing that the Secret Matter shall not be disclosed to or acquired by that person;
 - 3.1.4 who is not an Employee of the Second Party;
 - 3.1.5 who is an Employee of the Second Party and has no need to know the information for the proper performance of the Sub-Contract.
- 3.2 Unless they have the written permission of the Contracting Authority to do otherwise, the Second Party and their Employees shall, both before and after the completion or termination of the Sub-Contract, take all reasonable steps to ensure that:
- 3.2.1 no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of the Sub-Contract;
 - 3.2.2 any Secret Matter is at all times strictly safeguarded in accordance with the GovS 007: Security (as amended from time to time) and upon request is delivered up to the Authority who shall be entitled to retain it. A decision of the Contracting Authority on the question of whether the Second Party has taken or is taking reasonable steps as required by this paragraph 3.2, shall be final and conclusive.
- 3.3 The Second Party shall:
- 3.3.1 provide to the Contracting Authority:
 - (a) 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 paragraph 3.2.2;
 - (b) upon request, such information as the Contracting Authority may from time to time require so as to be satisfied that the Second Party and their Employees are complying with their obligations under this Annex, including the measures taken or proposed by the Second Party so as to comply with their obligations and to prevent any breach of them;
 - (c) full particulars of any failure by the Second Party and their Employees to comply with any obligations relating to Secret Matter arising under this Annex immediately upon such failure becoming apparent.
 - 3.3.2 ensure that, for the purpose of checking the Second Party's compliance with the obligation in paragraph 3.2.2, a representative of the First Party or the Contracting 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 Sub-Contract and inspect any document or thing in any such premises, which is being used or made for the purposes of the Sub-Contract. Such representative shall be entitled to all such information as they or it may reasonably require.
- 3.4 If at any time either before or after the completion or termination of the Sub-Contract, the Second Party or any of their 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 Contracting Authority of the matter with full particulars thereof.

4 Sub-Contracts

- 4.1 If the Second Party proposes to make a sub-contract which will involve the disclosure of Secret Matter to the sub-contractor, the Second Party shall:

- 4.1.1 submit for approval of the Contracting 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 Contracting Authority shall reasonably require;
- 4.1.2 incorporate into the sub-contract the terms of this Annex and such secrecy and security obligations as the Contracting Authority shall direct;
- 4.1.3 inform the Contracting Authority immediately if they become aware of any breach by the sub-contractor of any secrecy or security obligation and, if requested to do so by the Contracting Authority, terminate the Sub-Contract.

5 Termination

5.1 The First Party shall be entitled to terminate the Sub-Contract immediately if:

- 5.1.1 the Second Party is in breach of any obligation under this Annex; or
- 5.1.2 the Second Party is in breach of any secrecy or security obligation imposed by any other contract with the Crown;

where the Contracting Authority consider the circumstances of the breach jeopardise the secrecy or security of the Secret Matter and notifies its contractor accordingly

CONTRACT SCHEDULE 3: CYBER SECURITY

1 Application of this Contract Schedule

- 1.1 This Contract Schedule 3 sets out the provisions applicable to cyber security requirements under this Contract.

2 Definitions

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

the Annex	means the Annex to this Contract Schedule 3 (Provisions to Be Included in Relevant Sub-Contracts), setting out the cyber security obligations to be incorporated into relevant Sub-Contracts;
Associated Company	means: (a) any associated company of the Contractor from time to time within the meaning of Section 449 of the Corporate Tax Act 2010 or any subordinate legislation; and (b) parent undertaking or subsidiary undertaking of the Contractor from time to time within the meaning of section 1162 Companies Act 2006 and it is further agreed that where the ownership of shares in any such undertaking have been pledged or transferred to a third party by way of security, the original parent shall still be considered a member of the subsidiary undertaking;
Cyber Risk Profile	means the outcome of the CSM Risk Assessment Process, as specified in the Tasking Form;
Cyber Improvement Plan	means the plan referred to in paragraphs 4.1.1, 4.1.8, 5.1.1 and 6.3.2 of this Contract Schedule 3 by which the Contracting Authority identifies, manages and accepts the risk arising from any non-compliance of the Contractor with DEFSTAN 05-138, and through which the Contractor is required to implement agreed cyber security risk mitigation measures and achieve compliance with the control requirements corresponding to the relevant Cyber Risk Profile within the timescales agreed in that plan;
Cyber Security Incident	means an event, act or omission which gives rise to, or that has a significant probability of, unauthorised access to a System and/or the Data which resides therein causing a disruption to an entity's Functions, including the following: (a) unauthorised disruption or change of the operation (including but not limited to takeover of control) of a System and/or the Data which resides therein; (b) unauthorised destruction, damage, deletion or the change of Data residing in a System; (c) unauthorised or unintentional removal or limiting the possibility to use Data residing in a System; or (d) the appropriation, publication, dissemination or any other use of non-public Data residing in or deriving from a System by persons unauthorised to do so;
Cyber Security Instructions	means DEFSTAN 05-138, together with any relevant ISN and specific security instructions relating to the Contract issued by the Contracting Authority to the Contractor;

Cyber Security Model and CSM	mean the framework by which the Contracting Authority, the Contractor and any relevant Sub-Contractor demonstrate an assured level of cyber resilience in the defence supply chain, and includes but is not limited to the CSM Risk Assessment Process, DEFSTAN 05-138 and the CSM Supplier Assurance Questionnaire;
CSM Risk Assessment Process	means the risk assessment process conducted via the Supplier Cyber Protection Service which forms part of the Cyber Security Model and is used to measure the Cyber Risk Profile for the Contract and any Sub-Contract;
CSM Supplier Assurance Questionnaire	means the supplier assessment questionnaire conducted via the Supplier Cyber Protection Service which forms part of the Cyber Security Model and is to be used by the Contractor to demonstrate compliance with this Contract Schedule 3;
Data	means any electronic data or information, irrespective of ownership, that is generated, handled, stored or otherwise processed by the Contractor as necessary to carry out their Functions;
Defence Cyber Certification (DCC)	means certification of an organisation's compliance with DEFSTAN 05-138 at a stated level provided by an MOD approved certification body;
DEFSTAN 05-138	means the Defence Standard 05-138 as amended or replaced from time to time;
Functions	means business-critical operations i.e. those activities, systems, assets and processes which are essential to the sustained operation of the Contractor where unavailability, inaccessibility or compromise would have a material adverse effect on the Contractor and their ability to support UK Defence;
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;
NSA/DSA	means, as appropriate, the National or Designated Security Contracting Authority of the Contractor that is responsible for the oversight of the security requirements to be applied by the Contractor and for ensuring compliance with applicable national security regulations;
Sites	means any premises from which Contractor Deliverables are provided in connection with the Contract or from which the Contractor or any relevant Sub-Contractor manages, organises or otherwise directs the provision or the use of the Contractor Deliverables and/or any sites from which the Contractor or any relevant Sub-Contractor generates, processes, stores or transmits Data in relation to the Contract;
Substantial Cyber Security Incident	means an unauthorised access to a System and/or the Data which has given or may give rise to the following: (a) in relation to the Functions and/or Data, substantial loss of confidentiality, integrity or availability; (b) serious impact on the safety and resilience of the Functions;

	(c) serious disruption of the Contractor's Functions affecting their ability to engage in business or industrial operations, or deliver goods or services; or (d) unauthorised access to Functions and/or Data arising, facilitated through, or caused by, a compromise of a cloud service provider, managed service provider or other third party service, or from a compromise to the supply chain; or any Cyber Security Incident which is assessed, acting reasonably, as being attributable to a hostile state, state-sponsored or state-aligned actor;
Sub-Contract	means any contract which is awarded directly by the Contractor as a consequence of, or in connection with, the Contract to a Sub-Contractor;
Sub-Contractor	means a sub-contractor or any Associated Company of the Contractor who provides Contractor Deliverables in connection with the Contract;
Sub-Contractor Cyber Improvement Plan	means the plan referred to in paragraphs 4.3, 4.4, 5.1.1 and 6.3.2 of this Contract Schedule 3 by which the Contractor identifies, manages and accepts the risk arising from any non-compliance of the Sub-Contractor with DEFSTAN 05-138, and through which the Contractor records the agreed cyber security risk mitigation measures which the Sub-Contractor is obliged to implement in order to achieve compliance with the control requirements corresponding to the relevant Cyber Risk Profile within the timescales agreed in that plan;
Supplier Cyber Protection Service	means the service of this name provided by the Contracting Authority and accessible online at gov.uk supporting the CSM which includes but is not limited to the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire;
Supporting Information	means documentation evidencing the cyber security measures implemented by a Sub-Contractor which the Contractor may consider for the purposes of assessing, managing and recording risks, and which shall not constitute or imply compliance with DEFSTAN 05-138 or Defence Cyber Certification;
System	means any electronic system or process, including but not limited to an information management system, industrial control system, electronic communications network, IT system;
WARP	means the MOD Defence Industry Warning, Advice and Reporting Point or any successor body notified by way of ISN.

3 Contracting Authority Obligations

3.1 The Contracting Authority shall:

- 3.1.1 determine the Cyber Risk Profile appropriate to the Contract and notify the Contractor of the same at the earliest possible date; and
- 3.1.2 notify the Contractor as soon as reasonably practicable where the Contracting Authority reassesses the Cyber Risk Profile relating to the Contract, which shall be in accordance with paragraph 7.

4 Contractor Obligations

4.1 The Contractor shall:

- 4.1.1 throughout the term of the Contract comply with the control requirements set out in DEFSTAN 05-138 for the Cyber Risk Profile level specified for the Contract or, where the Contractor does not yet fully meet the control requirements set out in DEFSTAN 05-138 commensurate with the Cyber Risk Profile level of the Contract, comply with the terms of the Cyber Improvement Plan attached to the Contract. A valid current DCC at the level required by the Contract shall be considered evidence of compliance with this paragraph 4.1.1; and
- 4.1.2 diligently complete the CSM Risk Assessment Process in accordance with the Contracting Authority's instructions, ensuring that there is full and accurate disclosure and further that any change in the Cyber Risk Profile is notified to any affected Sub-Contractor, and complete a further CSM Risk Assessment or CSM Supplier Assurance Questionnaire where a change is proposed to the Contractor's Sub-Contractors or on receipt of any reasonable request by the Contracting Authority; and
- 4.1.3 confirm to the Contracting Authority that they are working to the correct Cyber Risk Profile to demonstrate continued compliance with the Cyber Security Instructions not less than once in each year of the Contract commencing on the first anniversary of the Contract; and
- 4.1.4 having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge their obligations under this Contract Schedule 3 in accordance with Good Industry Practice provided always that where there is a conflict between the Contractor's obligations under paragraph 4.1.1 and this paragraph 4.1.4 the Contractor shall notify the Contracting Authority as soon as they become aware of the conflict, and the Contracting Authority shall determine which standard or measure shall take precedence; and
- 4.1.5 comply with all Cyber Security Instructions notified to it by the Contracting Authority as soon as reasonably practicable; and
- 4.1.6 notify the WARP and the Contractor's NSA/DSA immediately as soon as they know or believe that a Substantial Cyber Security Incident has or may have taken place. In the case of all other Cyber Security Incidents, notification shall be made within twenty-four (24) hours of knowledge that a Cyber Security Incident has or may have taken place. In all cases, such notification shall include initial details of the circumstances of the incident and any mitigation measures already taken or intended to be taken, with further information to be provided in phases, as full details become available. For the avoidance of doubt, this obligation shall apply in relation to any Cyber Security Incident whether on a System which belongs to the Contractor and/or any Sub-Contractor or a service which is provided to the Contractor and/or any Sub-Contractor by a provider of cloud computing services; and
- 4.1.7 in coordination with their NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the Contracting Authority and its agents and representatives to take all steps to mitigate the impact of the Cyber Security Incident and minimise the likelihood of any further similar Cyber Security Incidents. For the avoidance of doubt, this shall include complying with any reasonable technical or organisational security measures deemed appropriate by the Contracting Authority and the Contractor's NSA/DSA in the circumstances and taking into account the Cyber Risk Profile; and
- 4.1.8 consent to the Contracting Authority recording and using information obtained via the Supplier Cyber Protection Service in relation to the Contract for the purposes of the Cyber Security Model which shall include any agreed Cyber Improvement Plan. For the avoidance of doubt such information shall include the cyber security certification of the Contractor

and/or Sub-Contractor as appropriate; and

4.1.9 include and enforce the provisions set out in the Annex in all Sub-Contracts.

- 4.2 Where an obligation is placed on a Contractor under this Contract Schedule 3, including but not limited to the controls set out in DEFSTAN 05-138, the Contractor must ensure that such obligations are appropriately met, irrespective of whether the Contractor is directly responsible for application of the control itself or meets the requirement using alternative means, including but not limited to third party providers or the use of a cloud service provider.
- 4.3 The Contractor shall conduct the CSM Risk Assessment Process for each Sub-Contractor and, where appropriate, agree a Sub-Contractor Cyber Improvement Plan in order to achieve compliance with the control requirements set out in DEFSTAN 05-138 commensurate to the Cyber Risk Profile level for the relevant Sub-Contract.
- 4.4 The Contractor acknowledges that DCC at a level equal to or greater than the Cyber Risk Profile level set out in the Contract, is the Contracting Authority's primary means of assessing compliance with this Contract Schedule 3. Where a Sub-Contractor does not hold DCC at the required level, the Contractor shall identify, manage and accept the risk arising from any non-compliance with DEFSTAN 05-138. To this end, the Contractor shall consider all available evidence to assure itself that the risks arising from the Sub-Contractor's cyber resilience posture are as low as reasonably possible and put in place an appropriate Sub-Contractor Cyber Improvement Plan and manage it. To do so, the Contractor shall require the Sub-Contractor to:
- 4.4.1 provide such Supporting Information as may be reasonably requested for the purposes of risk assessment and management;
 - 4.4.2 promptly update the Contractor where there is a substantive change to that Supporting Information; and
 - 4.4.3 consider Supporting Information provided to it by a Sub-Contractor on a case-by-case basis, for the purposes of assessing and managing risk within the supply chain and shall maintain records of such consideration and the Contractor's approach to managing the associated risk.
- 4.5 Where the Contractor has, by exception, acting diligently and prudently, using Good Industry Practice and taking all of the relevant factors into account:
- 4.5.1 made a reasonable determination that some or all of the obligations set out in this Contract Schedule 3 as set out in the Annex cannot be flowed down; or
 - 4.5.2 decided reasonably at their risk, where they consider that such decision presents no or low cyber risk to deliver to the Contracting Authority, not to flow down this Contract Schedule 3 as set out in the Annex; and recorded that determination and all relevant documents including Supporting Information, and retained it in accordance with paragraph 5, the Contractor shall not be considered in breach of their obligations under this Contract Schedule 3.
- 4.6 For the avoidance of doubt:
- 4.6.1 supporting Information shall not be treated as demonstrating full compliance by the Sub-Contractor with the control requirements of DEFSTAN 05-138 or DCC, nor as establishing an equivalent comparable level of assurance for the purposes of supplier evaluation or selection; and
 - 4.6.2 nothing in this Contract Schedule 3 shall be taken as requiring the Contracting Authority to recognise any alternative measures as being equivalent to DCC or the control requirements of DEFSTAN 05-138.

5 Records

- 5.1 The Contractor shall keep and maintain, and shall ensure that any Sub-Contractor shall keep and maintain, until six (6) years after the end of the Term, termination of the Contract or final payment under the Contract, or as long a period as may be agreed in writing by the Parties, full and accurate records including but not limited to:
- 5.1.1 copies of all documents required to demonstrate either compliance with DEFSTAN 05-138 or a Cyber Improvement Plan or a Sub-Contractor Cyber Improvement Plan and this Contract Schedule, including but not limited to any information used to inform the CSM Risk Assessment Process, including any Supporting Information, together with any certificates issued to the Contractor and/or Sub-Contractor; and
 - 5.1.2 copies of all documents demonstrating compliance with paragraph 4.1.5 and in relation to any notifications made under paragraph 4.1.6 and/or investigation under paragraph 4.1.7.
- 5.2 The Contractor shall, and shall ensure that any Sub-Contractor shall, on request provide the Contracting Authority, the Contracting Authority's representatives and/or the Contractor's NSA/DSA such access to those records under paragraph 5.1 as may be required in connection with the Contract.

6 Audit

- 6.1 In the event of a Substantial Cyber Security Incident, the Contractor agrees that:
- 6.1.1 the Contractor shall update the Contracting Authority promptly on request and regularly on no less than a monthly basis following the relevant Substantial Cyber Security Incident. The Parties agree that such update shall set out full details of the incident and investigation, including but not limited to technical information, security information, information about the root cause, information regarding timescales and impact, any recommended remedial activities and all relevant reports; and
 - 6.1.2 the Contractor shall, in the case of a Level 3 Cyber Risk Profile, at their own expense, engage a suitable Cyber Incident Response ("CIR") company (such company to be an enhanced NCSC-accredited CIR company in the event of a Substantial Cyber Security Incident in a UK supplier and an NSA/DSA approved CIR company in a non-UK supplier) and shall provide all necessary support to enable such company to carry out an appropriate forensic investigation and provide all relevant information and reports prepared by such CIR company to the Contracting Authority in accordance with paragraph 6.1.1 above,
- provided that where the investigation of the Substantial Cyber Security Incident would necessitate access to Systems holding information subject to third country controls that prohibit dissemination to a third party CIR, the Contractor shall be entitled appropriately to constrain the CIR's access accordingly and shall: (i) urgently seek the permission of the relevant third country authorities to provide full access to the CIR company and to seek permission to release information in accordance with paragraph 6.1.1. above; and (ii) pending receipt of any such permission, assist the CIR using Contractor resources.
- 6.2 The Contracting Authority and its representatives, in coordination with the Contractor's NSA/DSA, may conduct such audits as are required to establish (i) the cause of the Cyber Security Incident, (ii) the impact of the Cyber Security Incident, (iii) the information affected, and (iv) the work carried out by the Contractor to resolve the Cyber Security Incident and to mitigate the effects, to ensure that the Cyber Security Incident is resolved to the satisfaction of the Contracting Authority and the NSA/DSA.
- 6.3 In addition to the rights in paragraphs 6.1 and 6.2, the Contracting Authority or its representatives and/or the Contractor's NSA/DSA, either solely or in any combination, may at any time during the Contract and for a period of six (6) years after the end of the Term, termination of the Contract or

final payment under the Contract, whichever is the later, but not more than once in any calendar year, conduct an audit for the following purposes:

- 6.3.1 to review and verify the integrity, confidentiality and security of any information including Data; and
 - 6.3.2 to review the Contractor's and/or any Sub-Contractor's compliance with their obligations under DEFSTAN 05-138 and any Cyber Improvement Plan and/or any Sub-Contractor Cyber Improvement Plan; and
 - 6.3.3 to review any records created during the provision of the Contractor Deliverables, including but not limited to any documents, reports and minutes which refer or relate to the Contractor Deliverables for the purposes of paragraphs 5.1.1 and 5.1.2.
- 6.4 The Contracting Authority, acting reasonably and having regard to the confidentiality and security obligations owed by the Contractor to third parties, shall propose the scope of each audit in writing with a view to seeking the agreement of the Contractor but shall make the ultimate decision on the scope. For the avoidance of doubt the scope of the audit shall not grant the Contracting Authority any unsupervised access to any of the Contractor's Systems. The Contracting Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor and/or Sub-Contractor or delay the provision of the Contractor Deliverables and supplier information received by the Contracting Authority in connection with the audit shall be treated as confidential information.
- 6.5 The Contractor shall, on demand, provide the Contracting Authority and any relevant regulatory body, including the Contractor's or Sub-Contractor's NSA/DSA, (and/or their agents or representatives), together "the Auditors", with all reasonable co-operation and assistance in relation to each audit, including but not limited to:
- 6.5.1 all information requested by the Contracting Authority within the permitted scope of the audit;
 - 6.5.2 reasonable access to any Sites controlled by the Contractor or any Associated Company used in the performance of the Contract to the extent required within the agreed permitted scope of the audit and, where such Sites are outwith the control of the Contractor, shall secure sufficient rights of access, acting reasonably, for the Auditors as shall be necessary to allow audits to take place; and
 - 6.5.3 access to any relevant staff.
- 6.6 The Contracting Authority shall endeavour to (but is not obliged to) provide at least 15 calendar days' notice of its intention to conduct an audit.
- 6.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Contract Schedule 3, unless the audit identifies a material breach of the terms of this Contract Schedule 3 by the Contractor in which case the Contractor shall reimburse the Contracting Authority for all the Contracting Authority's reasonable costs incurred (which shall be evidenced to the Contractor) in the course of the audit.
- 6.8 Without prejudice to clause 17 (Disclosure of Information) and the Contracting Authority's statutory obligations referred to therein, where the Contracting Authority receives information as a result of this paragraph 6 or paragraph 5 of the Annex, the Contractor or relevant Sub-Contractor may inform the Contracting Authority of any of that information the disclosure of which it considers would be likely to prejudice their commercial interests or the commercial interests of a third party and the Contracting Authority shall keep such record of representations with the information.
- 6.9 The Contractor shall ensure rights are included in their Sub-Contracts to enable the Contracting Authority to enforce paragraph 5 of the Annex in accordance with the Contracts (Rights of Third Parties) Act 1999.

7 General

- 7.1 On termination or expiry of the Contract the provisions of this Contract Schedule 3 excepting paragraphs 4.1.2 and 4.1.3 shall continue in force so long as the Contractor and/or any Sub-Contractor holds any information including Data relating to the Contract.
- 7.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Contract Schedule 3 that have accrued up to the date of termination or expiry, including but not limited to the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 7.3 The Contractor agrees that the Contracting Authority has absolute discretion to determine changes to the Cyber Risk Profile and/or the Cyber Security Instructions. In the event that there is such a change, 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 provided always that:
- 7.3.1 the Contractor shall seek to mitigate the impact on time and cost to the extent which it is reasonably practicable to do so; and
- 7.3.2 such costs shall not be allowed unless they are appropriate, attributable to the Contract and reasonable in all the circumstances.
- 7.4 For the avoidance of doubt, costs associated with maintaining or achieving baseline organisational cyber resilience consistent with Good Industry Practice shall be treated as normal business overheads and shall not be recoverable as direct costs under this paragraph.
- 7.5 Subject to paragraph 7.3, where the Contractor seeks such adjustment or extension, the Contracting Authority shall proceed in accordance with clause 13 (Amendments to the Contract) 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 Contracting Authority within eight (8) weeks (or other period agreed in writing by the Parties) of the occurrence of the change in Cyber Security Instructions or Cyber Risk Profile or both, identifying the impact of that change and accompanied by full details of the request for adjustment. For the avoidance of doubt, the Contracting Authority shall not be required to withdraw any Contracting Authority Notice of Change which may have been issued insofar as it relates to the Cyber Security Instructions or the Cyber Risk Profile or both whether or not the Contractor Change Proposal is rejected. If the Contractor does not agree with the Contracting Authority's determination, then the provisions of paragraph 71 of the Contract (Dispute Resolution) or any agreed alternative dispute resolution procedure provided for in the Contract shall apply.
- 7.6 The Contractor shall not recover any costs and/or other losses under or in connection with this Contract Schedule 3 where such costs and/or other losses are recoverable or have been recovered by the Contractor elsewhere in the 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 System 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 the Contract or has recovered such costs and/or losses in other contracts between the Contractor and the Contracting Authority or with other bodies.

ANNEX TO CONTRACT SCHEDULE 3: CYBER SECURITY - PROVISIONS TO BE INCLUDED IN RELEVANT SUB-CONTRACTS

1 Definitions

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

Associated Company	means: (a) any associated company of the Sub-Contractor from time to time within the meaning of Section 449 of the Corporate Tax Act 2010 or any subordinate legislation; and (b) parent undertaking or subsidiary undertaking of the Sub-Contractor from time to time within the meaning of section 1162 Companies Act 2006 and it is further agreed that where the ownership of shares in any such undertaking have been pledged or transferred to a third party by way of security, the original parent shall still be considered a member of the subsidiary undertaking;
Contracting Authority	means the Contracting Authority named in the Prime Contract with the Prime Contractor;
Contractor	means the party entering into this Sub-Contract with the Sub-Contractor which, where applicable, may also be the Prime Contractor;
Cyber Risk Profile	means the outcome of the CSM Risk Assessment Process;
Cyber Improvement Plan	means the plan referred to in paragraphs 3.1.1, 3.1.8, 4.1.1 and 5.3.2 of this Annex by which the Contractor identifies, manages and accepts the risk arising from any non-compliance of the Sub-Contractor with DEFSTAN 05-138, and through which the Contractor records the agreed cyber security risk mitigation measures which the Sub-Contractor is obliged to implement in order to achieve compliance with the control requirements corresponding to the relevant Cyber Risk Profile within the timescales agreed in that plan;
Cyber Security Incident	means an event, act or omission which gives rise to, or that has a significant probability of, unauthorised access to a System and/or the Data which resides therein causing disruption to an entity's Functions, including the following: (a) unauthorised disruption or change of the operation (including but not limited to takeover of control) of a System and/or the Data which resides therein; (b) unauthorised destruction, damage, deletion or the change of Data residing in a System; (c) unauthorised or unintentional removal or limiting the possibility to use Data residing in a System; or (d) the appropriation, publication, dissemination or any other use of non-public Data residing in or deriving from a System 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 Sub-Contract issued by the Contracting Authority or the Contractor to the Sub-Contractor;

Cyber Security Model and CSM	mean the framework by which the Contracting Authority, the Contractor and any relevant Sub-Contractor demonstrate an assured level of cyber resilience in the defence supply chain, and includes but is not limited to the CSM Risk Assessment Process, DEFSTAN 05-138 and the CSM Supplier Assurance Questionnaire;
CSM Risk Assessment Process	means the risk assessment process conducted via the Supplier Cyber Protection Service which forms part of the Cyber Security Model and is used to measure the Cyber Risk Profile for this Sub-Contract and any lower-tier Sub-Contract;
CSM Supplier Assurance Questionnaire	means the supplier assessment questionnaire conducted via the Supplier Cyber Protection Service which forms part of the Cyber Security Model and is to be used by the Sub-Contractor to demonstrate compliance with this Annex;
Data	means any electronic data or information, irrespective of ownership, that is generated, handled, stored or otherwise processed by the Sub-Contractor as necessary to carry out their Functions;
Defence Cyber Certification and DCC	means certification of an organisation's compliance with DEFSTAN 05-138 at a stated level provided by a certification body approved by the Contracting Authority;
DEFSTAN 05-138	means the Defence Standard 05-138 as amended or replaced from time to time;
Functions	means business-critical operations i.e. those activities, systems, assets and processes which are essential to the sustained operation of the Sub-Contractor where unavailability, inaccessibility or compromise would have a material adverse effect on the Sub-Contractor and their ability to support UK Defence;
Good Industry Practice	means in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgment and the making of any expenditure that would reasonably be expected from a skilled person in the same type of undertaking under the same or similar circumstances;
ISN	means Industry Security Notices issued by the Contracting Authority to the Contractor and/or the Sub-Contractor whether directly or by issue on the gov.uk website;
lower-tier Sub-Contract	means any sub-Contract which is awarded directly by the Sub-Contractor or Associated Company as a consequence of or in connection with this Sub-Contract to a lower-tier Sub-Contractor;
lower-tier Sub-Contractor	means a sub-Contractor or any Associated Company of the Sub-Contractor who provides any Contractor Deliverables to the Sub-Contractor in connection with this Sub-Contract for the purposes of the Prime Contract;
lower-tier Sub-Contractor Cyber Improvement Plan	means the plan referred to in paragraphs 3.2.2, 3.3, 4.1.1 and 5.3.2 of this Annex by which the Sub-Contractor identifies, manages and accepts the risk arising from any non-compliance of the lower-tier Sub-Contractor with DEFSTAN 05-138, and through which the Sub-Contractor records the agreed cyber security risk mitigation measures which the lower tier Sub-Contractor is obliged to implement in order to achieve compliance with the control

	requirements corresponding to the relevant Cyber Risk Profile within the timescales agreed in that plan;
Prime Contract	means [insert contract reference] [insert details of prime contract between the Contracting Authority and the Contractor] made between the Contracting Authority and the Prime Contractor;
Prime Contractor	means the Contractor named in the Prime Contract with the Contracting Authority;
NSA/DSA	means, as appropriate, the National or Designated Security Contracting Authority of the Sub-Contractor that is responsible for the oversight of the security requirements to be applied by the Sub-Contractor and for ensuring compliance with applicable national security regulations;
Sites	means any premises from which Contractor Deliverables are provided in connection with this Sub-Contract or from which the Sub-Contractor or any relevant lower-tier Sub-Contractor manages, organises or otherwise directs the provision or the use of the Contractor Deliverables and/or any sites from which the Sub-Contractor or any relevant lower-tier Sub-Contractor generates, processes, stores or transmits Data in relation to this Sub-Contract;
Sub-Contract	means this Sub-Contract;
Sub-Contractor	means the party to this Sub-Contract delivering to the Contractor or any Associated Company of the Sub-Contractor who provides Contractor Deliverables in connection with this Sub-Contract for the purposes of the Prime Contract;
Substantial Cyber Security Incident	means an unauthorised access to a System and/or the Data which has given or may give rise to the following: (a) in relation to the Functions and/or Data, substantial loss of confidentiality, integrity or availability; (b) serious impact on the safety and resilience of the Functions; (c) serious disruption of the Contractor's Functions affecting their ability to engage in business or industrial operations, or deliver goods or services; (d) unauthorised access to Functions and/or Data arising, facilitated through, or caused by, a compromise of a cloud service provider, managed service provider or other third party service, or from a compromise of the supply chain; or any Cyber Security Incident which is assessed, acting reasonably, as being attributable to a hostile state, state-sponsored or state-aligned actor;
Supplier Cyber Protection Service	means the service of this name provided by the Contracting Authority and accessible online at gov.uk supporting the CSM which includes but is not limited to the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire;
Supporting Information	means documentation evidencing the cyber security measures implemented by a lower-tier Sub-Contractor which the Sub-Contractor may consider for the purposes of identifying, assessing, managing and recording risks, and which shall not constitute or imply compliance with DEFSTAN 05-138 or Defence Cyber Certification;

System	means any electronic system or process, including but not limited to, an information management system, industrial control system, electronic communications network, IT system; and
WARP	means the UK Ministry of Defence (MOD) Defence Industry Warning, Advice and Reporting Point or any successor body notified by way of ISN.

2 Contractor Obligations

2.1 The Contractor shall:

- 2.1.1 determine the Cyber Risk Profile appropriate to this Sub-Contract and notify the Sub-Contractor at the earliest possible date;
- 2.1.2 notify the Sub-Contractor as soon as reasonably practicable where the Contractor reassesses the Cyber Risk Profile relating to this Sub-Contract, which shall be in accordance with paragraph 6 of this Annex.

3 Sub-Contractor Obligations

3.1 The Sub-Contractor shall:

- 3.1.1 throughout the term of this Sub-Contract comply with the control requirements set out in DEFSTAN 05-138 for the Cyber Risk Profile level specified for this Sub-Contract, or where the Sub-Contractor does not yet fully meet the control requirements set out in DEFSTAN 05-138 commensurate with the Cyber Risk Profile level of this Sub-Contract, comply with the terms of the Cyber Improvement Plan attached to this Sub-Contract. A valid current DCC at the level required by this Sub-Contract shall be considered evidence of compliance with this paragraph 3.1.1;
- 3.1.2 diligently complete the CSM Risk Assessment Process in accordance with the Contracting Authority's and the Contractor's instructions, ensuring that there is full and accurate disclosure and further that any change in the Cyber Risk Profile is notified to the Contractor and any affected lower-tier Sub-Contractor, and complete a further CSM Risk Assessment or CSM Supplier Assurance Questionnaire where a change is proposed to the Sub-Contractor's lower-tier Sub-Contractors or on receipt of any reasonable request from the Contractor; and
- 3.1.3 confirm to the Contractor that they are working to the correct Cyber Risk Profile to demonstrate continued compliance with the Cyber Security Instructions not less than once in each year of this Sub-Contract commencing on the first anniversary of completion of the Sub-Contract;
- 3.1.4 having regard to the state of technological development, implement and maintain all appropriate technical and organisational security measures to discharge their obligations under this Annex in accordance with Good Industry Practice provided always that where there is a conflict between the Sub-Contractor's obligations under paragraph 3.1.1 and this 3.1.4 the Sub-Contractor shall notify the Contractor, the Prime Contractor and the Contracting Authority as soon as they become aware of the conflict and the Contractor (where necessary in consultation with the Prime Contractor and/or the Contracting Authority) shall determine which shall take precedence; and
- 3.1.5 comply with all Cyber Security Instructions notified to them by the Contracting Authority and/or the Contractor as soon as reasonably practicable;
- 3.1.6 notify the WARP, the Prime Contractor and the Contractor and the Sub-Contractor's NSA/DSA immediately as soon as they know or believe that a Substantial Cyber Security

Incident has or may have taken place. In the case of all other Cyber Security Incidents, notification shall be made within twenty-four (24) hours of knowledge that a Cyber Security Incident has or may have taken place. In all cases such notification shall include initial details of the circumstances of the incident and any mitigation measures already taken or intended to be taken, with further information to be provided in phases, as full details become available. For the avoidance of doubt, this obligation shall apply in relation to any Cyber Security Incident whether this has occurred or may occur on a System which belongs to the Sub-Contractor or a service which is provided to the Sub-Contractor and/or any lower-tier Sub-Contractor by a provider of cloud computing services; and

- 3.1.7 in coordination with their NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the Contracting Authority, the Prime Contractor and the Contractor and their agents and representatives to take all steps to mitigate the impact of the Cyber Security Incident and minimise the likelihood of any further similar Cyber Security Incidents. For the avoidance of doubt, this shall include complying with any reasonable technical or organisational security measures deemed appropriate by the Contracting Authority and the NSA/DSA in the circumstances and taking into account the Cyber Risk Profile; and
- 3.1.8 consent to the Contracting Authority recording and using information obtained via the Supplier Cyber Protection Service in relation to the Sub-Contract for the purposes of the Cyber Security Model which shall include any agreed Cyber Improvement Plan. For the avoidance of doubt such information shall include the cyber security certification of the Sub-Contractor and/or lower-tier Sub-Contractor as appropriate; and
- 3.1.9 include and enforce the provisions set out in this Annex in all lower-tier Sub-Contracts (the "Equivalent Provisions"). Where a lower-tier Sub-Contractor breaches terms implementing this Annex in a lower-tier Sub-Contract, the Sub-Contractor shall, and shall ensure that their lower-tier Sub-Contractors shall, in exercising their rights or remedies under the relevant lower-tier Sub-Contract:
 - (a) notify the Contractor of any such breach and consult with the Contractor regarding any remedial or other measures which are proposed as a consequence of such breach, taking the Contractor's views into consideration; and
 - (b) have regard to the Equivalent Provisions.
- 3.2 Where an obligation is placed on a Sub-Contractor under this Annex, including but not limited to the controls set out within DEFSTAN 05-138:
 - 3.2.1 the Sub-Contractor must ensure that such obligations are appropriately met, irrespective of whether the Sub-Contractor is directly responsible for application of the control itself or meets the requirement using alternative means, including but not limited to third party providers or the use of a cloud service provider; and
 - 3.2.2 the Sub-Contractor shall conduct the CSM Risk Assessment Process for each lower-tier Sub-Contractor and, where appropriate agree a lower-tier Sub-Contractor Cyber Improvement Plan in order to achieve compliance with the control requirements set out in DEFSTAN 05-138 for the Cyber Risk Profile level for the relevant lower-tier Sub-Contract.
- 3.3 The Sub-Contractor acknowledges that DCC at a level equal to or greater than the Cyber Risk Profile level set out in the Sub-Contract, is the Contracting Authority's primary means of assuring compliance with this Annex. Where a lower-tier Sub-Contractor does not hold DCC at the required level, the Sub-Contractor shall identify, manage and accept the risk arising from any non-compliance with DEFSTAN 05-138. To this end, the Sub-Contractor shall consider all available evidence to assure itself that the risks arising from the lower-tier Sub-Contractor's cyber resilience posture are as

low as reasonably possible and put in place an appropriate lower-tier Sub-Contractor Cyber Improvement Plan and manage it. To do so, the Sub-Contractor shall require the lower-tier Sub-Contractor to:

- 3.3.1 provide such Supporting Information as may be reasonably requested for the purposes of risk assessment and management; and
 - 3.3.2 promptly update the Sub-Contractor where there is a substantive change to that Supporting Information;
 - 3.3.3 consider Supporting Information provided to it by a lower-tier Sub-Contractor on a case-by-case basis, for the purposes of assessing and managing risk within the supply chain and shall maintain records of such consideration and the Sub-Contractor's approach to managing the associated risk.
- 3.4 Where the Sub-Contractor has, by exception, acting diligently and prudently, using Good Industry Practice and taking all of the relevant factors into account:
- 3.4.1 made a reasonable determination that some or all of the obligations set out in this Annex cannot be flowed down; or
 - 3.4.2 decided reasonably at their risk, where they consider that such a decision presents no or low cyber risk to delivery to the Contracting Authority, or the Contractor, not to flow down this Annex, and recorded that determination and all relevant documents including Supporting Information, and retained it in accordance with paragraph 4, the Sub-Contractor shall not be considered in breach of their obligations under this Annex.
- 3.5 For the avoidance of doubt:
- 3.5.1 Supporting Information shall not be treated as demonstrating full compliance by the lower-tier Sub-Contractor with the control requirements of DEFSTAN 05-138 or DCC, nor as establishing an equivalent or comparable level of assurance for the purposes of supplier evaluation or selection; and
 - 3.5.2 nothing in this Annex shall be taken as requiring the Contracting Authority and/or the Contractor to recognise any alternative measures as being equivalent to DCC or the control requirements of DEFSTAN 05-138.

4 Records

- 4.1 The Sub-Contractor shall keep and maintain, and shall ensure that any lower-tier Sub-Contractor shall keep and maintain, until six (6) years after the end of this Sub-Contract term, termination of this Sub-Contract or final payment under this Sub-Contract, or as long a period as may be agreed by the Parties, full and accurate records including but not limited to:
- 4.1.1 copies of all documents required to demonstrate compliance with DEFSTAN 05-138, any Cyber Improvement Plan and/or lower-tier Sub-Contractor Cyber Improvement Plan and this Annex, including but not limited to any information used to inform the CSM Risk Assessment Process, including any Supporting Information, together with any certificates issued to the Sub-Contractor and/or any lower-tier Sub-Contractor; and
 - 4.1.2 copies of all documents demonstrating compliance with paragraph 3.1.5 and in relation to any notifications made under paragraph 3.1.6 and/or investigation under paragraph 3.1.7.
- 4.2 The Sub-Contractor shall, and shall ensure that any lower-tier Sub-Contractor shall, on request provide the Contracting Authority, the Contracting Authority's representatives and/or relevant NSA/DSA such access to those records under paragraph 4.1 as may be required in connection with this Sub-Contract.

5 Audit

- 5.1 In the event of a Substantial Cyber Security Incident the Sub-Contractor agrees that:
- 5.1.1 the Sub-Contractor shall update the Contracting Authority, the Prime Contractor and the Contractor, promptly on request and regularly on no less than a monthly basis following the relevant Substantial Cyber Security Incident. The Parties agree that such update shall set out full details of the incident and investigation, including but not limited to technical information, security information, information about the root cause, information regarding timescales and impact, any recommended remedial activities and all relevant reports; and
 - 5.1.2 the Sub-Contractor shall in the case of a Level 3 Cyber Risk Profile, at their own expense, engage a suitable Cyber Incident Response (“CIR”) company (such company to be an enhanced NCSC-accredited CIR company in the event of a Substantial Cyber Security Incident in a UK supplier and NSA/DSA approved CIR company in a non-UK supplier) and shall provide all necessary support to enable such company to carry out an appropriate forensic investigation and provide all relevant information and reports prepared by such CIR company to the Contracting Authority in accordance with paragraph 5.1.1; and provided that where the investigation of the Substantial Cyber Security Incident would necessitate access to Systems holding information subject to third country controls that prohibit dissemination to a third party CIR, the Sub-Contractor shall be entitled appropriately to constrain the CIR’s access accordingly and shall
 - (a) urgently seek the permission of the relevant third country authorities to provide full access to the CIR company and to seek permission to release information in accordance with paragraph 5.1.1; and
 - (b) pending receipt of any such permission, assist the CIR using Sub-Contractor or (where available and not also so constrained) Contractor resources.
- 5.2 The Contracting Authority and its representatives, in coordination with the relevant NSA/DSA, may conduct such audits as are required to establish (i) the cause of the Cyber Security Incident, (ii) the impact of the Cyber Security Incident, (iii) the information affected, and (iv) the work carried out by the Sub-Contractor to resolve the Cyber Security Incident and to mitigate the effects, to ensure that the Cyber Security Incident is resolved to the satisfaction of the Contracting Authority and the NSA/DSA.
- 5.3 In addition to the rights in paragraphs 5.1 and 5.2, the Sub-Contractor agrees that the Contracting Authority, its representatives and/or the relevant NSA/DSA, either solely or in any combination, may at any time during the Contract and for a period of six (6) years after the end of the Sub-Contract term, termination of this Sub-Contract or final payment under this Sub-Contract whichever is the later, but not more than once in any calendar year, conduct an audit for the following purposes:
- 5.3.1 to review and verify the integrity, confidentiality and security of any information including Data; and
 - 5.3.2 to review the Sub-Contractor’s and/or any lower-tier Sub-Contractor’s compliance with their obligations under DEFSTAN 05- 138 or a Cyber Improvement Plan and/or lower-tier Sub-Contractor Cyber Improvement Plan; and
 - 5.3.3 to review any records created during the provision of the Contractor Deliverables, including but not limited to any documents, reports and minutes which refer or relate to the Contractor Deliverables for the purposes of paragraphs 4.1.1 and 4.1.2.
- 5.4 The Auditors, acting reasonably and having regard to the confidentiality and security obligations owed by the Sub-Contractor to third parties, shall propose the scope of each audit in writing with a view to seeking the agreement of the Sub-Contractor but shall make the ultimate decision on the

scope. For the avoidance of doubt the scope of the audit shall not grant the Contracting Authority any unsupervised access to any of the Sub-Contractor's Systems. In exercising this right, the Contracting Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Sub-Contractor and/or lower-tier Sub-Contractor or delay the provision of the Contractor Deliverables and supplier information received by the Contracting Authority in connection with the audit shall be treated as confidential information.

- 5.5 The Sub-Contractor shall, on demand provide the Contracting Authority and any relevant regulatory body, including the relevant 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:
- 5.5.1 all information requested by the Auditors within the permitted scope of the audit;
 - 5.5.2 reasonable access to any Sites controlled by the Sub-Contractor or any Associated Company used in the performance of the Sub-Contract to the extent required within the agreed permitted scope of the audit and, where such Sites are outwith the control of the Sub-Contractor, shall secure sufficient rights of access, acting reasonably, for the Auditors as shall be necessary to allow audits to take place; and
 - 5.5.3 access to any relevant staff.
- 5.6 Where the Contractor is provided with notice of the audit by the Contracting Authority and/or the relevant NSA/DSA, the Contractor shall endeavour to (but is not obliged to) provide at least 15 calendar days' notice to the Sub-Contractor of the intention to conduct an audit.
- 5.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Annex, unless the audit identifies a material breach of the terms of this Annex by the Sub-Contractor and/or a lower-tier Sub-Contractor in which case the Sub-Contractor shall reimburse the Contractor and the Contracting Authority as appropriate for all the reasonable costs incurred in the course of the audit.
- 5.8 Without prejudice to the Contracting Authority's statutory obligations, where the Contracting Authority receives information solely as a result of this paragraph 5, the Sub-Contractor may inform the Contracting Authority, either directly or via the Prime Contractor, of any information the disclosure of which they consider would be likely to prejudice their commercial interests or the commercial interests of a third party and the Contracting Authority shall keep a record of such representations with the information.
- 5.9 The Sub-Contractor shall ensure rights are included in their lower-tier Sub-Contracts to enable the Contracting Authority to enforce this paragraph 5 in the Equivalent Provisions in accordance with the Contracts (Rights of Third Parties) Act 1999.

6 General

- 6.1 On termination or expiry of this Sub-Contract the provisions of this Annex shall continue in force so long as the Sub-Contractor and/or any lower-tier Sub-Contractor holds any information including Data relating to this Sub-Contract.
- 6.2 Termination or expiry of this Sub-Contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Annex that have accrued up to the date of termination or expiry, including but not limited to the right to claim damages in respect of any breach of this Sub-Contract which existed at or before the date of termination or expiry.
- 6.3 The Sub-Contractor agrees that the Contracting Authority has absolute discretion to determine changes to the Cyber Risk Profile and/or the Cyber Security Instructions. In the event that there is such a change, either party may seek an adjustment to the Sub-Contract price for any associated

increase or decrease in costs and the Sub-Contractor may request an extension of time for compliance provided always that:

- 6.3.1 the Sub-Contractor shall seek to mitigate the impact on time and cost to the extent which it is reasonably practicable to do so; and
 - 6.3.2 such costs shall not be allowed unless they are appropriate, attributable to this Sub-Contract and reasonable in all the circumstances.
- 6.4 For the avoidance of doubt, costs associated with maintaining or achieving baseline organisational cyber resilience consistent with Good Industry Practice shall be treated as normal business overheads and shall not be recoverable as direct costs under this paragraph.
- 6.5 The Sub-Contractor shall not recover any costs and/or other losses under or in connection with this Annex where such costs and/or other losses are recoverable or have been recovered by the Sub-Contractor elsewhere in this Sub-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 System whether in response to a Cyber Security Incident or otherwise, where the Sub-Contractor is able to or has recovered such sums in any other provision of this Sub-Contract or has recovered such costs and/or losses in other contracts between the Sub-Contractor and the Contractor or with other bodies.

CONTRACT SCHEDULE 4: PROTECTION OF PERSONAL DATA**1 Application of this Contract Schedule**

- 1.1 This Contract Schedule 4 sets out the provisions applicable to the protection of personal data under this Contract.
- 1.2 The Tasking Form shall specify whether Annex A (Where Personal Data is not Processed on behalf of the Contracting Authority) or Annex B (Where Personal Data is Processed on behalf of the Contracting Authority) applies to this Contract.
- 1.3 If:
 - 1.3.1 the Contractor commences or ceases Processing Personal Data on behalf of the Contracting Authority during the term of the Contract; or
 - 1.3.2 the Parties determine that they will Process Personal Data as Joint Controllers in connection with the Contract,the Contract shall be amended in accordance with clause 13 (Amendments to the Contract) to ensure that the appropriate Annex of this Contract Schedule 4 applies and/or such additional provisions as are necessary to govern the relevant Processing are included in the Contract.

ANNEX A TO CONTRACT SCHEDULE 4: PROTECTION OF PERSONAL DATA (WHERE PERSONAL DATA IS NOT BEING PROCESSED ON BEHALF OF THE CONTRACTING AUTHORITY)**1 Applicability**

- 1.1 This Annex A applies where the Contractor is not Processing Personal Data on behalf of the Contracting Authority in connection with the performance of the Contract.
- 1.2 For the avoidance of doubt, the incidental exchange of Personal Data for the purposes of communications, contract management or administration of the business relationship between the Parties shall not, of itself, constitute Processing by the Contractor on behalf of the Contracting Authority.

2 Protection of Personal Data

- 2.1 The Contractor shall notify the Contracting Authority promptly if it considers that any of the Contracting Authority's instructions obligate the Contractor to take on the role of Processor under the Data Protection Legislation beyond that which is contemplated by this Annex A. The Contracting Authority agrees that the Contractor shall not be required to provide legal advice to the Contracting Authority and that such notification (or absence of notification) by the Contractor will not be construed as legal advice or representation by the Contractor.
- 2.2 Notwithstanding paragraph 1.2, each Party undertakes to comply with its obligations as Controller under the Data Protection Legislation.

ANNEX B TO CONTRACT SCHEDULE 4: PROTECTION OF PERSONAL DATA (WHERE PERSONAL DATA IS BEING PROCESSED ON BEHALF OF THE CONTRACTING AUTHORITY)**1 Applicability**

- 1.1 This Annex B applies where the Contractor Processes Personal Data on behalf of the Contracting Authority in connection with the performance of the Contract.
- 1.2 Where this Annex B applies, Annex C to this Contract Schedule 4 (Data Protection Particulars) shall

be completed and shall form part of the Statement of Requirements.

2 Protection of Personal Data

2.1 Each Party shall:

- 2.1.1 comply with its obligations under the Data Protection Legislation in respect of any Personal Data received under the Contract;
- 2.1.2 have regard to applicable guidance issued by the Information Commissioner's Office; and
- 2.1.3 implement appropriate technical and organisational measures to protect such Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure.

2.2 The Parties acknowledge that, for the purposes of the Data Protection Legislation, the Contracting Authority is the Controller and the Contractor is the Processor in respect of the Personal Data described in Annex C (Data Protection Particulars).

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

2.4 The Contractor shall provide all reasonable assistance to the Contracting Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing that is likely to result in a high risk to the rights and freedoms of Data Subjects. Such assistance may, at the discretion of the Contracting Authority, include:

- 2.4.1 a systematic description of the envisaged processing operations and the purpose of the processing;
- 2.4.2 an assessment of the necessity and proportionality of the processing operations in relation to the services provided under the Contract;
- 2.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
- 2.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

2.5 The Contractor shall, in relation to any Personal Data processed in connection with its processing obligations under the Contract:

- 2.5.1 process Personal Data only as directed by the Contracting Authority and in accordance with Annex C, unless required to do otherwise by Law;
- 2.5.2 where it is so required, promptly notify the Contracting Authority before processing the Personal Data unless prohibited by Law;
- 2.5.3 ensure that it has in place Protective Measures, including those set out in Annex C, as appropriate to protect against a Data Loss Event, having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;

2.5.4 ensure that:

- (a) subject to paragraph 2.5.1, Contractor Personnel and Sub-Contractor Personnel do not process Personal Data except in accordance with the Contract (and in particular Annex C); and
- (b) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel and Sub-Contractor Personnel who have access to Personal Data by ensuring that they undertake the Government's Baseline Personnel Security Standard, or such other standard as may be specified in the Contract, and that they:
 - i are aware of and comply with the Contractor's obligations under this paragraph 2.5;
 - ii are informed of the confidential nature of the Personal Data and do not publish, disclose or otherwise divulge any Personal Data to any third party except as permitted by the Contract or directed in writing by the Contracting Authority; and
 - iii have received adequate training in the use, care, protection and handling of Personal Data;

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

- (a) the Contracting Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or DPA 2018 Article 73) as determined by the Contracting Authority;
- (b) the Data Subject has enforceable rights and effective legal remedies;
- (c) 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 Contracting Authority in meeting its obligations); and
- (d) the Contractor complies with any reasonable instructions notified to it in advance by the Contracting Authority with respect to the processing of the Personal Data;

2.5.6 at the written direction of the Contracting Authority, delete or return Personal Data (and any copies of it) to the Contracting Authority on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

2.6 The Contracting Authority may, acting reasonably, reject any Protective Measures proposed by the Contractor under paragraph 2.5.3. Failure by the Contracting Authority to reject any Protective Measures shall not constitute approval of their adequacy.

2.7 Subject to paragraph 2.5, the Contractor shall notify the Contracting Authority without undue delay if, in connection with Personal Data processed under the Contract, it:

- 2.7.1 receives a Data Subject Request (or purported Data Subject Request);
- 2.7.2 receives a request to rectify, block or erase any Personal Data;
- 2.7.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- 2.7.4 receives any communication from the Information Commissioner or any other regulatory Contracting Authority;
- 2.7.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

- 2.7.6 becomes aware of a Data Loss Event.
- 2.8 The Contractor's obligation to notify under paragraph 2.7 shall include the provision of further information to the Contracting Authority in phases, as details become available.
- 2.9 Taking into account the nature of the processing, the Contractor shall provide the Contracting Authority with reasonable assistance, insofar as possible, in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 2.7 (and insofar as possible within the timescales reasonably required by the Contracting Authority) including by promptly providing:
- 2.9.1 the Contracting Authority with full details and copies of the complaint, communication or request;
 - 2.9.2 such assistance as is reasonably requested by the Contracting Authority to enable the Contracting Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 2.9.3 the Contracting Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 2.9.4 assistance as requested by the Contracting Authority following any Data Loss Event;
 - 2.9.5 assistance as requested by the Contracting Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Contracting Authority with the Information Commissioner's Office.
- 2.10 The Contractor shall maintain complete and accurate records and information as necessary to fulfil its obligations under paragraph 2.9.
- 2.11 The Contractor shall allow for audits of its Data Processing activity by the Contracting Authority or the Contracting Authority's designated auditor as required to demonstrate the Contracting Authority's compliance with its obligations as a Controller. Such audits shall be conducted in accordance with general audit conditions contained in the Contract.
- 2.12 Before allowing any Sub-Processor to process any Personal Data related to the Contract, the Contractor must:
- 2.12.1 notify the Contracting Authority in writing of the intended Sub-processor and processing;
 - 2.12.2 obtain the written consent of the Contracting Authority;
 - 2.12.3 enter into a written Contract with the Sub-Processor which gives effect to the terms set out in this Condition such that they apply to the Sub-Processor; and
 - 2.12.4 provide the Contracting Authority with such information regarding the Sub-Processor as the Contracting Authority may reasonably require.
- 2.13 The Contractor shall remain fully liable for all acts or omissions of any Sub-Processor.
- 2.14 The Parties shall cooperate to agree any amendments to this Contract that are necessary to ensure compliance with Data Protection Legislation, applicable guidance issued by the Information Commissioner's Office, any applicable controller-to-processor standard clauses, or the requirements of any recognised certification scheme. Any such amendment shall be made in accordance with clause 13 (Amendments to the Contract).

ANNEX C TO CONTRACT SCHEDULE 4: DATA PROTECTION PARTICULARS

This Annex forms part of the Contract and must be completed and attached to each Contract applying Contract Schedule 4 (Protection of Personal Data), Annex B (Protection of Personal Data (Where Personal Data is Being Processed on Behalf of the Contracting Authority)).

The capitalised terms used in this Annex shall have the same meanings as in the General Data Protection Regulations.

Data Controller	The Data Controller is [the Secretary of State for Defence] (the Contracting Authority). The Personal Data will be provided by: [insert the delivery team name (or equivalent source), address and contact details]
Data Processor	The Data Processor is the Contractor. The Personal Data will be processed at: [insert address(es) and contact details]
Data Subjects	The Personal Data to be processed under the Contract concern the following Data Subjects or categories of Data Subjects: <i>[please specify]</i>
Categories of Data	The Personal Data to be processed under the Contract concern the following categories of data: <i>[please specify]</i>
Special Categories of data (if appropriate)	The Personal Data to be processed under the Contract concern the following Special Categories of data: <i>[please specify]</i>
Subject matter of the processing	The processing activities to be performed under the contract are as follows: <i>[please specify]</i>
Nature and the purposes of the Processing	The Personal Data to be processed under the Contract will be processed as follows: <i>[please specify]</i>
Technical and organisational measures	The following technical and organisational measures to safeguard the Personal Data are required for the performance of this Contract: <i>[please specify]</i>
Instructions for disposal of Personal Data	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>
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>

CONTRACT SCHEDULE 5: CONTRACTS INVOLVING THE PROVISION OF ARTICLES**1 Application of this Contract Schedule**

- 1.1 This Contract Schedule 5 applies to any Articles supplied, used or provided by the Contractor in connection with the performance of the Contract.

2 Loss of or Damage to the Articles

- 2.1 Until delivery, the risk of loss of or damage to the Articles remains with the Contractor. Without prejudice to any other rights or remedies of the Contracting Authority, the Contractor shall make good any such loss or damage however caused or occasioned which occurs before delivery.
- 2.2 Paragraph 2.1 shall apply notwithstanding:
- 2.2.1 that the Articles may have been inspected by the Contracting Authority; or
 - 2.2.2 that the property therein may have passed earlier than upon delivery.
- 2.3 Unless otherwise agreed and save for the provisions of paragraph **Error! Reference source not found.**, the Contractor shall not after delivery be at risk in respect of the Articles, except where the Contracting Authority rejects any Article under clause 30 (Rejection), in which case the risk in the rejected Article shall revert to the Contractor on the earlier of:
- 2.3.1 the removal of the Article by the Contractor in accordance with clause 30; or
 - 2.3.2 the close of business on the last day of the period in which the Contractor is required to remove the rejected Article in accordance with clause 30; or
 - 2.3.3 the return of the Article by the Contracting Authority in accordance with clause 30.
- 2.4 Notwithstanding paragraph 2.3, where the Contractor has notified the Contracting Authority's Representative in writing within ten (10) Business Days of the rejection of an Article of its objection to that rejection, the Contractor shall not be at risk in respect of the rejected Article whilst any dispute between the parties relating to the rejection remains unresolved and the Article remains in the possession of the Contracting Authority.
- 2.5 This paragraph 2 shall not apply to Issued Property, which shall be subject to clause 41 (Issued Property).

3 Packaging

- 3.1 The Contractor shall provide Packaging that:
- 3.1.1 ensures each Article can be transported and delivered to the consignee specified in the Contract in an undamaged and serviceable condition;
 - 3.1.2 is labelled so that its contents can be identified without opening the package;
 - 3.1.3 complies with any packaging and labelling requirements notified by the Contracting Authority; and
 - 3.1.4 complies with all applicable statutory requirements.
- 3.2 Each consignment package shall be marked with:
- 3.2.1 the name and address of the consignor;
 - 3.2.2 the name and address of the consignee specified in the Contract;
 - 3.2.3 the destination, where different from the consignee's address;
 - 3.2.4 the Contract Reference Number; and

3.2.5 any other information required by the Contracting Authority.

- 3.3 The Contractor shall package, mark and deliver Explosives and any consignment package containing Explosives in accordance with any relevant instructions specified in the Tasking Form.

4 Hazardous Substances, Mixtures and Articles

- 4.1 Where applicable to the performance of the Contract, the Contractor shall comply with any relevant instructions specified in the Tasking Form relating to the declaration, notification and provision of safety data sheets and other information concerning Hazardous Substances, Mixtures and Articles.
- 4.2 The Contractor shall provide to the Contracting Authority all safety data sheets, declarations, notifications and other information required by applicable Law in relation to any Hazardous Substance, Mixture or Article contained in, used in, or supplied as part of the Contractor Deliverables and shall promptly provide any updates to such information that it becomes aware of during the Term.
- 4.3 Nothing in this paragraph 4 shall relieve or limit any statutory duty or other legal obligation of the Contracting Authority or the Contractor.

5 Timber and Wood-Derived Products

- 5.1 For the purposes of this paragraph 5, "Timber and Wood-Derived Products" means timber (including recycled timber and virgin timber but excluding short-rotation coppice) and any products that contain wood or wood fibre derived from those timbers.
- 5.2 Where applicable to the performance of the Contract, the Contractor shall comply with any relevant instructions specified in the Tasking Form in relation to Timber and Wood-Derived Products.
- 5.3 The Contractor shall ensure that any Timber or Wood-Derived Products supplied under the Contract originate from legal and sustainable sources or from a FLEGT-licensed (or equivalent) source.
- 5.4 The Contractor shall maintain, and shall ensure that its Sub-Contractors maintain, sufficient records to demonstrate compliance with paragraph 5.1.
- 5.5 If the Contracting Authority reasonably considers that compliance with this paragraph has not been adequately demonstrated, the Contracting Authority may require the Contractor, at its own cost, to obtain independent verification of the source and compliance status of the relevant Timber or Wood-Derived Products.

6 Counterfeit Materiel

- 6.1 The Contractor shall not supply Counterfeit Materiel as part of the Contractor Deliverables.
- 6.2 Where the Contracting Authority reasonably suspects that any Contractor Deliverable contains Counterfeit Materiel, it may require the Contractor to provide such information, evidence, samples and assistance as the Contracting Authority reasonably requires to determine whether the Contractor Deliverable contains Counterfeit Materiel.
- 6.3 Where the Contracting Authority reasonably determines that any Contractor Deliverable contains Counterfeit Materiel, the Contracting Authority may:
- 6.3.1 reject the Contractor Deliverable in accordance with clause 30 (Rejection);
 - 6.3.2 retain, remove, test, investigate, dispose of or otherwise deal with the Counterfeit Materiel;
 - 6.3.3 disclose information relating to the Counterfeit Materiel to any regulatory, law enforcement or other public authority; and
 - 6.3.4 recover from the Contractor all reasonable costs incurred in exercising its rights under this

paragraph 6.

- 6.4 The Contractor shall comply with any instructions of the Contracting Authority in relation to the identification, investigation, testing, retention and disposal of suspected or confirmed Counterfeit Materiel.
- 6.5 Any exercise by the Contracting Authority of its rights under this paragraph shall not constitute Acceptance of the relevant Contractor Deliverable.

7 Diversion Orders

- 7.1 The Contracting Authority shall notify the Contractor as soon as reasonably practicable if it becomes aware that any Contractor Deliverables are likely to be subject to a Diversion Order.
- 7.2 The Contracting Authority may issue a Diversion Order requiring the urgent delivery of specified Contractor Deliverables. The Contractor shall deliver those Contractor Deliverables by the quickest means available, as agreed with the Contracting Authority.
- 7.3 If a Diversion Order is unclear, the Contractor shall immediately seek clarification from the Contracting Authority Representative who issued it.
- 7.4 If a Diversion Order requires delivery of quantities exceeding the scope of the Contract, the Contractor shall immediately return it to the Contracting Authority's Representative with an explanation.
- 7.5 The Contracting Authority may cancel a Diversion Order at any time.
- 7.6 The Contractor shall comply with a Diversion Order immediately upon receipt and shall be entitled to recover any reasonable additional packaging and delivery costs incurred in complying with, or as a result of the cancellation of, that Diversion Order. The Contractor shall submit any claim to the Contracting Authority's Representative, together with supporting evidence of such costs, and any agreed amount shall be incorporated into the Contract by amendment in accordance with clause 13 (Amendments to the Contract).

8 Use of Asbestos

- 8.1 The Contractor shall not incorporate Asbestos into any Contractor Deliverable or use, supply or process Asbestos in the performance of the Contract except where expressly authorised by the Contracting Authority and permitted by any applicable Law.
- 8.2 The Contractor shall notify the Contracting Authority immediately upon becoming aware that Asbestos is or may be present in any Contractor Deliverable or material used in the performance of the Contract.

CONTRACT SCHEDULE 6: INTELLECTUAL PROPERTY RIGHTS**1 Application of this Contract Schedule**

- 1.1 This Contract Schedule 6 sets out the Intellectual Property Rights provisions (IPR Conditions) applicable to Technical Deliverables in accordance with clause 43 (Applicable Intellectual Property Rights (IPR) Conditions).

ANNEX SV TO CONTRACT SCHEDULE 6 - SUPPLIER VESTING IPR CONDITION**1 Ownership of IPR**

- 1.1 All Foreground IPR shall belong to the Contractor and shall be subject to this Annex.
- 1.2 The Contractor shall ensure that the terms of engagement of all individuals carrying out work for it under the Contract are such as to vest the ownership required by paragraph 1.1 of this Annex.
- 1.3 The Contractor shall ensure that no part of the work to be performed under the Contract is sub-contracted to a legal entity without the prior written agreement of the Contracting Authority, except as follows:
- 1.3.1 by first ensuring that the Sub-Contractor has entered into an agreement with the Contracting Authority, in the form of a Sub-Contractor's Agreement (Design Rights and Patents Sub-Contractor's Agreement), contained in Annex S-CA to Contract Schedule 6, which invokes this paragraph 1 in regard to the Sub-Contract work; or alternatively
- 1.3.2 by placing a contract which provides that the Contractor shall own the Foreground IPR arising from the performance of work under the Sub-Contract, and subject to these being licensed to the Contracting Authority by the Contractor under the terms of this Annex.
- 1.4 In the event that the Contractor assigns its ownership of any Foreground IPR, it shall secure for the Contracting Authority the continuance of the Contracting Authority's rights under this Annex.

2 Publication

- 2.1 The Contracting Authority may, at any time, publish or have published a brief summary indicating the nature of work to be carried out under the Contract.
- 2.2 The Contracting Authority may publish, or have published, an abstract of a commercially non-sensitive nature, of the Full Rights Versions of the Technical Deliverables. The Contractor may supply an acceptable abstract of that Full Rights Version for this purpose. In the absence of such an abstract, the Contracting Authority may produce an abstract itself but it shall not publish this without first consulting the Contractor allowing 45 Business Days for a response.
- 2.3 The Contractor may publish the Foreground Technical Information or any part of it, provided that the Contract, or the work package(s) within the Contract, is or are OFFICIAL, unless exceptionally the Contracting Authority considers that publication is not in the national interest. The Contractor shall give written prior notice of intended publication to the Contracting Authority and allow 45 Business Days for the Contracting Authority to raise an objection on national interest grounds. In the absence of such an objection from the Contracting Authority within this period, the Contractor shall be entitled to proceed with publication.

3 Provision and Use of Technical Information and Retention of Records

- 3.1 A Full Rights Version is required for every Technical Deliverable. The Contractor shall not be required to include Limited Rights Information in Full Rights Versions. Where a Full Rights Version does not contain all deliverable Technical Information, the Contractor shall provide a Limited Rights

Version of such other deliverable Technical Information.

- 3.2 To allow for the provision of further Foreground Technical Information under paragraph 3.3 the Contractor shall retain, for the duration of the Contract and for a period of five years thereafter (or such alternative period as may be specified in the Contract), a record of the work performed under the Contract and of the results obtained.
- 3.3 The Contracting Authority shall have the right to acquire from the Contractor additional Full Rights Information not contained in the Technical Deliverables comprising data and information resulting from studies, analyses or tests that are conducted in the performance of work under the Contract, for so long as this exists. This right shall be exercisable by separate order and on agreement of a fair and reasonable price and other relevant terms.
- 3.4 The Contracting Authority shall have the right to Use all Full Rights Versions and Full Rights Information in confidence, as provided below:
- 3.4.1 to disclose to and authorise Use within any United Kingdom Government Department (which term shall include the United Kingdom Armed Forces) and the UK police and civil defence agencies, for any purposes;
- 3.4.2 to disclose to and authorise Use by any party under, and solely for the purposes of, any UK National Defence Agreement, meaning, any invitation to tender, agreement, or contract, issued or entered into by or on behalf of the Contracting Authority in any territory pursuant to its own defence, civil defence, or security or intelligence purposes (which may provide, without limitation, for information awareness or assessment, or research, or design development, integration, manufacture, provision or support of any equipment materials, tools or services).
- 3.4.3 to disclose to any governmental or intergovernmental body under any Research and Technology Agreement, and to allow onward release in confidence to contractors to the extent only that such onward release is authorised by the Contracting Authority in the circumstance that the Research and Technology Agreement provides for these releases on a reciprocal basis, and to authorise Use by these parties in accordance with, and solely for the purposes set out in, the Research and Technology Agreement concerned;
- 3.4.4 to disclose to any governmental or intergovernmental body under any Collaborative Defence Agreement other than a Research and Technology Agreement, to allow onward release in confidence to a contractor to the extent only that such onward release is authorised by the Contracting Authority and complies with the Collaborative Defence Agreement, and to authorise Use by these parties in accordance with, and solely for the purposes set out in, that Collaborative Defence Agreement, providing that:
- (a) unless the Collaborative Defence Agreement is one which has been identified in the Contract at the time of Contract placement or exceptionally is one subject to security restrictions to a degree which precludes its identification to the Contractor, the Contracting Authority shall not exercise its rights under this sub- Clause without first informing the Contractor adequately of its intentions and giving the Contractor an opportunity to make representations; and
- (b) whilst the Contracting Authority's decision shall be final between the Parties, it shall pay due regard to the Contractor's representations when making its decision;
- 3.4.5 where any Technical Information is to be disclosed to a contractor of another governmental or intergovernmental body under paragraphs 3.4.3 or 3.4.4, the Contracting Authority will use all reasonable endeavours to release to the Contractor and other contractors to the Contracting Authority relevant Technical Information received from the other body under the relevant Collaborative Defence Agreement commensurate with the terms of release and use

set out in that Agreement; and

- 3.4.6 to disclose to and permit Use by any party as reasonably necessary in connection with the sale or disposal of anything made pursuant to paragraph 3.4.2, which is surplus to requirements.
- 3.5 Subject to the availability of the relevant expertise and on a request made by the Contracting Authority within the period specified in paragraph 3.2, the Contractor shall provide assistance in understanding any Full Rights Versions to the Contracting Authority or any other Person to whom the Contracting Authority may provide it in accordance with paragraph 3.4. The degree of assistance shall be limited to that required for a Person competent in the relevant area of technology to interpret the results of the Contract. The assistance shall be made available within a reasonable period of the request and on fair and reasonable terms and conditions.
- 3.6 The Contracting Authority shall have the right to Use in confidence all Limited Rights Versions and Limited Rights Information as provided below:
 - 3.6.1 to disclose to and authorise Use within any United Kingdom Government Department (which term shall include the United Kingdom Armed Forces) and the UK police and civil defence agencies, for any purpose;
 - 3.6.2 to disclose to and authorise Use by a service provider, under a UK National Defence Agreement, solely for the purposes of the provision of a service to the Contracting Authority which, unless otherwise identified in the Contract or agreed by the Contractor, shall be limited to managing, monitoring, evaluating, assessing or auditing the work under the Contract, provided that the service provider is identified for this purpose in the Contract at the time of Contract placement or is one later agreed with the Contractor with a view to avoiding any conflict of interests.
- 3.7 Subject to the limitation imposed by paragraph 3.8, the rights granted under paragraphs 3.4 and 3.6 shall be free of payment to the Contractor in respect of any IPR owned or controlled by the Contractor.
- 3.8 The freedom from payment granted under paragraph 3.7 shall not extend to Use of any patents, or registered designs other than those comprising Foreground IPR, but shall be without prejudice to the rights of the Contracting Authority arising under any separate contract or agreement or arising under statute.

4 Marking of Information

- 4.1 The Contractor shall mark each Technical Deliverable with a proprietary legend in which the owner of the rights shall be identified and references to the Contract and this Annex included. The legend may also make other IPR statements reserving rights to the Contractor provided that these are stated in terms consistent with the Contracting Authority's rights under this Annex. All Limited Rights Versions shall be clearly marked as such. The markings shall comply with the requirements set out in the Tasking Form.
- 4.2 The Contracting Authority shall not remove or modify any marking properly applied to Technical Deliverables in accordance with paragraph 4.1, shall perpetuate the marking on any copies it makes of Technical Deliverables, and shall retain markings sufficient to identify ownership and rights of use in all extracts of Technical Deliverables as appropriate for the technical environment in which they are stored or processed, and shall require any third parties to whom the Technical Deliverable or Technical Information are provided, to do the same, however:
 - 4.2.1 if a Technical Deliverable subject to this Annex has been accepted by the Contracting Authority with a marking that does not comply with the requirements of this Annex, and the Contracting Authority has notified the Contractor of this and requested correction, and the

Contractor fails to remove or correct a non-conforming marking and supply the corrected version within 30 calendar days of such notification, then the Contracting Authority shall be entitled to ignore, correct, or delete the marking as appropriate.

5 Applications for Patents and Registered Designs

- 5.1 The Contractor shall provide the Contracting Authority's Director of Intellectual Property Rights with the following notifications and copies:
- 5.1.1 a notification of the first application for patent or like protection (wherever made) for an invention comprising Foreground IPR, which identifies the country and the application number and number of the Contract, together with a copy of the application;
 - 5.1.2 a notification of the first application for registration of a design (wherever made) for a design generated in the performance of work under the Contract, which identifies the country and the application number and the number of the Contract, together with a copy of the application;
 - 5.1.3 a notification of the grant of any patent or like protection effective in the UK secured for an invention comprising Foreground IPR or the grant of registered design protection effective in the UK for a design generated in the performance of work under the Contract, which gives identification details for the rights granted.
- 5.2 All notifications under paragraph 5, together with the accompanying material as required, shall be provided by the Contractor within 45 Business Days of receipt by the Contractor of the corresponding certificate of filing or grant, save as provided in paragraph 5.3.
- 5.3 In lieu of providing individual notifications under paragraph 5.1, the Contractor shall be entitled to provide a notification, aggregated across the Contract and any other contracts, of all applications and grants which are subject to this Annex (such as a notification in the form of a data base, printout or extract), as long as this is provided no less frequently than quarterly and as long as the copies required by paragraph 5.1 are provided at the same time.
- 5.4 The Contracting Authority undertakes to hold all copies provided under paragraph 5.1 in confidence and to use them only for the purpose of ascertaining the Contracting Authority's rights, unless and until they are published in the normal way.
- 5.5 The Contractor shall, at the request and expense of the Contracting Authority, take all reasonable steps necessary to enable the Contracting Authority to register, at the UK Patent Office or elsewhere, its interest in inventions or designs notified under this Annex.
- 5.6 If the Contract, or a package of work under the Contract, has a national security grading of or equivalent to "OFFICIAL-SENSITIVE" or higher, then the Contractor shall prepare and file all patent applications for any invention generated in the performance of work under the Contract or that package of work, in accordance with the Contractor's appropriate national security laws and procedures, using persons having appropriate security clearance for the purpose. This obligation on the Contractor shall apply also to the making of any patent applications for other inventions which discloses any matter connected with the Contract, or a package of work under the Contract, so graded.
- 5.7 If the Contractor's national security laws and procedures require it to make a patent application for an invention to which paragraph 5.6 applies otherwise than to the UK Patent Office, it shall secure the Contracting Authority's consent (which shall not be unreasonably withheld) before making the patent application.
- 5.8 When a patent application for an invention to which paragraph 5.6 applies is made at the UK Patent Office, the Contractor shall ensure that it is filed directly with the Security Section. When making

such a patent application the Contractor shall comply with the following:

- 5.8.1 it shall provide authorisation to the UK Patent Office, at the appropriate stage in the proceedings, to provide a copy of the patent application to the Contracting Authority in confidence, solely for the purpose of assessing the correct national security grading; and
- 5.8.2 for inventions which constitute Foreground IPR, it shall state in writing when the application is made that the invention concerned is related to UK Government work and it shall quote the number of the Contract and the name and address of the Authorised Representative of the Contracting Authority.

- 5.9 Any patent application made in accordance with paragraphs 5.7 to 5.8 shall be considered to have been made with the prior consent of the Contracting Authority.
- 5.10 The Contractor shall have no right to compensation under Section 22(7)(b) of the Patents Act 1977 in relation to any invention comprising Foreground IPR.
- 5.11 The provisions of paragraphs 5.6 to 5.8 do not apply to any individual patent application made or proposed to be made if the whole content of that application has been reviewed and assessed by an appropriate UK national classification authority as having a national security grading of or equivalent to "OFFICIAL".

6 Patents Etc. – Rights of the Contracting Authority

- 6.1 The Contracting Authority shall have an irrevocable, world-wide non-exclusive payment-free licence with the right to sub-license, for the Services of the United Kingdom Government as follows:
 - 6.1.1 to do in relation to any patent or like protection of the Contractor for an invention comprising Foreground IPR, any act as defined in Section 55(1) (a) to (e) of the Patents Act 1977 or
 - 6.1.2 to make, use, have used, import, keep, offer to sell or sell a registered design comprising Foreground IPR;

and this shall include the right to grant a licence, with the right to sub-license, to another government, government agency, intergovernmental organisation or its agency under the terms of a Collaborative Defence Agreement to permit use of the invention or registered design in any joint activity with the Contracting Authority under the Collaborative Defence Agreement (including the provision to all parties to that Agreement of any defence equipment which is produced by the joint activity).

- 6.2 The Contracting Authority shall inform the Contractor when the Contracting Authority exercises its rights under paragraph 6.1.

7 Exploitation

- 7.1 The Contractor shall notify the Contracting Authority promptly if it is not able, or does not wish, to take responsibility for the utilisation, management and exploitation of the Foreground Technical Information or Foreground IPR so that the Contracting Authority can consider alternative options. Unless such a notification has been given, paragraphs 7.2 to 7.5 shall apply.
- 7.2 The responsibility for securing effective utilisation, management and exploitation of the Foreground Technical Information and Foreground IPR shall fall to the Contractor concomitant upon their ownership of these under paragraph 1.1.
- 7.3 The Contracting Authority shall be entitled to require the Contractor, at reasonable intervals during the Contract and for a period of six years thereafter or such other period as may be set down in the Contract, to inform it of the plans for and the extent to which the Foreground Technical Information and Foreground IPR are being exploited in both the defence market and other markets. The Contracting Authority may review from time to time the technology arising from the Contract and may

require the Contractor to engage in discussions with a view to promoting commercial exploitation. The Contracting Authority may conduct this review itself or may engage a contractor to conduct a review on its behalf providing that this contractor is reasonably acceptable to the Contractor and is bound by an obligation of confidence.

- 7.4 If the Contractor wishes to grant a licence including any provision which conflicts with a provision of this Annex, it shall inform the Contracting Authority's Director of Intellectual Property Rights giving full details of the proposed licence and the conflict of provisions. If, having regard to the territories and/or goods or services to which the licence relates, it appears to the Contracting Authority that the proposed licence is unlikely to inhibit its defence interests it will consent to the licence or consent to the grant on modified terms. No such licence may be granted unless the Contracting Authority's consent has been given.
- 7.5 Subject always to the Contracting Authority's existing obligations at the time of the request, the Contracting Authority will favourably consider the grant of a licence to the Contractor (with the right to sub-license) to use information provided by and belonging to the Contracting Authority as necessary to enable the Contractor to exploit Foreground Technical Information and Foreground IPR commercially. Such a licence shall be non-exclusive and on fair and reasonable terms, taking account of all the circumstances.

8 General

- 8.1 For the avoidance of doubt, nothing in this Annex shall:
- 8.1.1 restrict the entitlement of the Contracting Authority and the Contractor to make use of information once it enters the public domain;
 - 8.1.2 extinguish any entitlement to use information and IPR which has been acquired under any separate contract or agreement; or
 - 8.1.3 override any applicable security restriction or constitute an export licence for Technical Information.
- 8.2 This Annex shall constitute 'an agreement to the contrary' for the purposes of Section 48(5) of the Copyright, Designs and Patents Act 1988.
- 8.3 The terms of this Annex shall survive the cessation of the Contract.

9 Optional Clauses of this Annex SV

Option GW: UK 'Government Wide' Definition of Contracting Authority for Certain Rights

- GW If in respect of one or more Technical Deliverables, the Tasking Form invokes Annex SV and this option GW, then for the purposes of those Technical Deliverable(s):
- (a) the term 'Contracting Authority', for the purposes of paragraphs 1.4, 3.3, 3.4, 3.5, 4.1, 4.2, 6.1, 6.2, and 8.1 and (where applicable) options GP, SM and (unless stated to the contrary) X, shall include all UK Government Department(s) and all UK Central Government Bodies;
 - (b) no statement in the Tasking Form shall prevent the Contracting Authority for the purposes of all paragraphs in this Annex from at least including the Contracting Authority as defined in Contract Schedule 1 (Definitions).

Option GP: Certain Contracting Authority Rights Expanded to UK 'Government Purposes'

- GP If in respect of one or more Technical Deliverables, the Tasking Form invokes Annex SV and this option GP, then for the purposes of those Technical Deliverable(s):

- (a) the rights of the Contracting Authority set out in paragraph 3.4.2 to disclose to and authorise Use by any party under, and solely for the purposes of, any invitation to tender, agreement, or contract, issued or entered into by or on behalf of the Contracting Authority in any territory, shall extend to doing so for any UK Government purpose.
- (b) the rights of the Contracting Authority as set out paragraphs 3.4.3 to 3.4.5 in relation to Collaborative Defence Agreements, shall extend to any treaty, agreement, MOU or other like formal arrangement entered into by or on behalf of the Contracting Authority with another government, government agency, intergovernmental organisation or its agency, for any UK Government purpose.
- (c) no statement in the Tasking Form shall prevent the Contracting Authority from having the rights set out in paragraphs 3.4.2 to 3.4.5.

Option P: Contracting Authority Right of Publication

- P If in respect of one or more Technical Deliverables, the Tasking Form invokes Annex SV and this option P, then for the purposes of those Technical Deliverable(s):
- (a) the Contracting Authority shall have the right to disclose and publish the Full Rights Versions and Full Rights Information, including any part thereof and any information derived therefrom. This right includes the right to disclose and authorise disclosure, modification and use thereof, by any person in any manner, confidentially or otherwise, for any purpose, including under any non-exclusive licence such as any open-source licence.

Option CEL: Commercial Exploitation Levy for Deliverables at High Technical Readiness Level

- CEL If in respect of one or more Technical Deliverables, the Tasking Form invokes Annex SV and this option CEL, then for the purposes of those Technical Deliverable(s):
- (a) the Contractor shall not commercially exploit the Foreground IPR (including without limitation by selling articles produced using it, or granting any licence to use it), without first agreeing with the Contracting Authority the sum or sums (if any) which should reasonably be paid to the Contracting Authority by the Contractor in respect of such exploitation having regard, among other things, to the amounts paid or payable to the Contractor by the Contracting Authority under the Contract.

Option SM: Software Maintenance Rights for Deliverables at High Technical Readiness Level

- SM If in respect of one or more Technical Deliverables, the Tasking Form invokes Annex SV and this option SM, then for the purposes of those Technical Deliverable(s), and to the extent that they contain software:
- (a) during the currency of the Contract and for a period of six years thereafter, the Contractor shall at the request and to the requirements of the Contracting Authority and to the extent they are able to do so in relation to third party software:
 - i deliver further copies of the software to the Contracting Authority at a reasonable charge based on the cost of providing such copies;

- ii where the Contractor is unable or unwilling to support, maintain or modify the software, deliver to the Contracting Authority all information necessary for the Contracting Authority, its contractors or agents to independently support, maintain or modify the software for the services of the United Kingdom Government (not limited to object code, source code and other source material, post-contract updates and patches, documentation, configuration and hosting information, records, tools and data) and all authorisations needed for the Contracting Authority, its contractors or agents to do so in accordance with the Contracting Authority's requirements. All such information shall be supplied on fair and reasonable terms, but delivery shall not be conditional upon prior agreement on the need for, the amount of or the making of any payment therefor.
- (b) the Contractor shall retain for the period specified in paragraph SM(a) a copy of such Software as is required for the performance of their obligations under paragraph SM(a).
- (c) if the Software generated under the Contract is subsequently modified by or on behalf of the Contractor for the Contracting Authority, the Software to be retained under paragraph SM(b) shall be the latest modified version and any other version that may be specified by the Contracting Authority no later than the time of delivery of the succeeding modified version. The Contractor shall additionally maintain sufficient records to enable the changes introduced by each such modification to be identified so as to provide traceability back to the version originally accepted by or for the Contracting Authority.

Option X: Bespoke Provisions

- X If in respect of one or more Technical Deliverables, the Tasking Form invokes Annex SV and this option X, and in doing so sets out additional terms and conditions then:
- (a) for the purposes of those Technical Deliverable(s), such additional terms and conditions shall apply; and
 - (b) if the Tasking Form invokes Annex SV in conjunction with the terms GWX, GPX, PX, CELX and/or SMX, this/these shall be interpreted as invoking both this option X and the corresponding option GW, GP, P, CEL and/or SM and as indicating that such additional terms and conditions are applicable to the corresponding option(s).

ANNEX AV TO CONTRACT SCHEDULE 6 - AUTHORITY VESTING IPR CONDITION**1 Authority Vesting IPR Condition**

- 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 Contracting Authority. The Contractor shall take all necessary measures to secure that vesting. On request, the Contractor shall demonstrate to the Contracting Authority's satisfaction that, where they have sub-contracted work under the Contract, they have secured that vesting in the work performed by their sub-contractors.
- 1.2 The Contractor shall waive, or procure a waiver of, any moral rights in the Results.
- 1.3 The Contracting Authority shall determine whether any of the Results should be protected by patent or other protection. The Contractor shall assist the Contracting Authority in filing and executing documents necessary to secure that protection. The Contractor shall use all commercially reasonable endeavours to secure similar assistance from Sub-Contractors as appropriate. The costs of such patent or other protection shall be borne by the Contracting Authority.
- 1.4 The Contractor shall mark any copyright work comprising Results with the legend: '© Crown-owned copyright [insert the year of generation of the work]'.
- 1.5 Ownership of any Intellectual Property Rights generated independently of this Contract (Background IPR) shall remain unaffected by this agreement, and in particular any Contractor-owned Background IPR shall remain the property of the Contractor, and;
- 1.5.1 subject to paragraph 1.5.2, nothing in this Annex shall prevent the Contractor from using, changing, disclosing, publishing and licensing such Contractor-owned Background IPR, independently of the Results, however;
- 1.5.2 except where, and to the extent, agreed to the contrary in writing, the Contractor shall, when delivering the Results, grant the Contracting Authority a non-exclusive, perpetual, royalty-free, irrevocable worldwide licence to any Contractor-owned Background IPR, and shall procure for the Contracting Authority the same in any third-party Background IPR, which is included in, delivered with, or necessary for use of, the Results, permitting the Contracting Authority to use, copy, change, disclose, publish, and authorise use and copying of such Background IPR by any person, solely for the following purpose:
- RP as a minimum, for the purpose of using the Results; and
- AP in the case of interface specifications, policies and requirement specifications, and where the Tasking Form indicates that the Results will be used for standards development, for any purpose.
- 1.6 Unless otherwise agreed by the Contracting Authority in writing, the Contractor shall retain a copy of the Results together with records of all work done for the purposes of the Contract for six (6) years after the completion of the Contract.
- 1.7 The Contracting Authority shall have the right to require the Contractor to furnish to the Contracting Authority 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 Contracting Authority unless already included in the price of the Contract.
- 1.8 The Contractor shall treat the Results as if received in confidence from the Contracting Authority and
- 1.8.1 shall not copy, use or disclose to a third party any of the Results without the prior written consent of the Contracting Authority, except that the Contractor may without prior consent,

copy and use the Results, and disclose the Results in confidence to their officers, employees and sub-contractors, 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 paragraph 1.12; and

- 1.8.2 shall take all reasonable precautions necessary to ensure the Results are treated in confidence by those of their officers, employees and sub-contractors who receive them and are not further disclosed or used otherwise than for the purpose of performing work or having work performed for the Contracting Authority under the Contract or any Sub-Contract.
- 1.9 The Contractor shall ensure that their employees are aware of their arrangements for discharging the obligations at paragraph 1.8 and take such steps as may be reasonably practical to enforce such arrangements.
- 1.10 The confidentiality provisions of paragraph 1.8 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.
- 1.11 The Contractor shall not be in breach of the confidentiality obligations contained in this Annex 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 Contracting Authority 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 Annex.
- 1.12 The Contractor shall be entitled to request consent from the Contracting Authority to re-use (under licence or otherwise) the Results and intellectual property rights vested in the Contracting Authority by virtue of paragraph 1.1 for other purposes including, but not limited to, tendering for other work for the Contracting Authority or work for another UK Government department. Such consent shall be properly considered by the Contracting Authority taking into account matters such as national security and the rights of third parties.

2 Optional Clause of this Annex AV

Option X: Bespoke Provisions

- X If in respect of one or more Technical Deliverables, the Tasking Form invokes Annex AV and this option X, and in doing so sets out additional terms and conditions then for the purposes of those Technical Deliverable(s), such additional terms and conditions shall apply.

ANNEX S-CA TO CONTRACT SCHEDULE 6 - DESIGN RIGHTS AND PATENTS SUB-CONTRACTOR'S AGREEMENT**1 Guidance Note on the Completion of this Agreement**

- 1.1 This note has been devised as an aid to the completion of the Sub-Contractor's Agreement.
- 1.2 This top sheet is to be detached before inclusion of the Agreement in a Contract or before submission to a Sub-Contractor.
- 1.3 Use a blank template of the Sub-Contractor's Agreement and insert:
- (a) * the date of the Agreement;
 - (b) * the Sub-Contractor's full name;
 - (c) * the Sub-Contractor's registered address;
 - (d) correct the Contracting Authority if appropriate, if the main Contract was not placed by Dstl/MOD;
 - (e) paragraph 1 - the full name of the main Contractor;
 - (f) paragraph 1 - the reference number of the main Contract;
 - (g) paragraph 1 - the description of the equipment being designed and developed under the main contract as shown on the Tasking Form of the Contract;
 - (h) * Section A - List of items appropriate to the Sub-Contract in question (the Sub-Contractor may insert these itself if necessary);
 - (i) Section B - List of the relevant IPR conditions applicable to the Contract.
- 1.4 It will also be necessary to amend the references to "design and development" should the subject Contract be a Feasibility Study, Project Definition etc.
- 1.5 Similarly, as the Sub-Contractor's Agreement is a drafting form, it will require that any references required in the Contract should refer to "the Agreement in the form set out in Annex [...] to the Contract".
- 1.6 Two copies of the Sub-Contractor's Agreement should be signed by a responsible officer on behalf of the Sub-Contractor and both of these should be returned for signature by the Representative of the Contracting Authority. One copy is for the Sub-Contractor to retain, and the other is for retention by the Contracting Authority.

**Note: This information will not necessarily be available at the drafting stage.*

DESIGN RIGHTS AND PATENTS (SUB-CONTRACTOR'S AGREEMENT)

THIS AGREEMENT is made the day of 20.....

BETWEEN.....

whose registered office is at.....
(hereinafter called "the Sub-Contractor") of the one part and

.....the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland.....

(referred to in this document as the "**Contracting Authority**"), acting as part of the Crown of the other part

WHEREAS:

- 1 The Contracting Authority has placed with..... (hereinafter called "the main Contractor") a contract bearing the reference number..... (hereinafter called "the main contract") for the design and development of..... the effect of which is that the costs of such design and development (including the cost referable to any Sub-Contracts hereinafter referred to) will be substantially borne by the Secretary of State.
- 2 The main Contractor contemplates that the design development and supply of certain components needed for performance of the main contract will be undertaken by various third parties in pursuance of Sub-Contracts made between them and the main Contractor.
- 3 With a view to securing to the Contracting Authority rights as regards inventions designs and other related matters in respect of any Sub-Contract the main contract provides that the main Contractor shall not enter into any Sub-Contract for any component aforesaid without obtaining the prior approval of the Contracting Authority.
- 4 The main Contractor has now informed the Contracting Authority that for the purpose of performing the main contract he wishes to place with the Sub-Contractor a Sub-Contract for the design and development of the items described in Section A of this Design Rights and Patents (Sub-Contractor's Agreement) (hereinafter called "the sub-contracted items") and has requested the Contracting Authority's approval of the Sub-Contract accordingly.
- 5 The Contracting Authority has signified its willingness to approve the Sub-Contract on condition that in consideration of its giving approval the Sub-Contractor enters into a direct Agreement with the Contracting Authority concerning the matters hereinafter appearing and the Sub-Contractor has signified its willingness to enter into such an agreement.

NOW THIS AGREEMENT made in consideration of the premises and of the rights and liabilities hereunder mutually granted and undertaken WITNESSETH AND IT IS HEREBY AGREED AND DECLARED as follows:

- 1 The Sub-Contractor and the Contracting Authority hereby agree to be bound to each other by the provisions of the IPR Conditions as set out in Section B of this Design Rights and Patents (Sub-Contractor's Agreement).
- 2 No extension alteration or variation in the terms of the Sub-Contract between the main Contractor and the Sub-Contractor and no other agreement between the main Contractor and the Sub-Contractor relating to the work to be done under the Sub-Contract or any modification now or hereafter made thereto shall prejudice the operation of this Agreement which shall in all respects apply to the Sub-Contract as so extended altered varied supplemented or modified as if such extension alteration variation supplementation or modification had been originally provided for in the Sub-Contract and the expression "the Sub-Contract items" shall have effect accordingly.

IN WITNESS whereof the parties hereto have set their hands the day and years first before written

Signed on behalf of the Sub-Contractor.....

(in capacity of).....

Signed on behalf of the Contracting Authority.....

SECTION A

The Sub-Contract Items are:

.....
.....
.....

SECTION B

The IPR Condition(s) which apply to this Agreement are:

.....
.....
.....

To be inserted as appropriate except that:

- (i) Where "the Contractor" is stated "the Sub-Contractor" shall be substituted.
- (ii) Where "Contract" is stated "Sub-Contract" shall be substituted.
- (iii) Where "Sub-Contractor" is stated "further Sub-Contractor" shall be substituted.
- (iv) Where "Sub-Contract" is stated "further Sub-Contract" shall be substituted.

CONTRACT SCHEDULE 7: PRICING ON ASCERTAINED COSTS**1 Application of this Contract Schedule**

- 1.1 This Contract Schedule 7 sets out the provisions to be included in Sub-Contracts entered into under a Contract priced on the basis of Ascertained Costs, in accordance with clause 53 (Pricing on Ascertained Costs).

ANNEX A TO CONTRACT SCHEDULE 7: PROVISIONS TO BE INCLUDED IN SUB-CONTRACTS PRICED ON THE BASIS OF ASCERTAINED COSTS, INCLUDING WITH A SUBSIDIARY COMPANY OR FIRM**1 Applicability**

- 1.1 This Annex A applies where a Sub-Contract is to be determined on the basis of Ascertained Costs.

2 Pricing in Sub-Contracts

- 2.1 The Sub-Contractor shall provide such cost information as the Contracting Authority may reasonably require in connection with the Sub-Contract and shall permit the Contracting Authority's Representative to verify that information by inspecting the Contractor's books, accounts and other documents and records.
- 2.2 Subject to the maximum amount, if any, stated to be payable under the Sub-Contract, the total amount payable under the Sub-Contract shall be subject to the Contracting Authority being satisfied, either from an inspection of the costs of the Sub-Contractor or otherwise, that fair and reasonable charges have been made in respect of:
- 2.2.1 the costs properly incurred for the purposes of the Sub-Contract of:
- (a) wages and salaries constituting a direct charge to the work to be performed under the Sub-Contract, including work in respect of the provision of special jigs and tools; and
 - (b) materials, bought-out parts and Sub-Contracted work including such costs in respect of the provision of special jigs and tools;
- 2.2.2 overhead and administration charges appropriate to the Sub-Contract; and
- 2.2.3 a sum for profit to be agreed in the Contract.

**ANNEX B TO CONTRACT SCHEDULE 7: PROVISIONS TO BE INCLUDED IN A SUB-CONTRACT
(INCLUDING WITH A SUBSIDIARY COMPANY OR FIRM) NOT PRICED ON ASCERTAINED COSTS
AND WHICH IS A FIXED PRICE SUB-CONTRACT**

1 Applicability

- 1.1 This Annex B applies where a Sub-Contract is a Fixed Price Sub-Contract and is not priced on the basis of Ascertained Costs.

2 Pricing in Sub-Contracts

- 2.1 In this paragraph 2, “main contract” means the Contract between the Contracting Authority and the Contractor in connection with which, or for the purposes of which, this Sub-Contract has been made.
- 2.2 For the purpose of determining the costs of the Contractor Deliverables to be supplied or performed under the main contract, the Sub-Contractor shall, until prices for those Contractor Deliverables have been finally fixed, provide the Contracting Authority with such access to its premises, records, plans and processes as the Contracting Authority may reasonably require.

**ANNEX C TO CONTRACT SCHEDULE 7: PROVISIONS TO BE INCLUDED IN A SUB-CONTRACT
(INCLUDING WITH A SUBSIDIARY COMPANY OR FIRM) NOT PRICED ON ASCERTAINED COSTS
AND NOT A FIXED PRICE SUB-CONTRACT**

1 Applicability

- 1.1 This Annex C applies where a Sub-Contract is:
- 1.1.1 not to be determined on the basis of Ascertained Costs; and
 - 1.1.2 is not a Fixed Price Sub-Contract.

2 Pricing in Sub-Contracts

- 2.1 In this paragraph 2, “main contract” means the Contract between the Contracting Authority and the Contractor in connection with which, or for the purposes of which, this Sub-Contract has been made.
- 2.2 Fair and reasonable prices shall be paid to the Sub-Contractor in respect of the Contractor Deliverables to be supplied or performed under this Sub-Contract, such prices to be fixed as soon as practicable by agreement between the Contractor and the Sub-Contractor.
- 2.3 In the event of delay in fixing prices, the Contractor shall determine fair and reasonable provisional prices. The Contractor reserves the right to vary those provisional prices from time to time.
- 2.4 Upon the fixing of the final prices or any revision to the provisional prices:
- 2.4.1 the Contracting Authority shall pay to the Contractor any amount by which the amount payable on that basis exceeds the amount already paid; and
 - 2.4.2 the Contractor shall repay to the Contracting Authority any amount by which the amount already paid exceeds the amount payable on that basis.
- 2.5 For the purpose of determining the costs of the Contractor Deliverables to be supplied or performed under the main Contract, the Sub-Contractor shall, until the prices for those Contractor Deliverables have been finally fixed:
- 2.5.1 maintain records of the costs incurred in performing the Sub-Contract, including such information as is available from its normal accounting procedures, and any additional cost information reasonably required by the Contracting Authority for the purpose of determining those costs with reasonable accuracy, provided that the Sub-Contractor shall not be required to create or maintain records of any additional information requested by the Contracting Authority in respect of costs incurred before the date of that request.
 - 2.5.2 if requested by the Contracting Authority, provide the Contracting Authority with a breakdown of the costs referred to in paragraph 2.5.1 in such form and detail as the Contracting Authority may reasonably require.
 - 2.5.3 provide the Contracting Authority with such access to its premises, records, plans and processes as the Contracting Authority may reasonably require for the purpose of determining the costs of the Contractor Deliverables, including the records maintained under paragraph 2.5.1.
 - 2.5.4 maintain and, if requested by the Contracting Authority, provide details of its plans for the performance of the Sub-Contract, including its proposed resources, personnel, sub-contracting arrangements and delivery approach. The Sub-Contractor shall, on request by the Contracting Authority, confirm or update those details where any change may significantly affect the costs of the Contractor Deliverables.

CONTRACT SCHEDULE 8: CONTRACT CHANGE CONTROL PROCEDURE**1 Contracting Authority Changes**

- 1.1 The Contracting Authority shall be entitled to propose any change to the Contract (a "Change") in accordance with this Contract Schedule 8.
- 1.2 Nothing in this Contract Schedule 8 shall prevent the Contracting Authority from including more than one Change in a single proposal, provided the Changes relate to the same or similar matters.

2 Notice of Change

- 2.1 If the Contracting Authority wishes to propose a Change, it shall notify the Contractor by issuing a Contracting Authority Notice of Change, setting out the proposed Change in sufficient detail to enable the Contractor to prepare a Contractor Change Proposal in accordance with paragraphs 3.1 to 3.4.
- 2.2 The Contractor may only refuse to implement a Change proposed by the Contracting Authority, if such Change would, if implemented:
 - 2.2.1 require the Contractor to deliver any Contractor Deliverables under the Contract in a manner that infringes any applicable Law;
 - 2.2.2 result in any consent obtained by or on behalf of the Contractor in connection with its obligations under the Contract being revoked, or require a new consent which the Contractor has been unable to obtain despite reasonable efforts and reasonably believes it cannot obtain; or
 - 2.2.3 materially change the nature, scope, or risk profile of the Contract; and:
 - 2.2.4 the Contractor notifies the Contracting Authority within 10 (ten) Business Days of the Contracting Authority Notice of Change (or such longer period agreed in writing by the Contracting Authority) that the proposed Change falls within paragraphs 2.2.1, 2.2.2, or 2.2.3 providing supporting evidence for its position; and
 - 2.2.5 following such notification:
 - (a) the Contracting Authority either confirms in writing that it agrees, or (if it reasonably disputes the Contractor's notice under paragraph 2.2.4) it is determined in accordance with clause 71 (Dispute Resolution), that the relevant Change falls within paragraphs 2.2.1, 2.2.2, or 2.2.3; and
 - (b) following such agreement or determination, the Contracting Authority fails, within 10 (ten) Business Days (or such longer period agreed in writing), to amend the Contracting Authority Notice of Change (and issue a revised notice) sufficiently to remove the Contractor's grounds for refusal.
- 2.3 The Contractor shall at all times act reasonably and shall not raise unreasonable objections in respect of any such adjustment.

3 Contractor Change Proposal

- 3.1 The Contractor shall submit a Contractor Change Proposal as soon as practicable and in any event within 15 (fifteen) Business Days (or such other period agreed in writing by the Parties, acting reasonably) after:
 - 3.1.1 receipt of the Contracting Authority Notice of Change; or
 - 3.1.2 where the Contractor has notified the Contracting Authority under paragraph 2.2 that the

relevant Change falls within paragraphs 2.2.1, 2.2.2, or 2.2.3:

- (a) receipt of a revised Contracting Authority Notice of Change following agreement or determination under clause 71 (Dispute Resolution) that paragraphs 2.2.1, 2.2.2, or 2.2.3 apply; or
- (b) a determination under clause 71 (Dispute Resolution) that paragraphs 2.2.1, 2.2.2, or 2.2.3 do not apply.

3.2 For the avoidance of doubt, the Contractor shall not be obliged to submit a Contractor Change Proposal where the Contractor notifies the Contracting Authority, and the Contracting Authority agrees or it is determined further to such notification in accordance with paragraph 2.2, that the relevant Change falls within the scope of paragraphs 2.2.1, 2.2.2, or 2.2.3.

3.3 The Contractor Change Proposal shall contain:

- 3.3.1 the impact on the Contractor's obligations under the Contract;
- 3.3.2 a detailed breakdown of any resulting costs;
- 3.3.3 the implementation programme;
- 3.3.4 any amendment required to this Contract, including the Contract Price (where appropriate); and
- 3.3.5 any other information reasonably required by the Contracting Authority.

3.4 The price for any Change shall be based on the agreed Contract prices (including rates) and shall include only charges properly attributable to the Change, without double recovery.

4 Contractor Change Proposal – Process and Implementation

4.1 As soon as practicable following receipt of a Contractor Change Proposal, the Contracting Authority shall evaluate the proposal and, where necessary, discuss any issues with the Contractor.

4.2 Following any such discussions, the Contracting Authority may amend the Contracting Authority Notice of Change. If the Contracting Authority makes any such amendment, the Contractor shall, as soon as practicable and in any event within 10 (ten) Business Days (or such other period agreed in writing by the Contracting Authority), submit an amended Contractor Change Proposal.

4.3 As soon as practicable after completing its evaluation, the Contracting Authority shall:

- 4.3.1 accept the Contractor Change Proposal and, in accordance with clause 13 (Amendments to the Contract), agree a written amendment to the Contract giving effect to the Change, following which the Contractor shall implement the Change; or
- 4.3.2 reject the Contractor Change Proposal and withdraw the Contracting Authority Notice of Change (which shall then have no further effect).

For the avoidance of doubt, where a Contractor Change Proposal relates to the Cyber Security Instructions and/or the Cyber Risk Profile under Contract Schedule 3 (Cyber Security), paragraph 4.3.2 shall not require the Contracting Authority to withdraw any Contracting Authority Notice of Change relating to such Cyber Security Instructions and/or Cyber Risk Profile.

4.4 The Contracting Authority is not required to give reasons for rejecting a Contractor Change Proposal.

4.5 The Contracting Authority shall not be liable for any work undertaken or costs incurred in connection with a Change unless a Contractor Change Proposal has been accepted under paragraph 4.3.1 and then only in accordance with that accepted proposal.

5 Contractor Changes

- 5.1 If the Contractor wishes to propose a Change, it shall submit a Contractor Change Proposal to the Contracting Authority, to be prepared, reviewed and otherwise dealt with in accordance with paragraphs 3.3 to 4.5.

CONTRACT SCHEDULE 9: CONTRACT SPECIFIC AMENDMENTS

[Note: This Contract Schedule 9 should only be included where Task-specific amendments to the Conditions of Contract are required.

Where applicable, the Buyer will complete this Contract Schedule and issue it with the relevant Tasking Form.

If no Task-specific amendments are required, this Contract Schedule should be omitted.

Note to Buyers: This Contract Schedule may only be used with prior approval from the Dstl R-Cloud Management Team. Please refer to the R-Cloud Buyers Guidance for further details.]