

# **R-CLOUD (VERSION 4)**

# **TERMS AND CONDITIONS**

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## R-CLOUD (VERSION 4) – TERMS AND CONDITIONS OF THE R-CLOUD AGREEMENT

### 1. THE APPOINTMENT

<b>Parties:</b>	means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, (referred to in this document as the " <b>Authority</b> "), acting as part of the Crown
	means the " <b>Supplier</b> ", as defined at Schedule 1.
<b>Appointment:</b>	Subject to the terms of this Agreement, the Authority appoints the Supplier, as a supplier of research and development services who can bid as part of a Tasking Procedure as outlined in Clause 3.
<b>Appointment begins at:</b>	The date on which the Supplier's Request to Participate is accepted by the Authority (the " <b>Appointment Date</b> ").
<b>Appointment expires at:</b>	Five (5) years after the Appointment Date unless the Agreement is otherwise decreased or extended in accordance with Clause 2.1 (the " <b>Expiry Date</b> ")

- 1.1 On 17th November 2020, the Authority placed a contract notice in Defence Contracts Online (DCO) (the "Contract Notice") seeking expressions of interest from bidders of research and development services as described at Annex A.
- 1.2 In response to the Contract Notice or associated listing, the Supplier submitted a Request to Participate.
- 1.3 As part of the Request to Participate, the Supplier was required to provide evidence to the Authority as to its suitability, economic and financial standing and technical and professional ability to participate in the Agreement.
- 1.4 Following evaluation of the Request to Participate in accordance with the evaluation criteria, the Supplier was admitted on to this Agreement to provide the Services to the Authority from time to time on a call off basis in accordance with this Agreement.
- 1.5 This Agreement sets out:
  - 1.5.1 how Contracts will be awarded for the provision of Services,
  - 1.5.2 the main terms and conditions for any Contract which the Authority may enter into, and
  - 1.5.3 the obligations of the Parties during and after the Term of this Agreement
- 1.6 The Parties agree there is no obligation for any the Authority to place any Contracts under this Agreement during the Term.
- 1.7 By electronically confirming acceptance of the terms of this Agreement within their Request to Participate, the Supplier agrees to comply with all the terms of this Agreement.
- 1.8 The Supplier acknowledges the receipt of the sum of £1 from the Authority, paid in consideration of the Supplier entering into this Agreement.

### INTERPRETATION

- 1.9 In this Agreement, unless otherwise provided or the context otherwise requires:
  - 1.9.1 capitalised expressions shall have the meanings set out in Schedule 1 (Definitions and Interpretation) and the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;

- 1.9.2 the singular includes the plural and vice versa;
- 1.9.3 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time and references to this Agreement are references to this Agreement as amended from time to time;
- 1.9.4 the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
- 1.9.5 references to Clauses and Schedules are references to the Clauses and Schedules of this Agreement and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear.

1.10 The Schedules and the Annexures form part of this Agreement.

## **2. AGREEMENT OVERVIEW AND AWARD PROCEDURE**

### **Term of the Agreement**

2.1 The Agreement shall take effect on the Appointment Date and shall expire at the Expiry Date unless:

- 2.1.1 it is terminated earlier in accordance with the terms of this Agreement or otherwise by the operation of Law; or
- 2.1.2 the Authority at its discretion elects to decrease or extend the Term.

Notice of any changes to the Term will be communicated to Suppliers via the R-Cloud Portal.

### **Scope of the Agreement**

2.2 This Agreement governs the relationship between the Authority and the Supplier in respect of the provision of the Services.

2.3 The Agreement allows the Authority to order the Services from the Supplier in accordance with the Tasking Procedure.

2.4 The Supplier acknowledges that there is no obligation whatsoever on the Authority to invite or select the Supplier to provide any Services and/or to purchase any Services under this Agreement.

2.5 No undertaking or any form of statement, promise, representation or obligation will be made or deemed to have been made by the Authority in respect of the total quantities or values of the Services to be ordered by them through this Agreement. The Supplier acknowledges and agrees that it has not entered into this Agreement on the basis of any such undertaking, statement, promise or representation and that no volume guarantee has been given by the Authority.

### **Suppliers Appointment**

2.6 The Authority hereby appoints the Supplier of the Services during the Term. This means the Supplier is eligible to be considered for the award of Contracts for the Services by the Authority during the Term.

2.7 Where the Supplier comprises more than one entity acting as a consortium, each entity that is a member of the consortium shall be jointly and severally liable for performance of the Supplier's obligations under this Agreement.

2.8 The Supplier shall not commence work under any Contract until authorised. The authorisation will be made to the Supplier via notification of an Authority purchase order number as notified within

the Acceptance Notice, which shall be shown on all correspondence relating to the resultant Contract.

#### **Non-Exclusivity**

2.9 The Supplier acknowledges that, in entering this Agreement, no form of exclusivity or volume guarantee has been granted by the Authority for Services from the Supplier and that the Authority is at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services.

### **3. HOW SERVICES WILL BE BOUGHT (TASKING PROCEDURE)**

#### **Overview**

3.1 The Tasking Procedure to let Contracts under this Agreement will follow either the:

- 3.1.1 Competitive Process; or
- 3.1.2 Direct Award Process.

3.2 The Authority reserves the right at its sole discretion to determine the process to be used in letting Contracts under this Agreement.

#### **3.3 Competitive Process**

- 3.3.1 The Authority shall invite all Suppliers who hold the skills and capabilities as set out in the R-Cloud Taxonomy (Annex 1) which are applicable and relevant to the specific Services for that particular Contract to participate in the competitive process.
- 3.3.2 The Authority shall send the Tasking Form to all R-Cloud Suppliers selected in accordance with Clause 3.3.1. The Tasking Form shall include project specific Information, such as (but not limited to):
  - a) The statement of requirements;
  - b) Any applicable instructions for the participation in the Competitive Process;
  - c) The evaluation methodology including the weightings which shall apply.
- 3.3.3 Suppliers' Responses to the Competitive Process will be scored by the Authority against the evaluation method and scoring system outlined in the Tasking Form.

#### **3.4 Direct Award Process**

- 3.4.1 The Authority may elect to invite a single supplier to submit a proposal in respect of a Tasking Procedure in the event that certain criteria are met. These may include (but are not limited to):
  - a) where competition is absent for technical reasons;
  - b) the protection of exclusive rights, including intellectual property rights;
  - c) urgency;
  - d) protection of security interests.

#### **The Authority reserves the right not to award**

- 3.5 A Tasking Procedure may be cancelled at any time. The Authority is not obliged to award any Contract.
- 3.6 At any time during the Tasking Procedure, the Authority may go back to any previous stage in the process and amend requirements.

3.7 The Supplier may ask clarification questions relating to the Authority's requirements during the Tasking Procedure. Any deadlines associated with clarification question submission for a Tasking Procedure will be detailed in the relevant Tasking Form. Clarification questions and associated answers will be anonymised and made available to all Suppliers invited to participate in the Tasking Procedure.

#### **Form of Contract**

3.8 All Contracts let with Suppliers pursuant to this Agreement shall be in the form as set-out in Schedule 3 (R-Cloud (Version 4) Conditions of Contract).

3.9 The Authority reserves the right, where it considers it to be necessary owing to the nature of the specific Services being let under that Contract to require additional or changes to the terms and conditions.

#### **4. SERVICES**

##### **Security**

4.1 The Supplier shall be required to have their own security operating procedures that shall be made available to the Authority to provide assurance of data security on request.

4.2 The Supplier shall ensure that the Authority's Information and data (electronic and physical) shall be collected, held and maintained in a secure and confidential manner. The Supplier shall ensure appropriate security standards, controls and measures in place.

4.3 The Supplier shall ensure that all Supplier Personnel involved in the performance of any individual Contracts awarded under this Agreement shall comply with all data security and confidentiality requirements.

4.4 The Supplier shall ensure that any suspected or actual security breaches are reported to the Authority immediately.

4.5 The Supplier shall ensure that Authority Information and data is secured in a manner that complies with the Government Security Classification Policy rating. The Supplier shall ensure that the Government Security Classification Policy rating is also applied when information and data is transmitted across all applicable networks and/or in line with the Authority's requirements.

4.6 For further information, the Government Security Classification 4014 may be accessed here: <https://www.gov.uk/government/publications/government-security-classifications>

##### **Vetting**

4.7 The Supplier shall, where applicable, comply with all vetting and security provisions in relation to the Supplier Personnel engaged in Contract related activity as required by the Authority.

##### **Social Value**

4.8 The Supplier shall identify options for Social Value that are appropriate to the Authority during the Tasking Procedure. Any Social Value options selected by the Authority shall be in accordance with the Authority's Social Values that are current at that point in time.

#### **5. THE SUPPLIER'S OBLIGATIONS UNDER THE AGREEMENT**

##### **Warranties, Representations and Undertakings**

5.1 The Supplier warrants, represents and undertakes to the Authority all of the following:

- 5.1.1 it is validly incorporated and organised, and operates in accordance with the Laws of its place of incorporation;
- 5.1.2 it has full capacity, authority and all necessary consents to enter into and to perform its obligations under this Agreement and each Contract;
- 5.1.3 this Agreement has been electronically authorised by a duly authorised representative of the Supplier;
- 5.1.4 in entering into this Agreement and any Contract it has not committed or agreed to commit any Fraud or Prohibited Act;
- 5.1.5 all information, statements, warranties and representations contained in the Request to Participate and any other document which resulted in the Supplier being 'appointed' on to the Agreement are true, accurate, and not misleading;
- 5.1.6 to the best of its knowledge, it is not facing any claim or going through any litigation, arbitration or administrative proceeding which will or might affect its ability to perform its obligations under this Agreement and/or any Contract;
- 5.1.7 it is not subject to any contractual obligation or Law which is likely to have an adverse effect on its ability to perform its obligations under this Agreement and/or any Contract;
- 5.1.8 it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non-Compliance;
- 5.1.9 it is not affected by an Insolvency Event and no insolvency proceedings or other steps have been taken or to the best of its knowledge, are threatened
- 5.1.10 in the three (3) years prior to the Appointment Date (or, if the Supplier has been in existence for less than three (3) years, the whole of its existence) it has:
  - a) conducted all financial accounting and reporting activities in compliance with the generally accepted accounting principles that apply to it in any country where it files accounts; and
  - b) not performed any act or made any omission with respect to its financial accounting or reporting which could have an adverse effect on the Supplier's ability to fulfil its obligations under this Agreement or any Contract.

5.2 The Supplier shall promptly notify the Authority in writing:

- 5.2.1 of any material detrimental change in the financial standing and/or credit rating of the Supplier
- 5.2.2 if the Supplier undergoes a Change of Control, and
- 5.2.3 provided this does not contravene any Law, of any circumstances suggesting that a Change of Control is planned.

5.3 The Supplier is understood to repeat these warranties, representations and undertakings each time it enters into a Contract.

5.4 If at any time a Party becomes aware that a representation or warranty a Supplier has given under 5.1 has been breached, is untrue or is misleading, it shall immediately notify the other Party, and provide sufficient detail to enable the other Party to make an accurate assessment of the situation.

5.5 The fact that any provision within this Agreement is expressed as a warranty does not preclude the Authority's right of termination if the Supplier breaches that provision.

5.6 The Supplier acknowledges and agrees that the warranties, representations and undertakings contained in this Agreement are material, and the Authority has relied on those warranties,

representations and undertakings when entering into this Agreement and each time it enters into a Contract.

### **Corrupt Gifts and Payment of Commission**

5.7 The Supplier shall not and warrants that in entering this Agreement it has not done any of the following (hereafter referred to as 'prohibited acts'):

- 5.7.1 offer, promise or give to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;
  - a) 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
  - b) for showing or not showing favour or disfavour to any person in relation to this or any other contract with the Crown.
- 5.7.2 enter into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.

5.8 If the Supplier, its employees, agents or any Sub-Contractor (or anyone acting on its behalf or any of its or their employees) does any of the prohibited acts or commits any offence under the Bribery Act 2010 with or without the knowledge or authority of the Supplier in relation to this Agreement or any other contract with the Crown, the Authority shall be entitled:

- 5.8.1 to terminate this Agreement and recover from the Supplier the amount of any loss resulting from the termination;
- 5.8.2 to recover from the Supplier the amount or value of any such gift, consideration or commission; and
- 5.8.3 to recover from the Supplier any other loss sustained in consequence of any breach of this Clause, where this Agreement has not been terminated.

5.9 In exercising its rights or remedies under this Clause, the Authority shall:

- 5.9.1 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;
- 5.9.2 give all due consideration, where appropriate, to action other than termination of this Agreement, including (without being limited to):
  - a) requiring the Supplier to procure the termination of a 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 its or their behalf;
  - b) requiring the Supplier to procure the dismissal of an employee (whether its own or that of a Sub-Contractor or anyone acting on its behalf) where the prohibited act or committing of any offence under the Bribery Act 2010 is that of such employee.

5.10 Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against the Supplier pursuant to this Clause.

### **Supplier Conflicts of Interest**

5.11 The Supplier shall not be in a position where there is a conflict, or a potential conflict, between its interests (or the interests of any affiliated company) and the duties owed to the Authority under this Agreement or any Contract. Any breach of this Clause will be deemed to be a material Default.

- 5.12 A conflict of interest may occur where the Supplier or an affiliated company is bidding, or intends to bid, for the opportunity to deliver Services where the Supplier or an affiliated company has had involvement in the same or other related project that may give them an advantage. As soon as the Supplier recognises there is a risk of conflict, the Supplier shall:
  - 5.12.1 establish the necessary ethical wall arrangement(s) to eliminate it
  - 5.12.2 inform the Authority of the risk of conflict, and the arrangements the Supplier has made to eliminate it.
- 5.13 If a Supplier does not take these steps, the Authority can immediately terminate this Agreement, or instruct the Supplier to take such other steps as the Authority deems necessary. Such action by the Authority does not prejudice or affect any right of action or remedy which has accrued, or accrues thereafter.

### **Management Information**

- 5.14 Subject to reasonable notice, for the purposes of monitoring performance of the Agreement, participation in any Tasking Procedure, and any Contract placed, the Supplier shall provide the Authority with any Management Information as may be reasonably required.
- 5.15 The Supplier is responsible for monitoring and maintaining the supply chain and for keeping a record of the Contracts which have been placed with both themselves and through Sub-Contractors. The Supplier shall keep a record of Contract values and who each Contract and Sub-Contract was placed with in a spreadsheet which is to be submitted to the R-Cloud Commercial Manager on request and on conclusion of the Agreement.
- 5.16 Throughout the duration of the Agreement there may be some specific Management Information (MI) requirements regarding Tasks and/or Contracts. There may also be ad hoc MI requirements throughout the duration of the Agreement.
- 5.17 MI will be provided by the Supplier with no charge to the Authority.

### **Performance**

- 5.18 The Supplier shall perform all its obligations under this Agreement and all Contracts entered into:
  - 5.18.1 in accordance with the requirements of this Agreement
  - 5.18.2 in accordance with the terms and conditions of the respective Contracts
  - 5.18.3 in accordance with Good Industry Practice
  - 5.18.4 with appropriately experienced, qualified and trained personnel with all due skill, care and diligence
  - 5.18.5 in compliance with all applicable Laws, and
  - 5.18.6 in compliance with all licences and authorisations.
- 5.19 If the Supplier identifies any conflict between any of the requirements above, it must inform the Authority. The Supplier shall then comply with the Authority's decision on the resolution of that conflict.
- 5.20 The Authority will monitor the participation of the Supplier in its research programmes using information relating to participation in Tasking Procedures, Responses provided and Contracts placed. If the Supplier has not actively participated in a Tasking Procedure, having been invited to respond, then the Authority reserves the right to terminate this Agreement in accordance with Clause 9.2.

5.21 The Authority employs a supplier rating system, through the completion of surveys within its electronic ordering system. Responses to these surveys may be considered when assessing the Supplier's performance against time, quality and cost.

#### **Change of Control**

5.22 The Supplier shall notify the Authority, as soon as practicable, in writing of any material change in Control of the Supplier. Notification must be sent:

- 5.22.1 in respect of the Agreement in accordance with Clause 13.9
- 5.22.2 in respect of any Contract in accordance with the terms of that Contract

5.23 The Supplier shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Supplier in the UK or other jurisdictions where the Supplier may be subject to legal sanction arising from issue of such notice.

#### **Non-Discrimination**

5.24 When performing its obligations under this Agreement and any Contract, the Supplier shall not unlawfully discriminate either directly or indirectly on grounds of race, gender, religion or religious belief, colour, ethnic or national origin, disability, sexual orientation, age or otherwise. The Supplier is responsible for ensuring that Supplier Personnel adhere to this rule.

### **6. RECORD KEEPING, CONFIDENTIALITY AND TRANSPARENCY**

#### **Record Keeping**

6.1 The Supplier shall maintain such records as may reasonably be required to comply with Clauses 5.1 – 5.24 and make them available to the Authority as the Authority may require upon reasonable notice. Subject to the provisions of Clause 6.2 – 6.8, the Supplier shall permit all such records to be examined, and if necessary copied, by or on behalf of the Authority.

#### **Confidentiality and Disclosure of Information**

6.2 The provisions of this Clause apply to:

- 6.2.1 this Agreement (including Tasking Forms, Responses and Contracts issued under Clause 3);
- 6.2.2 any Information disclosed by either Party prior to the issue of a Tasking Form and in contemplation of required Services being placed by the Authority under a Contract; and
- 6.2.3 any Contract placed under this Agreement, provided that Information provided to a Party for the purpose of responding under a Tasking Procedure shall only be used for that purpose in accordance with Clause 3, and Information provided to a Party for delivering the Service placed on it under this Agreement shall only be used for the performance of that Contract.

6.3 Nothing in this Clause shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence. The provisions of this Clause shall survive the expiration or termination of the Agreement or any Contract or the decision not to proceed with the issue of a Contract.

6.4 Subject to Clauses 6.7 and 6.8 each Party:

- 6.4.1 shall treat in confidence all Information it receives from the other;

- 6.4.2 shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Supplier may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Agreement or any Contract;
- 6.4.3 shall not use any of that Information otherwise than for the purpose of the Agreement or any Contract; and
- 6.4.4 shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Agreement or any Contract.

6.5 The Supplier shall take all reasonable precautions necessary to ensure that all Information disclosed to the Supplier by or on behalf of the Authority under or in connection with the Agreement or any Contract:

- 6.5.1 is disclosed to its employees and Sub-Contractors only to the extent necessary for the performance of the Agreement or any Contract; and
- 6.5.2 is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing work or having work performed for the Authority under the Contract or any Sub-Contract under it.

6.6 The Supplier shall ensure that its employees are aware of its arrangements for discharging the obligations at Clauses 6.4 and 6.5 before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.

6.7 Clauses 6.4 and 6.5 shall not apply to any Information to the extent that either Party:

- 6.7.1 exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Agreement or any Contract;
- 6.7.2 has the right to use or disclose the Information in accordance with other conditions of the Agreement or any Contract; or
- 6.7.3 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 Agreement or any 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 it receiving it under or in connection with the Agreement or any Contract;
  - c) that the Information was received without restriction on further disclosure from a third Party who lawfully acquired it and who is himself under no obligation restricting its disclosure; or
  - d) from its records that the same Information was derived independently of that received under or in connection with the Agreement or any Contract;
- 6.7.4 provided the relationship to any other Information is not revealed.

6.8 Neither Party shall be in breach of Clauses 6.2 – 6.8 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 these Clauses 6.2 – 6.8.

### **Controlled Information**

6.9 Clauses 6.9 – 6.12 shall apply in addition to any other confidentiality provisions in the Agreement or under any Contract.

For the purposes of Clauses 6.9 – 6.12, 'Controlled Information' shall mean any information in any written or tangible form which is disclosed to the Supplier by or on behalf of the Authority under or in connection with the Agreement or under any Contract, and which is identified by the legend 'Controlled Information' or other approved legend notified to the Supplier. Controlled Information shall exclude information provided by oral communication.

For the purpose of Clauses 6.9 – 6.12, reference to the Agreement shall also be taken to include any Contract(s) awarded under R-Cloud in accordance with the terms of this Agreement.

6.10 The Supplier shall:

- 6.10.1 hold the Controlled Information and not use it other than for the purpose of discharging its' obligations under the Agreement;
- 6.10.2 not copy the Controlled Information except as strictly necessary for the purpose of discharging its' obligations under the Agreement, and only with the prior written authorisation of the Authority (which shall not be unreasonably withheld);
- 6.10.3 not disclose the Controlled Information to any third party unless authorised in writing beforehand by the Authority;
- 6.10.4 protect the Controlled Information diligently against unauthorised access and against loss;
- 6.10.5 act diligently to ensure that:
  - a) Controlled Information is disclosed to its' employees only to the extent necessary for the purpose of discharging its' obligations under the Agreement;
  - b) employees to whom Controlled Information is disclosed are made aware of and required to comply with the terms of this Clause.

6.11 Where Controlled Information is provided to the Supplier, it shall;

- 6.11.1 compile a register of that Controlled Information, which shall include explicit description of the Controlled Information, a record of the number of copies made and a record of all access to the Controlled Information including access to any copies of the Controlled Information.
- 6.11.2 maintain this register for the duration of the Agreement and for two (2) years following completion of the Agreement;
- 6.11.3 make a register of access available to the Authority upon reasonable notice for inspection and audit for so long as it is required to be maintained under this Clause; and,
- 6.11.4 at the completion of the Agreement, return to the Authority all original and duplicate copies of the Controlled Information, or else at the Authority's option destroy these copies and provide a certificate of destruction to the Authority.

6.12 This Clause shall not diminish or extinguish any right of the Supplier to copy, use or disclose any other Information to the extent that it can show:

- 6.12.1 that the Information concerned was or has become published or publicly available for use without breach of any provision of the Contract and this Agreement or any other agreement between the Parties;
- 6.12.2 that the Information was already known to it (without restrictions on disclosure or use) prior to receiving it under or in connection with the Agreement;

6.12.3 that the Information concerned was lawfully provided by a third party without restriction on use or further disclosure, or

6.12.4 from its records, that the Information was derived independently of the Controlled Information;

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

### Transparency

6.13 For the purpose of Clauses 6.13 - 6.16 the expressions:

“Transparency Information” shall mean the content of this Agreement and any Contract in its entirety, including from time to time agreed changes to the Agreement and any Contract, and details of any payments made by the Authority to the Supplier under the Agreement and any Contract;

“Supplier Commercially Sensitive Information” shall mean any Information notified by the Supplier to the Authority in writing and which is acknowledged by the Authority as being commercially sensitive Information.

6.14 Notwithstanding any other term of this Agreement, the Supplier understands that the Authority may publish the Transparency Information to the general public. The Supplier shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.

6.15 Before publishing the Transparency Information to the general public in accordance with clause 6.14, the Authority shall redact any Information that would be exempt from disclosure if it was the subject of a request for Information under the Freedom of Information Act 2000 (“the Act”) or the Environmental Information Regulations 2004 (“the Regulations”), including the Supplier Commercially Sensitive Information.

6.16 The Authority may consult with the Supplier before redacting any information from the Transparency Information in accordance with Clause 6.15 above. The Supplier acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact Information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations. For the avoidance of doubt, nothing in this Clause 6 shall affect the Supplier’s rights at law.

### Official Secrets Act

6.17 The Supplier shall comply with, and ensure Supplier Personnel comply with the Official Secrets Acts 1911 to 1989 and Section 182 of the Finance Act 1989.

### Protection of Personal Data (Where Personal Data is Being Processed on Behalf of the Authority)

Clauses 6.18 – 6.33 shall apply to this Agreement and any Contract.

### **Definitions**

6.18 In these Clauses 6.18 to 6.33 and Schedule 5: Data Protection Particulars only, the following words and expressions shall have the meanings given to them, except where the context requires a different meaning:

- a) **“Supplier Personnel”** means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of its obligations under the Agreement or any Contract;
- b) **“Data Loss Event”** means any event that results in unauthorised access to Personal Data held by the Supplier under this Agreement or any Contract, and/or actual loss and/or destruction of

Personal Data in breach of the Agreement or any Contract, including any Personal Data Breach;

- c) **“Data protection legislation”** means all applicable data protection and privacy legislation in force from time to time in the UK, including but not limited to:
  - (i) the General Data Protection Regulation ((EU) 2016/679) as retained in UK law by the EU (Withdrawal) Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 (the "UK General Data Protection Regulation" or "UK GDPR");
  - (ii) the Data Protection Act 2018;
  - (iii) the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and
  - (iv) all applicable legislation and regulatory requirements in force from time to time which apply to a party relating to the processing of personal data and privacy and the guidance and codes of practice issued by the Information Commissioner's Office which apply to a party;
- d) **“Data Protection Impact Assessment”** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
- e) **“Data Subject Access 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;
- f) **“DPA 2018”** means the Data Protection Act 2018;
- g) **“Law”** means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;
- h) **“LED”** means the Law Enforcement Directive (Directive (EU) 2016/680);
- i) **“Protective Measures”** means appropriate technical and organisational measures which includes:
  - (i) pseudonymising and encrypting Personal Data; ensuring confidentiality, integrity, availability and resilience of systems and services;
  - (ii) ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and
  - (iii) regularly assessing and evaluating the effectiveness of such measures adopted by it;
- j) **“Sub-processor”** means any third party appointed to process Personal Data on behalf of the Supplier related to the Agreement or any Contract;
- k) The following expressions shall have the same meanings as in Article 4 of the UK GDPR:
  - (i) Controller;
  - (ii) Processor;
  - (iii) Data Subject;
  - (iv) Personal Data and Special Categories;
  - (v) Personal Data Breach; and

(vi) Data Protection Officer.

### Data Protection

6.19 In connection with the Personal Data received under the Agreement or any Contract, each Party undertakes to comply with its obligations under Data Protection Legislation and in particular, but without limitation, each Party shall take appropriate technical and organisational measures against unauthorised or unlawful Processing of Personal Data provided to it by the other Party, and against accidental loss, alteration, unauthorised disclosure or destruction of or damage to that Personal Data.

6.20 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed by the Authority in Schedule 5 – Personal Data Particulars or as otherwise detailed in any Contract and may not be determined by the Supplier. The completed Schedule 5 – Personal Data Particulars shall form part of the Agreement or any Contract.

6.21 The Supplier shall notify the Authority without undue delay if it considers that any of the Authority's instructions infringe the Data Protection Legislation. The Authority will not consider such notification to constitute formal legal advice.

6.22 The Supplier shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:

- a) a systematic description of the envisaged processing operations and the purpose of the processing;
- b) an assessment of the necessity and proportionality of the processing operations in relation to the services provided under the Agreement or any Contract;
- c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

6.23 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under the Agreement or any Contract:

- a) process that Personal Data only in accordance with Schedule 5 – Personal Data Particulars or as otherwise stated in any Contract, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
- b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- c) ensure that:
  - (i) the Supplier Personnel do not process Personal Data except in accordance with the Agreement or any Contract (and in particular Schedule 5 – Personal Data Particulars);
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:

- (a) have the necessary probity by undertaking the Government's Baseline Personnel Security Standard or other standard as specified in the Agreement or any Contract;
- (b) are aware of and comply with the Supplier's duties under this Clause;
- (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by the Agreement or any Contract; and
- (d) have undergone adequate training in the use, care, protection and handling of Personal Data; and

d) not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

- (i) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or LED Article 37) as determined by the Authority;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
- (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data; and

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

6.24 Subject to Clause 6.23, the Supplier shall notify the Authority without undue delay if, in connection with Personal Data processed under the Agreement or any Contract, it:

- a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- b) receives a request to rectify, block or erase any Personal Data;
- c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- d) receives any communication from the Information Commissioner or any other regulatory authority;
- e) 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
- f) becomes aware of a Data Loss Event.

6.25 The Supplier's obligation to notify under Clause 6.24 shall include the provision of further information to the Authority in phases, as details become available.

6.26 Taking into account the nature of the processing, the Supplier shall provide the Authority with assistance, insofar as possible, in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 6.24 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

- a) the Authority with full details and copies of the complaint, communication or request;

- b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
- d) assistance as requested by the Authority following any Data Loss Event;
- e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office. The Supplier shall maintain complete and accurate records and information as necessary to fulfil its obligations under this Clause 6.26.

6.27 The Supplier shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor as required to demonstrate the Authority's compliance with its obligations as a Controller. Such audits will be conducted in accordance with general audit conditions contained in the Agreement or any Contract.

6.28 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.

6.29 Before allowing any Sub-processor to process any Personal Data related to the Agreement or any Contract, the Supplier must:

- a) notify the Authority in writing of the intended Sub-processor and processing;
- b) obtain the written consent of the Authority;
- c) enter into a written contract with the Sub-processor which give effect to the terms set out in this Clause such that they apply to the Sub-processor; and
- d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

6.30 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.

6.31 The Authority may, at any time on not less than 30 working days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Agreement or any Contract).

6.32 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 working days' notice to the Supplier amend the Agreement or any Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

6.33 Any amendments resulting from Clause 6.31 and/or 6.32 shall be conducted in accordance with any change control procedure as set out in the Agreement or any Contract.

### Freedom of Information

6.34 The Supplier acknowledges that the Authority is subject to the requirements of the Freedom of Information Act (FOIA) and the Environmental Information Regulations (EIRs). The Supplier shall:

- a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
- b) transfer to the Authority all requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Business Days of receipt;
- c) provide the Authority with a copy of all Information belonging to the Authority requested in the request for information which is in its possession or control in the form that the Authority requires within five (5) Business Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and

- d) not respond directly to a request for Information unless authorised in writing to do so by the Authority.

6.35 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

### **Cyber Essentials Scheme**

6.36 The Supplier shall comply with the Authority's requirements on cyber security as applicable to this Agreement and any Contract, including providing the Authority with a valid Cyber Essentials Scheme Basic Certificate, where this is required as a condition for the award of any Contract(s) under this Agreement.

6.37 Where the Supplier continues to process Cyber Essentials Scheme Data during the Term or the contract period of any Contract the Supplier shall deliver to the Authority evidence of renewal of a valid Cyber Essentials Scheme Basic Certificate on each anniversary of the first applicable certificate obtained by the Supplier under Clause 6.36.

6.38 In the event that the Supplier fails to comply with Clauses 6.36 or 6.37 or, in respect of any Contract, the provisions of Schedule S3-3, the Authority reserves the right to terminate this Agreement.

## **7. INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY**

### **Intellectual Property Rights (IPR)**

7.1 Unless otherwise indicated in the Tasking Form, the IPR terms in Annex S3-A (Schedule 3) shall apply, and IPR generated in performance of work under a Contract shall be vested in the Supplier. Where Annex S3-A applies, and the Tasking Form indicates specific rights requirements in relation to one or more Technical Deliverables, then Annex S3-A clauses 1.2.1 and 12(g) shall determine whether the Authority has the right to publish the Technical Deliverable.

Where the Tasking Form indicates that Annex S3-B (Schedule 3) applies regarding IPR, for one, more, or all Deliverables (or indicates a requirement of IPR to vest in the Authority), then Annex S3-B shall apply for those Deliverables instead of Annex S3-A, and the Results shall be vested in, and be the property of, the Authority.

### **Third Party Intellectual Property – Rights and Restrictions**

7.2 The Supplier shall promptly notify the Authority as soon as it becomes aware of:

- a) 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 a Contract or to use by the Authority of anything required to be done or delivered under a Contract;
- b) any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including Technical Information) required for the purposes of a Contract or subsequent use by the Authority of anything delivered under a Contract and, where appropriate, the notification shall include such information as is required by Section 2 of the Defence Contracts Act 1958; and/or

- c) any allegation of infringement of IPR made against the Supplier and which pertains to the performance of a Contract or subsequent use by the Authority of anything required to be done or delivered under the Contract.

7.3 Clause 7.2 does not apply in respect of Deliverables normally available from the Supplier as a commercial off the shelf ("COTS") item or service.

7.4 If the Information required under Clause 7.2 has been notified previously, the Supplier may meet its obligations by giving details of the previous notification.

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

7.5 In the event an allegation is made (to the Authority or Supplier, or otherwise) that the manufacture or provision under the Contract of Deliverables normally available from the Supplier as a COTS item or service is an infringement of a United Kingdom patent or registered design not owned or controlled by the Supplier or the Authority, the Supplier shall, subject to the agreement of the third party owning such patent or registered design, be given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The Supplier shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation.

7.6 Clause 7.5 shall not apply if:

- a) the Authority has made or makes an admission of any sort relevant to such allegation;
- b) the Authority has entered or enters into any discussions on such allegation with any third party without the prior written agreement of the Supplier;
- c) the 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;
- d) legal proceedings have been commenced against the Authority or the Supplier in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.

7.7 The indemnity in Clause 7.5 does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.

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

#### **Patents and Registered Designs in the UK - All Other Articles or Services**

7.9 For all Deliverables patents and registered designs in the UK, other than those covered by Clauses 7.5 to 7.8 above, if a relevant invention or design has been notified to the Authority by the Supplier prior to the Effective Date of a Contract, then (unless it has been otherwise agreed) under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Supplier is hereby 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.

7.10 If, under Clause 7.2, a relevant invention or design is notified to the Authority by the Supplier after the Effective Date of a Contract, then:

- a) if the owner (or his exclusive licensee) takes or threatens in writing to take any relevant action against the Supplier, the Authority shall issue to the Supplier 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

- b) in any event, unless the Supplier and the Authority can agree an alternative course of action, the 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.

#### **Patents, Utility Models and Registered Designs Outside the UK**

- 7.11 The Authority shall assume all liability and shall indemnify the Supplier, its officers, agents and employees against liability, including the Supplier's costs, as a result of infringement by the Supplier 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 Supplier following any specification, statement of requirement or instruction in a Contract or using, keeping or disposing of any item given by the Authority for the purpose of a Contract in accordance with a Contract.
- 7.12 The Supplier shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of infringement by the Supplier 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 otherwise than by reason of the Supplier following any specification, statement of requirement or instruction in a Contract or using, keeping or disposing of any item given by the Authority for the purpose of a Contract in accordance with the Contract.

#### **Royalties and Other Licence Fees**

- 7.13 The Supplier shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under a Contract, where:
  - a) 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
  - b) any obligation to make payments for intellectual property has not been promptly notified to the Authority under Clause 7.2.
- 7.14 Where authorisation is given by the Authority under Clause 7.8, 7.11 or 7.12, 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 Supplier shall also be:
  - a) released from payment whether by way of royalties, licence fees or similar expenses in respect of the Supplier's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing a Contract, and
  - b) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.

#### **Copyright, Design Rights etc.**

- 7.15 The Supplier shall assume all liability and indemnify the Authority and its officers, agents and employees against liability, including costs as a result of:
  - a) infringement or alleged infringement by the Supplier 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 a Contract or otherwise in the performance of a Contract;

- b) misuse of any confidential information, trade secret or the like by the Supplier in performing a Contract; and/or
- c) provision to the Authority of any information or material which the Supplier does not have the right to provide for the purpose of a Contract.

7.16 The Authority shall assume all liability and indemnify the Supplier, its officers, agents and employees against liability, including costs as a result of:

- a) infringement or alleged infringement by the Supplier 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 Authority for the purpose of a Contract but only to the extent that the item is used for the purpose of a Contract; and/or
- b) alleged misuse of any confidential information, trade secret or the like by the Supplier as a result of use of information provided by the Authority for the purposes of the Contract, but only to the extent that Supplier's use of that information is for the purposes intended when it was disclosed by the Authority.

#### **Authorisation and Indemnity - General**

7.17 Clauses 7.2 – 7.16 represent the total liability of each Party to the other under any Contract in respect of any infringement or alleged infringement of patent or other Intellectual Property Rights (IPR) owned by a third party.

7.18 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.

7.19 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 Agreement 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.

7.20 Subject to the provisions of Clause 7.5, 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.

7.21 Following a notification under Clause 7.19, 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.

7.22 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.

7.23 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 Supplier Deliverable by the Supplier to the Authority, the Supplier 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.

7.24 The Supplier shall secure from any Sub-Contractor the prompt notification to the Authority of the information required by Clause 7.2. On receipt of any such notification, the Authority will issue a written authorisation to the Sub-Contractor in accordance with Clause 7.10. Any such authorisation will be subject always to Clauses 7.13, 7.14 and 17.17 as though the Sub-Contractor was the

Supplier. If any claim or action relevant to such authorisation arises, it shall be promptly notified to the Authority. The Supplier is not authorised to enter into any substantive correspondence in such matter nor in any way to act on behalf of the Authority in such claim or action. Any arrangement between the Supplier and Sub-Contractor to enable the Supplier to underwrite its indemnities to the Authority under this Clause is a matter between the Supplier and the Sub-Contractor.

7.25 Nothing in Clause 7.2 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

## 8. PRICING AND PAYMENT

### Pricing

The pricing of any Response submitted by the Supplier pursuant to any Tasking Procedure shall be in accordance with the provisions of this Clause 8.

8.1 The Supplier shall submit pricing within their Response in the format set out in the Tasking Form. A breakdown of costs must be submitted for provision of the Services, which details the rates applicable for each role in Schedule 2 (Pricing Matrix) that is relevant to the Tasking Procedure (and any resultant Contract). The Supplier shall identify individually the costs for materials, travel, subsistence and any other costs.

### Pricing – Competitive Procedure

8.2 The Supplier is free to submit a Firm Price based on rates of its choosing save always that those rates must not exceed those in the pricing matrix agreed as part of this Agreement. Where the Authority determines that pricing on a Firm Price basis is not appropriate it may require:

- the Supplier to propose an ascertained cost, with a Maximum Price Payable, using the Firm Price Hourly Rates contained in the pricing matrix; or
- the Authority may require the use of a Maximum Price Target Cost [MPTC] pricing mechanism.

8.3 In the event that a Contract is agreed on an ascertained cost basis, pursuant to Clause 8.2(a), the Authority reserves the right to subsequently require the Supplier to provide a Firm Price at a determined point which when agreed with the Supplier will apply for the remainder of the Contract.

### Pricing - Direct Award Process

8.4 The Supplier's Firm Price Hourly Rates as set out in the pricing matrix shall apply to any Contract awarded using the Direct Award Process for the duration of the Term. Where the Authority determines that pricing on a Firm Price basis is not appropriate, it may require:

- the Supplier to propose an ascertained cost, with a Maximum Price Payable, using the Firm Price Hourly Rates contained in the pricing matrix; or
- the Authority may require the use of a Maximum Price Target Cost [MPTC] pricing mechanism, using the Firm Price Hourly Rates contained in the pricing matrix.

8.5 The Supplier's Firm Price Hourly Rates as set out in the pricing matrix shall apply to any Contract awarded using the Direct Award Process for the duration of the Term, unless the Authority specifically requires the use of a Maximum Price Target Cost [MPTC] pricing mechanism.

8.6 At the time of responding to a Tasking Procedure under the Direct Award Process, the Supplier can offer, or the Authority can request an offer with, lower Firm Price Hourly Rates than those detailed in the pricing matrix and (subject to mutual agreement) these rates can be utilised in any resulting Contract.

**Pricing On Ascertained Costs (Competitive and Direct Award Process)**

8.7 The ascertained costs (Maximum Price Payable) shall be agreed prior to commencement of the Contract. A cost breakdown of the Maximum Price Payable shall be submitted by the Supplier and shall be exclusive of VAT.

8.8 The total amount to be paid by the Authority to the Supplier under the Contract shall not, without the Approval in writing of the Authority, exceed the Maximum Price Payable stated in the approved Contract.

8.9 Where Parties agree that the duration and value of the Contract warrants it, progress payments will be made monthly, based on the proportion of work undertaken less a 20% retention fee, which shall be held over and included in the final payment on submission of the required information set out in Clause 8.12 below. Any request for progress payments must be set out by the Supplier in the commercial response to the Response.

8.10 If at any time the Supplier considers that the Contract cannot be completed within the Maximum Price Payable agreed, it shall immediately inform the Authority and provide an explanation of the circumstances. The Supplier will under no circumstances undertake any work exceeding the Maximum Price Payable unless agreed otherwise with Authority.

8.11 Provided that it does not exceed the Maximum Price Payable, the final price payable to the Supplier for delivery of the Services shall comprise the following elements:

- a) the actual net invoiced cost of materials properly purchased and paid for by the Supplier for incorporation in the Articles;
- b) the actual net sums properly paid by the Supplier to its suppliers or Sub-Contractors for goods supplied or work done in connection with the Contract;
- c) the labour costs incurred in the execution of the work under the Contract, having included (where applicable and in accordance to the pricing matrix) the percentage discount and showing the hourly rate and hours utilized.
- d) a declaration of the profit generated as part of the final Contract price.

8.12 On completion of a Contract priced on the basis of ascertained costs the Supplier will provide to the Authority:

- a) a certified cost statement, showing the cost elements used to build the final Price;
- b) where requested, an explanation of the various rates used; and
- c) confirmation that the costs have been reasonably and properly incurred in accordance with the Contract.

8.13 A representative sample of cost statements may be subject to individual audit by the Authority.

8.14 The Authority shall pay to the Supplier the amount by which any sum payable on the basis of the prices finally fixed exceeds any sum paid on the basis of the provisional prices and the Supplier shall pay to the Authority the amount by which any sum paid on the basis of the provisional prices exceeds the sum payable on the basis of the prices finally fixed. In the event of any alteration of the provisional prices similar provisions for payment and repayment shall apply.

8.15 Claims for travel and subsistence included within the price for a Contract shall be submitted in accordance with the actual limits listed below which shall remain unchanged throughout the duration of the Agreement, unless the Authority agrees otherwise at the time of awarding a Contract. These limits are inclusive of VAT.

- a) The Supplier may claim up to a maximum of £100 per night for accommodation. The Supplier may claim up to a maximum of £6 for lunch and/or £20 for an evening meal. Any price in excess of these limits will require justification and Approval by the Authority.

- b) For any car journeys made in the performance of the Contract, the Supplier may claim 25 pence per mile. Claims including vehicle insurance are inadmissible. In exceptional circumstances and with the prior authorisation of the Authority, where it is deemed to be in the public interest, the Supplier may request reimbursement for short-term car hire to meet specifically the performance of the Contract.
- c) For air, sea and rail travel, if possible the Supplier shall use any benefits obtained as a direct consequence of the Supplier's performance under the Agreement (e.g. Air Miles) to offset the costs of further travel required in performance of Contract(s) placed under this Agreement.

### **Payment**

- 8.16 Save as may be agreed for a specific Contract, the Authority shall pay the Supplier for the Services in accordance with the terms of the relevant Contract after Acceptance (as defined in the Contract and/or Tasking Form) of all Deliverables required under that Contract.
- 8.18 The Authority enters into this Agreement and each Contract hereunder on the strict understanding that the Supplier shall be responsible for the payment of all taxes lawfully due from or collectable by the Supplier, including but not limited to its own National Insurance contributions, income taxes and VAT. The Supplier shall defend and indemnify the Authority for all and any claims which may be brought against the Authority as a result of the failure of the Supplier to pay such taxes.

### **Recovery of Sums Due**

- 8.19 Whenever under the Agreement or any Contract any sum of money, including all appropriate and relevant tax, shall be recoverable from or payable by the Supplier, the same may be deducted from any sum, then due, or which at any time thereafter may become due, to the Supplier under the Agreement or any Contract, or under any other contract with the Authority, or with any Government Department.

### **Value for money**

- 8.20 The Supplier acknowledges that the Authority wishes to ensure that the Services represent value for money to the taxpayer throughout the Term.

## **9. TERMINATION AND EXIT MANAGEMENT**

### **Termination on Supplier's Insolvency**

- 9.1 Without prejudice to any other rights or remedies of the Authority under this Agreement, the Authority shall have the right forthwith to terminate this Agreement or any Contract by written notice to the Supplier (or its trustee in bankruptcy or receiver or (if a company) liquidator or administrator) if the Supplier shall have a receiver appointed over all or a substantial part of its assets or (if an individual) be declared bankrupt or (if a company) shall go into liquidation or have an administrator appointed to manage its affairs.

### **Termination for Convenience**

- 9.2 The Authority shall have the right at any time and for any reason to terminate this Agreement in whole or in part by giving the Supplier written notice to expire at the end of twenty (20) Business Days.

### **Material Breach**

- 9.3 In addition to any other rights and remedies, the Authority shall have the right to terminate the Agreement or any Contract (in whole or in part) with immediate effect by giving written notice to the

Supplier where the Supplier is in material breach of its obligations under this Agreement or any Contract.

9.4 Where the Authority has terminated this Agreement under Clause 9.3 the Authority shall have the right to claim such damages as may have been sustained as a result of the Supplier's material breach of the Agreement or any Contract, including but not limited to any costs and expenses incurred by the Authority in:

- a) carrying out any work that may be required to make the Deliverables comply with the Contract; or
- b) obtaining the Deliverable in substitution from another supplier.

### **Continuing Obligations**

9.5 The provisions of these Clauses: 6 (Record Keeping, Confidentiality and Transparency); 7 (Intellectual Property, Data and Confidentiality); 8 (Pricing and Payment); 9 (Termination and Exit Management); 10 (Insurances and Guarantee); and 13 (Miscellaneous and Governing Law) shall survive the expiry or termination of the Agreement or any Contract.

## **10. INSURANCES AND GUARANTEE**

### **Insurance**

10.1 The Supplier shall maintain necessary insurance coverage, commensurate with the potential costs and losses to cover the indemnity liability under this Agreement and any Contract and shall at the request of the Authority produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereunder.

### **Guarantee**

10.2 The Authority may, at its absolute discretion, determine that a Contract requires protection in the form of guarantee. The Supplier shall obtain a guarantee in the form of a bond, parent company guarantee or letter of credit, if requested, before the Contract is formally accepted by the Authority.

## **11. AMENDMENTS TO THE AGREEMENT OR CONTRACT**

11.1 Only the Authority shall be authorised to vary the scope, terms and conditions of the Agreement or any Contract in any way, provided that the Authority shall be free to amend the format of the Tasking Form and/or the expression of interest form. Any such changes shall be formally notified to the Supplier and no change shall be effective until mutually agreed and issued as a formal amendment and accepted by the Supplier.

## **12. SUPPLIER PERSONNEL AND SUPPLY CHAIN**

### **Research Workers**

12.1 All Research Workers engaged in support of the Agreement or any Contract shall have appropriate qualifications and competence and be in all respects acceptable to the Authority. The Authority reserves the right to reject any proposed Research Worker(s) whom it considers unsuitable for any reason. The decision of the Authority shall be final and it shall not be obliged to provide any reasons.

12.2 The Authority shall approve Research Workers proposed by the Supplier to work directly on any Contract and the Supplier shall notify the Authority in writing prior to the relevant Supplier Personnel starting work on a Contract.

12.3 A form detailing the personal particulars for each Research Worker shall be completed and submitted by the Supplier for any Contract. The appropriate Authority administrative procedures

shall need to have been completed to the satisfaction of the Authority before any additional Supplier Personnel may start work on a Contract. For the avoidance of doubt, this requirement does not apply to any Supplier Personnel who have already received adequate security clearance from the Authority.

12.4 The Supplier (and any Sub-Contractor) shall take all reasonable steps to avoid changes in the Research Workers once accepted by the Authority for a Contract. Where such a change is necessary, the Supplier shall obtain the prior written consent of the Authority, which shall not be unreasonably withheld.

#### **Security Clearance**

12.5 Supplier's Personnel may be required to have or obtain the necessary security clearance deemed applicable by the Authority for access to material designated to any security classification above OFFICIAL. When a Tasking Form, with defined assets requiring security protection, is received by the Supplier, Supplier Personnel must have or be prepared to acquire the necessary clearance or they will be deemed to be unable to participate in the Tasking Procedure at that level and may not be awarded a Contract.

12.6 Prior to any Contract being placed all of the Supplier's Personnel engaged on the Authority's requirement may be required to complete and return a Personal Particulars – Research Workers Form; see also Clauses 12.1 – 12.4.

#### **Supplier's Personnel at Government Establishments**

12.7 The Supplier shall, except as otherwise provided for in the Agreement or any Contract, make good or, at the option of the Authority, pay compensation for all damage occurring to any Government property, which includes land or buildings, occasioned by the Supplier, or by any of the Supplier Personnel, arising from its or their presence on a Government Establishment in connection with the Agreement or any Contract, provided that this Clause shall not apply to the extent that the Supplier is able to show that any such damage was not caused or contributed to by any circumstances within its or their reasonable control.

#### **Sub-Contracting and Supply Chain**

12.8 The Supplier shall obtain the prior written consent of the Authority before entering into any Sub-Contracts in connection with the performance of a Contract. Entering into a Sub-Contract shall not relieve the Supplier of any of its obligations under the Contract.

12.9 The Authority's general policy is not to award Contracts under this Agreement where more than 50% of the Contract shall be sub-contracted out, measured as a % of the total offered Contract Price as stated in the Response to the Tasking Procedure. The Authority may at its discretion deviate from this policy under the following circumstances:

- The Authority indicates in the Tasking Form that it is willing to waive this restriction; or
- The Authority may at its sole discretion accept an innovative Response where a Supplier believes its Response is enhanced by sub-contracting in excess of this policy. The Supplier shall evidence this in its Response, as a minimum describing the added value provided by the Supplier as related to the work to be performed by the proposed Sub-Contractor(s) and identifying the costs associated with managing this. Along with any innovative Response the Supplier shall also submit a conventional Response adhering to the 50% Sub-Contract cap. For the avoidance of doubt Clause 12.9(b) shall not apply when the decision to derogate from the sub-contracting limit is made by the Authority in accordance with Clause 12.9(a).
- Also for the avoidance of doubt the purchase of materials, commercial off the shelf ("COTS") equipment or the hire of third party facilities shall not be included in the calculation of the 50%.

12.10 Where a Sub-Contract involves the design or development of defence equipment (including software), the Supplier shall ensure that the Sub-Contractor enters into a direct agreement with the Authority in the form set out in Design Rights and Patents Sub-Contractor's Agreement (Appendix to Annex S3-A).

12.11 Where the Contractor enters into a Sub-Contract a term shall be included in such Sub-Contract:

- providing that where the Sub-Contractor submits an invoice to the Supplier, the Supplier will consider and verify that invoice in a timely fashion;
- providing that the Supplier shall pay the Sub-Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Supplier has determined that the invoice is valid and undisputed;
- providing that where the Supplier fails to comply with paragraph a) above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of paragraph b) after a reasonable time has passed; and
- requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards, provisions having the same effect as Clauses a) to d) of this Clause 12.11.

12.12 The relationship of the Supplier (and any individual of the Supplier engaged to provide the Services ("an Individual")) to the Authority will be that of independent Supplier, and nothing in this Agreement shall render it (nor the Individual) an employee, worker, agent or partner of the Authority and the Supplier shall not hold itself out as such and shall procure that the Individual shall not hold himself out as such.

12.13 This Agreement and any Contract constitutes a contract for the provision of Services and not a contract of employment and accordingly the Supplier shall be fully responsible for and shall indemnify the Authority for and in respect of any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by any Individual against the Authority arising out of or in connection with the provision of the Services. The Authority may at its option satisfy such indemnity (in whole or in part) by way of deduction from payments due to the Supplier.

### Transfer

12.14 This Agreement is between the Authority and the Supplier only. The Supplier is not allowed to assign, novate or otherwise dispose of any rights and obligations under this Agreement without the prior Approval of the Authority.

## **13. MISCELLANEOUS AND GOVERNING LAW**

### Precedence of Documents

13.1 If there is any inconsistency between the terms and conditions of this Agreement and any Contract, the following descending order of precedence shall apply:

- the terms and conditions of this Agreement;
- the requirement and any additional terms, specified as part of the tasking process (including the Tasking Form), incorporated into the Contract;
- so that the provision in the higher ranked document, to the extent of the inconsistency, shall prevail.

13.2 For tasks in support of a United States Government DoD prime contract calling up Federal Acquisition Regulations (FARS) and Defense Federal Acquisition Regulations Supplements (DFARS), the following descending order of precedence shall apply:

- the FAR and DFAR clauses (see Schedule 4);

- b) the terms and conditions of this Agreement;
- c) the requirement and any additional terms specified as part of the tasking process (including the Tasking Form), incorporated into the Contract;

so that provision in the higher ranked document, to the extent of the inconsistency, shall prevail.

### **Waiver**

- 13.3 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.
- 13.4 No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

### **Rights of Third Parties**

- 13.5 Notwithstanding anything to the contrary elsewhere in the Agreement or any Contract, no right is granted to any person who is not a Party to the Agreement or any Contract to enforce any term of the Agreement or any Contract in his own right and the Parties to the Agreement or any Contract declare that they have no intention to grant any such right.

### **Notices**

- 13.6 Any notices given under or pursuant to the Agreement or any Contract shall be given in writing and shall be addressed to the appropriate department or officer and, where applicable, be marked in a prominent position with the relevant reference number such as a purchase order number.
- 13.7 Any notices given under or pursuant to the Agreement or any Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by electronic mail where such a means of communication has been agreed for the purposes of the Agreement or any Contract.
- 13.8 Any notices given under or pursuant to the Agreement or any Contract shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would be received by the addressee in normal business hours.
- 13.9 The following addresses are to be used for delivering Notices in relation to the Agreement:
 

The Defence Science and Technology Laboratory (Dstl)  
 FAO Commercial Services – R-Cloud Commercial Manager  
 Porton Down  
 Salisbury  
 Wiltshire  
 SP4 0JQ  
 dstlrccloud@dstl.gov.uk
- 13.10 Notices given or pursuant to any Contract shall be transmitted to the address of the Party detailed in the Contract (including the Tasking Form), or to such other address as the Party may by notice to the other have substituted therefor.

### **Dispute Resolution**

- 13.11 The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the Agreement or any 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.

- 13.12 In the event that the dispute or claim is not resolved pursuant to Clause 13.11 the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this Clause 13.12 shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.
- 13.13 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.

#### **Governing Law**

- 13.14 The Agreement and any Contract shall be considered as a contract made in England and subject to English Law. Both Parties irrevocably submit to the exclusive jurisdiction of the English courts.

#### **Severance**

- 13.15 If any provision of this Agreement or any Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions.

## ANNEX A: R-CLOUD TAXONOMY

This Annex contains an overview of the R-Cloud Taxonomy (the 'Taxonomy'); its scope and operation within the Agreement.

### Scope

The Taxonomy provides a broad overview of the scope of the technical requirements of the Agreement and Contracts to be placed under R-Cloud. It has been designed to focus on the S&T disciplines that underpin the much of the Authority's research and development activity, whilst also including capability areas of increased or growing priority.

The Taxonomy comprises 22 Strategic Science and Technology (S&T) Capabilities, which span the full range of the Authority's science and technology capabilities; beneath each Strategic Capability are Broad and Narrow Capabilities, which support these Strategic Capabilities.

The full taxonomy, including Statements of Requirement, detailing the scope of each Strategic Capability, is published in the R-Cloud Portal.

### Operation within R-Cloud

The Taxonomy serves various functions within R-Cloud including:

- Supplier Accounts – suppliers are required to indicate at the point of application to R-Cloud, which capabilities and skills are relevant to their organisation's proposed services. If approved to join R-Cloud, it is the responsibility of Suppliers to maintain their account and ensure that the registered capabilities and skills remain relevant to their services.
- Supplier Shortlisting to Tasking Procedures – the Authority may generate a shortlist of suppliers to be invited to participate in a Tasking Procedure using the Taxonomy. When creating a Tasking Procedure in the R-Cloud Portal, the Authority will select the capabilities and skills relevant to that procedure. The R-Cloud Portal will then generate a shortlist of Suppliers to be invited, based on this selection, by matching the capabilities and skills selected for to those registered with Suppliers.
- Management Information – the Authority may utilise data from R-Cloud, including that based on the Taxonomy (e.g. number of Suppliers registered against capabilities) as a source of Management Information.

### The R-Cloud Taxonomy

The Authority reserves the right to make changes to the R-Cloud Taxonomy during the term of the Agreement. Any changes will be communicated to Suppliers via the R-Cloud Portal.

The Authority reserves the right to require a Suppliers to provide evidence to demonstrate their capabilities against the Taxonomy and, at its sole discretion, to amend or suspend Suppliers accounts in whole or in part should this evidence be insufficient to confirm the Supplier's suitability for inclusion one or more capabilities.

## **ANNEX B: STATEMENT RELATING TO GOOD STANDING**

In addition to the warranties, representations and undertakings at Clause 5 of this agreement, the Supplier warrants, represents and undertakes to the Authority all of the following:

1. The Supplier, including its directors or any other person who has powers of representation, decision or control of the Supplier has not been convicted of any of the following offences:
  - a) conspiracy within the meaning of section 1 or section 1A of the Criminal Law Act 1977 or article 9 or 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983, or in Scotland the Offence of conspiracy, where that conspiracy relates to participation in a criminal organisation as defined in Article 2 of Council Framework Decision 2008/841/JHA;
  - b) involvement in serious organised crime or directing serious organised crime within the meaning of section 28 or 30 of the Criminal Justice and Licensing (Scotland) Act 2010;
  - c) corruption within the meaning of section 1 of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906\*;
  - d) the offence of bribery;
  - e) bribery within the meaning of section 1, 2 or 6 of the Bribery Act 2010;
  - f) bribery or corruption within the meaning of section 68 and 69 of the Criminal Justice (Scotland) Act 2003;
  - g) fraud, where the offence relates to fraud affecting the financial interests of the European Communities as defined by Article 1 of the Convention relating to the protection of the financial interests of the European Union\*, within the meaning of:
    - (i) the offence of cheating the Revenue;
    - (ii) the offence of conspiracy to defraud;
    - (iii) fraud or theft within the meaning of the Theft Act 1968\* the Theft Act (Northern Ireland) 1969\*, the Theft Act 1978\* or the Theft (Northern Ireland) Order 1978\*;
    - (iv) fraud within the meaning of section 2, 3 or 4 of the Fraud Act 2006;
    - (v) in Scotland, the offence of fraud;
    - (vi) in Scotland, the offence of theft;
    - (vii) fraudulent trading within the meaning of section 458 of the Companies Act 1985, article 451 of the Companies Act (Northern Ireland) Order 1986 or section 993 of the Companies Act 2006;
    - (viii) fraudulent evasion within the meaning of section 170 of the Customs and Excise Management Act 1979 or section 72 of the Value Added Tax Act 1994\*;
    - (ix) an offence in connection with taxation in the European Union within the meaning of section 71 of the Criminal Justice Act 1993;
    - (x) destroying, defacing or concealing of documents or procuring the execution of a valuable security within the meaning of section 20 of the Theft Act 1968\* or section 19 of the Theft Act (Northern Ireland) 1969\* or making, adapting, supplying or offering to supply articles for use in frauds within the meaning of section 7 of the Fraud Act 2006;
    - (xi) in Scotland the offence of uttering; or
    - (xii) in Scotland, the criminal offence of attempting to pervert the course of justice;
    - (xiii) money laundering within the meaning of section 93A, 93B, or 93C of the Criminal Justice Act 1988, section 45, 46 or 47 of the Proceeds of Crime (Northern Ireland) Order 1996

or the Money Laundering Regulations 2003 or money laundering or terrorist financing within the meaning of the Money Laundering Regulations 2007\*;

- (xiv) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Framework Decision 2002/475/JHA\*;
- (xv) an offence in connection with proceeds of drug trafficking within the meaning of section 49, 50 or 51 of the Drug Trafficking Act 1994; or
- (xvi) in Scotland, the offence of incitement to commit any of the crimes described in Regulation 23(1);
- (xvii) any other offence within the meaning of Article 39(1) of the Defence and Security Procurement Directive 2009/81/EC as defined by the national law of any member State.

\* including amendments to the legislation

2. The Supplier further confirms to the best of its knowledge and belief that it:

- a) being an individual, is a person in respect of whom a debt relief order has not been made, is not bankrupt or has not had a receiving order or administration order or bankruptcy restrictions order or debt relief restrictions order made against him or has not made any composition or arrangement with or for the benefit of his creditors or has not made any conveyance or assignment for the benefit of his creditors or does not appear unable to pay or to have no reasonable prospect of being able to pay, a debt within the meaning of section 268 of the Insolvency Act 1986, or article 242 of the Insolvency (Northern Ireland) Order 1989, or in Scotland has not granted a trust deed for creditors or become otherwise apparently insolvent, or is not the subject of a petition presented for sequestration of his estate, or is not the subject of any similar procedure under the law of any other state;
- b) being a partnership constituted under Scots law, has not granted a trust deed or become otherwise apparently insolvent, or is not the subject of a petition presented for sequestration of its estate;
- c) being a company or any other entity within the meaning of section 255 of the Enterprise Act 2002 has not passed a resolution or is not the subject of an order by the court for the company's winding up otherwise than for the purpose of bona fide reconstruction or amalgamation, nor had a receiver, manager or administrator on behalf of a creditor appointed in respect of the company's business or any part thereof or is not the subject of similar procedures under the law of any other state?
- d) has not been convicted of a criminal offence relating to the conduct of its business or profession, including, for example, any infringements of any national or foreign law on protecting security of information or the export of defence or security goods;
- e) has not committed an act of grave misconduct in the course of its business or profession, including a breach of obligations regarding security of information or security of supply required by the contracting authority in accordance with Regulation 38 or 39 of the DSPCR during a previous contract;
- f) has not been told by a contracting authority, that the Potential Provider does not to possess the reliability necessary to exclude risks to the security of the United Kingdom\*;
- g) has fulfilled obligations relating to the payment of social security contributions under the law of any part of the United Kingdom or of the member State in which it is established;
- h) has fulfilled obligations relating to the payment of taxes under the law of any part of the United Kingdom or of the member State in which it is established.

3. The Supplier is understood to repeat all warranties, representations and undertakings within this Annex B each time it enters into a Contract.
4. If at any time a Party becomes aware that a representation or warranty a Supplier has given under this Annex B has been breached, is untrue or is misleading, it shall immediately notify the other Party, and provide sufficient detail to enable the other Party to make an accurate assessment of the situation.
5. The fact that any provision within this Agreement is expressed as a warranty does not preclude the Authority's right of termination if the Supplier breaches that provision.
6. The Supplier acknowledges and agrees that the warranties, representations and undertakings contained in this Annex B are material, and the Authority has relied on those warranties, representations and undertakings when entering into this Agreement and each time it enters into a Contract.

## SCHEDULE 1: DEFINITIONS AND INTERPRETATION

### Defined Terms

In this Agreement, the following expressions and defined terms have the following meanings:

<b>Agreement</b>	means this agreement between the Authority and the Supplier;
<b>Approval</b>	means the prior written consent of the Authority.
<b>Articles</b>	means all goods (excluding Services) which the Supplier is required under the Contract to supply
<b>Acceptance Notice</b>	means the formal notification of the Contract award issued by the Authority via the R-Cloud Portal (or otherwise expressly communicated by the Authority in writing), including any associated documents expressly referred to therein.
<b>Business Day</b>	<p>means any day excluding:</p> <ul style="list-style-type: none"> <li>a) Saturdays, Sundays and public and statutory holidays in the jurisdiction of either Party; and</li> <li>b) such periods of holiday closure of the Supplier's premises of which the Authority is given written Notice by the Supplier at least ten (10) Business Days in advance;</li> </ul>
<b>R-Cloud Commercial Manager</b>	means the person designated by the Authority as having responsibility for the management of R-Cloud.
<b>Change of Control</b>	means a change in the ownership or control of a Supplier, as defined in Section 450 of the Corporation Tax Act 2010.
<b>Charges</b>	means the charges payable to the Supplier by the Authority under any Contract in consideration of the full and proper performance by the Supplier of the Supplier's obligations under the Contract calculated in a manner that is consistent with the Charging Structure as set out in Schedule 2 (Pricing Matrix)
<b>Competitive Process</b>	means the process set out in Clause 3.3
<b>Contract</b>	means the legally binding agreement (entered into following the provisions of this Agreement) including the Tasking Form for the provision of Services made between the Authority and the Supplier
<b>Contract Price</b>	means the amount to be paid (inclusive of packaging and exclusive of any applicable VAT) by the Authority to the Contractor, for the full and proper performance by the Contractor of its obligations under the Contract.
<b>Contract Year</b>	means a consecutive twelve (12) Month period during the Term commencing on the Appointment Date or each anniversary thereof.
<b>Control</b>	is as defined in Sections 1124 and 450 of the Corporation Tax Act 2010.

<b>Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer</b>	have the meaning given to them in the UK GDPR;
<b>Crown Use</b>	in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a registered design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949;
<b>Cyber Scheme Essentials</b>	means the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats. Details of the Cyber Essentials Scheme can be found here: <a href="https://www.gov.uk/government/publications/cyberessentials-scheme-overview">https://www.gov.uk/government/publications/cyberessentials-scheme-overview</a> .
<b>Cyber Essentials Scheme Basic Certificate</b>	means the certificate awarded on the basis of self-assessment, verified by an independent certification body, under the Cyber Essentials Scheme and is the basic level of assurance.
<b>Cyber Essentials Scheme Data</b>	means sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme.
<b>Deliverables</b>	means the Articles and Services identified in the Tasking Form and/or Contract which the Supplier is required to supply under the Contract
<b>DPA 2018</b>	means the Data Protection Act 2018
<b>Data Loss Event</b>	means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach
<b>Data Protection Legislation</b>	has the meaning given at Clause 6.18.
<b>Data Protection Impact Assessment</b>	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data
<b>Data Subject Access Request</b>	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.
<b>Default</b>	means any breach of the Agreement by the Supplier, for which the Supplier is liable to the Authority. This includes, but is not limited to, breach of a fundamental term, omission, misrepresentation, negligence or negligent statement in relation to this Agreement or the subject matter of this Agreement.
<b>Design Right</b>	means the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;

<b>Direct Award Process</b>	means the process set out in Clause 3.4
<b>Environmental Information Regulations (EIRs)</b>	means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;
<b>Firm Price</b>	means a price agreed for the Services which is not subject to variation
<b>Firm Price Hourly Rate</b>	means the maximum chargeable Supplier hourly rates as set out in the pricing matrix in the R-Cloud Portal. Such rates shall be inclusive of all overheads, administration and profit elements but exclusive of VAT
<b>FOIA</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body
<b>Foreground IPR</b>	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
<b>Fraud</b>	means any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Agreement or defrauding or attempting to defraud or conspiring to defraud the Crown.
<b>GDPR</b>	means the General Data Protection Regulation ((EU) 2016/679) as retained in UK law by the EU (Withdrawal) Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (the "UK General Data Protection Regulation" or "UK GDPR");
<b>Good Industry Practice</b>	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
<b>Government Establishment</b>	shall be deemed to include any of Her Majesty's Ships or Vessels and Service Stations
<b>Information</b>	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 Agreement or any Contract (including the Tasking Form).
<b>Insolvency Event</b>	Means, in respect of the Supplier or Supplier guarantor (as applicable):

	<ul style="list-style-type: none"> <li>a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986; or</li> <li>b) a winding-up resolution is considered or passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or</li> <li>c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or</li> <li>d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</li> <li>e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or</li> <li>f) it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or</li> <li>g) being a "small company" within the meaning of Section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or</li> <li>h) where the Supplier is an individual or partnership, any event analogous to these listed in this definition occurs in relation to that individual or partnership; or</li> <li>i) any event analogous to these listed in this definition occurs under the law of any other jurisdiction.</li> </ul>
<b>Intellectual Property Rights or IPR</b>	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
<b>Know-How</b>	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 Tasking Procedure and/or Contract.
<b>Law</b>	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply.

<b>LED</b>	means the Law Enforcement Directive (Directive (EU) 2016/680)
<b>Losses</b>	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgement, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise.
<b>Management Information or MI</b>	shall include, but not be limited to, the following information to be provided by the Supplier to the Authority: <ol style="list-style-type: none"> <li>evidence of suitability for inclusion on R-Cloud capability(ies)</li> <li>details of tasks awarded (e.g. TLB, title, value, duration)</li> <li>number of tasks bid for</li> <li>details of any contract variations (e.g. value, duration)</li> </ol>
<b>Maximum Price Payable</b>	means the total amount stated (if any) to be payable by the Authority under the Contract (including the Tasking Form);
<b>Maximum Price Target Cost [MPTC]</b>	means the mechanism for the agreement of a target cost and a target allowance for profit, along with a procedure for sharing of savings or overrun in expenditure. The entire arrangement is underpinned by a Maximum Price Payable.
<b>Milestone/Progress</b>	shall bear the meaning given to it in the Contract (including the Tasking Form)
<b>Month</b>	means an entire calendar Month. "Monthly" shall be interpreted accordingly.
<b>Occasion of Tax Non-Compliance</b>	This is where any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which found on or after 1 April 2013 to be incorrect as a result <ol style="list-style-type: none"> <li>a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax abuse principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax abuse principle, or</li> <li>the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the Disclosure of Tax Avoidance Schemes (DOTAS) or any equivalent or similar regime in any jurisdiction; and/or</li> <li>any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which 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 Appointment Date or to a civil penalty for fraud or evasion.</li> </ol>
<b>Party (or Parties)</b>	means either the Authority or the Supplier (or both).
<b>Price</b>	means the consideration agreed between Parties that the Authority shall pay as determined in a Contract

<b>Proceedings</b>	refers to both arbitration proceedings which have been commenced and court proceedings where a letter before action or a notice of claim has been issued.
<b>Process / Processing</b>	refers specifically to the processing of data under the Data Protection Act 2018. For the purposes of this Agreement, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly.
<b>Prohibited Act</b>	<p>means to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:</p> <ul style="list-style-type: none"> <li>a) induce that person to perform improperly a relevant function or activity</li> <li>b) reward that person for improper performance of a relevant function or activity</li> <li>c) commit any offence: <ul style="list-style-type: none"> <li>(i) under the Bribery Act 2010</li> <li>(ii) under legislation creating offences concerning Fraud</li> <li>(iii) at common Law concerning Fraud</li> <li>(iv) committing or attempting or conspiring to commit Fraud.</li> </ul> </li> </ul>
<b>Properly Submitted Invoice</b>	means an invoice that complies with HMRC requirements as defined at: <a href="http://www.hmrc.gov.uk/vat/managing/charging/vat-invoices.htm">http://www.hmrc.gov.uk/vat/managing/charging/vat-invoices.htm</a>
<b>Protective measures</b>	<p>means appropriate technical and organisational measures which may include:</p> <ul style="list-style-type: none"> <li>a) pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services,</li> <li>b) ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and</li> <li>c) regularly assessing and evaluating the effectiveness of the such measures adopted by it.</li> </ul>
<b>R-Cloud Portal</b>	means the web application through which the Agreement is managed.
<b>Relevant Tax Authority</b>	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established.
<b>Request To Participate</b>	means the Supplier's application to be appointed to the Agreement
<b>Research Workers</b>	means students, supervisors or other representatives, agents or employees of the Supplier (or any Sub-Contractor)
<b>Response</b>	means the response submitted by a Supplier as part of a Tasking Procedure

<b>Results</b>	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
<b>Services</b>	means any services which the Supplier is required under the Contract (including services stated within the Tasking Form) to perform or to fulfil;
<b>Social Value</b>	means improvements that could be made to the social, economic and environmental well-being of the relevant local area through a contract
<b>Sub-Contract</b>	means any contract or agreement or proposed agreement between the Supplier and a Sub-Contractor.
<b>Sub-Contractor</b>	means any person engaged by the Supplier to provide to the Supplier any part of the Services or any services necessary for the provision of the Services.
<b>Sub-Processor</b>	means any third party to process Personal Data on behalf of the Supplier related to this Agreement.
<b>Supplier</b>	means the organisation as identified in the R-Cloud Portal which has confirmed acceptance of these terms and conditions.
<b>Supplier Confidential Information</b>	means any information that the Supplier gives to the Authority that is designated as being confidential, or which ought reasonably be considered to be confidential (whether or not it is marked "confidential"). This may include information, however it is conveyed, that relates to the Supplier's business, affairs, developments, trade secrets, Know-How, Supplier Personnel and suppliers including all IPRs.
<b>Supplier Representative</b>	means the representative appointed by the Supplier in relation to this Agreement.
<b>Supplier Personnel</b>	means all persons employed by the Supplier, together with the Supplier's agents, suppliers, consultants and Sub-Contractors (and all persons employed by any Sub-Contractor together with the Sub-Contractor's servants, consultants, agents and suppliers) used in the performance of the Supplier's obligations under this Agreement or any Contract.
<b>Tasking Form</b>	means a document or other form of communication containing details of a specific requirement and inviting Suppliers to respond to a Tasking Procedure.
<b>Tasking Procedure</b>	means the procedure by which a Supplier or Suppliers are invited to provide a Response against a particular task.
<b>Technical Deliverable</b>	means a document or product comprising Technical Information which is required to be provided to the Authority under the terms of the Contract.
<b>Technical Information</b>	means information of a scientific or technical nature (including information in the form of Knowhow, inventions, designs, secret

	formulae 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;
<b>Term</b>	means the duration of this Agreement from the Appointment Date to the Expiry Date or earlier termination of this Agreement.

## SCHEDULE 2: PRICING MATRIX

To be completed by Suppliers in the R-Cloud Portal

Grade - Industry	Grade - Academia	Firm Price			
		Short Term (<=6m)	Long Term (>6m)	Sole Source	Discount <sup>2</sup>
Director	Head of School				
Senior Business Manager / Department Manager	Professor				
Department Manager	Reader / Business Manager				
Senior Principal	Senior Lecturer				
Principal	Lecturer				
Practitioner	Post-Doctoral Student				
Junior Practitioner	PHD Student				
Technician	Technician				
Administrator	Administrator				

<sup>1</sup> See Schedule 1 Definitions and Interpretation

<sup>2</sup> Discount shall apply to tasks greater than £100k (ex VAT) in value

### SCHEDULE 3: R-CLOUD (VERSION 4) - CONDITIONS OF CONTRACT

#### 1. THE APPOINTMENT

Parties:	means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, (referred to in this document as the " <b>Authority</b> "), acting as part of the Crown
	means the " <b>Contractor</b> ", as defined at Schedule S3-1.
Appointment:	Subject to the terms of the Agreement, the Authority appoints the Contractor, as a supplier of research and development services, as defined in the Tasking Form applicable to this Contract
Appointment begins at:	The date on which the Acceptance Notice is issued by the Authority unless otherwise agreed in writing with the Authority (the " <b>Effective Date</b> ")
Appointment expires at:	The date as stated in the Tasking Form, unless otherwise agreed in writing with the Authority (the " <b>Expiry Date</b> ")

- 1.1 The Contractor is one of a number of organisations appointed by the Authority to R-Cloud and is therefore able to enter into this Contract.
- 1.2 This Contract, made between the Authority and the Contractor, sets out the terms of the Contractor's appointment as a provider of the Services. The Services will be delivered according to the terms of this Contract (including the Tasking Form) and the Agreement.
- 1.3 The Contractor's appointment has been confirmed via the R-Cloud Portal, or in writing by the Authority.
- 1.4 The Parties agree that the Services and associated Contractor Deliverables shall be supplied in accordance with the terms of the R-Cloud Agreement Terms and Conditions and this Contract (including the Tasking Form).

#### 2. GENERAL

- 2.1 The Contractor shall comply with all applicable Legislation, whether specifically referenced in this Contract or not
- 2.2 If there is any inconsistency between these terms and conditions and the associated documents expressly referred to therein, the conflict shall be resolved according to the following descending order of priority:
  - a) the Agreement
  - b) the Tasking Form
  - c) these terms and conditions;
  - d) the schedules; and
  - e) the documents expressly referred to in the Agreement.
- 2.3 Neither Party shall be entitled to assign the Contract (or any part thereof) without the prior written consent of the other Party.
- 2.4 Failure or delay by either Party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of its rights under the Contract.

- 2.5 The Parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a Party to it.
- 2.6 The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English Law, and subject to Clause 14 and without prejudice to the dispute resolution procedure set out therein, the Parties submit to the exclusive jurisdiction of the English courts. Other jurisdictions may apply solely for the purpose of giving effect to this Clause 2.6 and for enforcement of any judgement, order or award given under English jurisdiction.
- 2.7 This Contract comes into effect on the Effective Date and will expire automatically on the Expiry Date unless otherwise stated in writing by the Authority, or it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.
- 2.8 This Contract, including the Tasking Form and together with the relevant provisions of the Agreement, constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes, and neither Party has relied upon, any prior negotiations, representations and undertakings, whether written or oral, except that this Clause 2 shall not exclude liability in respect of any fraudulent misrepresentation.
- 2.9 In addition to any other rights and remedies, the 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 its obligations under the Contract. Where the Authority has terminated the Contract under Clause 2.9 the Authority shall have the right to claim such damages as may have been sustained as a result of the Contractor's material breach of the Contract.
- 2.10 The Authority shall have the right to terminate the Contract if the Contractor is declared bankrupt or goes into liquidation or administration. This is without prejudice to any other rights or remedies under this Contract.

### **3. AMENDMENTS TO CONTRACT**

- 3.1 Any variation to the Contract shall have no effect unless expressly agreed in writing and signed by both Parties
- 3.2 Without prejudice to Clause 3.1, where the Authority or the Contractor wishes to introduce a change which is not minor or which is likely to involve a change to the Contract Price, the provisions of Schedule S3-2 (Contract Change Control Procedure) shall apply.
- 3.3 All amendments to this Contract shall be serially numbered, in writing, issued only by the Authority's Representative (Commercial) (as identified in the Tasking Form), and agreed by both Parties.
- 3.4 The Contractor shall not carry out any work until any necessary change to the Contract Price has been agreed and a written amendment in accordance with Clause 3.1 above has been issued.

### **4. SEVERABILITY**

- 4.1 If any provision of the Contract is held to be invalid, illegal or unenforceable to any extent then:
  - 4.1.1 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
  - 4.1.2 the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

## 5. TRANSPARENCY

- 5.1 Subject to Clause 5.2, but notwithstanding Clause 6, the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.
- 5.2 Before publishing the Transparency Information to the general public in accordance with Clause 5.1, the Authority shall redact any information that would be exempt from disclosure if it was the subject of a request for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, including the Contractor Commercially Sensitive Information.
- 5.3 The Authority may consult with the Contractor before redacting any information from the Transparency Information in accordance with Clause 5.2. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.
- 5.4 For the avoidance of doubt, nothing in this Clause 5 shall affect the Contractor's rights at law.

## 6. DISCLOSURE OF INFORMATION

- 6.1 Information received or in connection with the Contract shall be managed in accordance with Clause 6 of the R-Cloud Agreement and Clause 5 of these terms and conditions.

## 7. PUBLICITY AND COMMUNICATIONS WITH THE MEDIA

- 7.1 The Contractor shall not, and shall ensure that any employee or Sub-Contractor shall not, communicate with representatives of the press, television, radio or other media on any matter concerning the Contract unless the Authority has given its prior written consent.

## 8. CHANGE OF CONTROL OF CONTRACTOR

- 8.1 The Contractor shall notify both the Authority's Representative as stated in the Tasking Form and the Change Control Representative at the address given in Clause 8.2, as soon as practicable, in writing of any intended, planned or actual change in control of the Contractor, including any Sub-Contractors. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanction arising from issuing such a notice.
- 8.2 Each notice of change of control shall be taken to apply to all contracts with the Authority. Notices shall be submitted to:

Mergers & Acquisitions Section  
Strategic Supplier Management Team

Spruce 3b #1301  
MOD Abbey Wood,  
Bristol, BS34 8JH

The Change Control Representative shall consider the notice of change of control and advise the Contractor in writing of any concerns the Authority may have. Such concerns may include but are not limited to potential threats to national security, the ability of the Authority to comply with its statutory obligations or matters covered by the declarations made by the Contractor prior to Contract award.

- 8.3 The Authority may terminate the Contract by giving written notice to the Contractor within six months of the Authority being notified in accordance with Clause 8.1. The Authority shall act reasonably in exercising its right of termination under this Clause 8.
- 8.4 If the Authority exercises its right to terminate in accordance with Clause 8.3 the Contractor shall be entitled to request the Authority to consider making a payment representing any commitments, liabilities or expenditure incurred by the Contractor in connection with the Contract up to the point of termination. Such commitments, liabilities or expenditure shall be reasonably and properly chargeable by the Contractor, and shall otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any payment under this Clause 8.4 must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.
- 8.5 Notification by the Contractor of any intended, planned or actual change of control shall not prejudice the existing rights of the Authority or the Contractor under the Contract nor create or imply any rights of either the Contractor or the Authority additional to the Authority's rights set out in this Clause 8.

## **9. SUPPLY OF CONTRACTOR DELIVERABLES AND QUALITY ASSURANCE**

- 9.1 The Contractor shall supply the Contractor Deliverables to the Authority at the Contract Price. Unless otherwise stated in the Tasking Form, the Contract Price shall be a Firm Price.
- 9.2 The Contractor shall ensure that the Contractor Deliverables:
  - a) correspond with the Statement of Requirements;
  - b) are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) except that fitness for purpose shall be limited to the goods being fit for the particular purpose held out expressly by or made known expressly to the Contractor and in this respect the Authority relies on the Contractor's skill and judgement; and
  - c) comply with any applicable quality assurance requirements specified in the Contract (including the Tasking Form).
- 9.3 The Contractor shall apply for and obtain any licences required to import any material required for the performance of the Contract in the UK. The Authority shall provide to the Contractor reasonable assistance with regard to any relevant defence or security matter arising in the application for any such licence.

## **10. DELIVERY / COLLECTION**

- 10.1 The Tasking Form shall specify whether the Contractor Deliverables are to be delivered to the consignee by the Contractor or collected from the consignor by the Authority.
- 10.2 Title and risk in the Contractor Deliverables shall pass from the Contractor to the Authority on delivery or on collection in accordance with Clause 10.1.
- 10.3 The Authority shall be deemed to have accepted the Contractor Deliverables thirty (30) days after title and risk has passed to the Authority unless it has rejected the Contractor Deliverables within the same period.

## **11. THIRD PARTY INTELLECTUAL PROPERTY**

- 11.1 Claims, liabilities and indemnities in respect of infringements or alleged infringements of Third Party Intellectual Property Rights shall be handled in accordance with the provisions of Clause 7 of the Agreement and the provisions of this Contract.

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

## 12. PAYMENT

12.1 Payment for Contractor Deliverables will be made by electronic transfer.

12.2 In order to obtain payment the Contractor shall:

- 12.2.1 submit an invoice to the address set out in the Tasking Form and send a PDF copy of the invoice to the Authority's Representative (Project) (as identified in the Tasking Form). Invoices must quote the relevant purchase order number, and any other information as required in the Contract (including the Tasking Form).
- 12.2.2 comply with any other payment process(es) detailed in the Contract (including the Tasking Form).

12.3 Where the Contractor submits an invoice to the Authority in accordance with Clause 12.2, the Authority will consider and verify that invoice in a timely fashion.

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

12.5 Where the Authority fails to comply with Clause 12.3 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 12.4 after a reasonable time has passed.

12.6 The approval for payment of a valid and undisputed invoice by the Authority shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under this Contract.

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

## 13. SUB-CONTRACTING AND PROMPT PAYMENT

13.1 Sub-contracting any part of the Contract shall not relieve the Contractor of any of the Contractor's obligations, duties or liabilities under the Contract.

13.2 Where the Contractor enters into a Sub-Contract he shall cause a term to be included in such Sub-Contract:

- 13.2.1 providing that where the Sub-Contractor submits an invoice to the Contractor, the Contractor will consider and verify that invoice in a timely fashion;
- 13.2.2 providing that the Contractor shall pay the Sub-Contractor any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Contractor has determined that the invoice is valid and undisputed;
- 13.2.3 providing that where the Contractor fails to comply with Clause 13.2.1 above, and there is an undue delay in considering and verifying the invoice, that the invoice shall be regarded as valid and undisputed for the purposes of Clause 13.2.2 after a reasonable time has passed; and

13.2.4 requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards, provisions having the same effect as Clauses 13.2.1 to 13.2.4.

#### **14. DISPUTE RESOLUTION**

- 14.1 The Parties will 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.
- 14.2 In the event that the dispute or claim is not resolved pursuant to Clause 14.1 the dispute shall be referred to arbitration and shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.

#### **15. TERMINATION FOR CORRUPT GIFTS**

The Authority may terminate the Contract with immediate effect, without compensation, by giving written notice to the Contractor at any time after any of the following events:

- 15.1 where the Authority becomes aware that the Contractor, its employees, agents or any Sub-Contractor (or anyone acting on its behalf or any of its or their employees):
  - 15.1.1 has offered, promised or given to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward;
  - 15.1.2 commits or has committed any prohibited act or any offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown;
  - 15.1.3 has entered into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.
- 15.2 In exercising its rights or remedies to terminate the Contract under Clause 15.1 the Authority shall:
  - 15.2.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person committing the prohibited act;
  - 15.2.2 give due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):
    - a) requiring the Contractor to procure the termination of a Sub-Contract where the prohibited act is that of a Sub-Contractor or anyone acting on its or their behalf;
    - b) requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Sub-Contractor or anyone acting on its behalf) where the prohibited act is that of such employee.
- 15.3 Where the Contract has been terminated under Clause 15.1 the Authority shall be entitled to purchase substitute Contractor Deliverables from elsewhere and recover from the Contractor any costs and expenses incurred by the Authority in obtaining the Contractor Deliverables in substitution from another supplier.

## 16. TERMINATION FOR CONVENIENCE

- 16.1 The Authority shall have the right to terminate the Contract in whole or in part at any time by giving the Contractor at least 20 (twenty) business days written notice (or such other period as may be stated in the Tasking Form).
- 16.2 Subject to Clause 16.4, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor, subject to:
  - 16.2.1 the Contractor taking all reasonable steps to mitigate such loss; and
  - 16.2.2 the Contractor submitting a fully itemised and costed list of such loss, with supporting evidence, reasonably and actually incurred by the Contractor as a result of the termination of the Contract or relevant part thereof.
- 16.3 The Contractor shall include in any Sub-Contract over £250,000 which it may enter into for the purpose of the Contract the right to terminate the Sub-Contract under the terms of Clauses 16.1 - 16.2 except that:
  - 16.3.1 the notice period for termination shall be as specified in the Sub-Contract, or if no period is specified 20 (twenty) business days; and
  - 16.3.2 the Contractor's right to terminate shall be restricted by including the following additional clause "Provided that this right is not exercised unless the main contract, or relevant part, has been terminated by the Authority in accordance with the provisions of Clause 16".
- 16.4 The Authority's total liability under the provisions of this Clause shall be limited to the total price of the Contractor Deliverables payable under the Contract (or relevant part), including any sums paid, due or becoming due to the Contractor at the date of termination.

## 17. CONTRACTOR'S RECORDS

- 17.1 The Contractor and its Sub-Contractors shall maintain all records specified in and connected with the Contract (expressly or otherwise) and make them available to the Authority when requested on reasonable notice.
- 17.2 The Contractor and its Sub-Contractors shall also permit access to relevant records that relate to the contractual obligations to supply goods or services under the Contract, held by or controlled by them and reasonably required by the Comptroller and Auditor General, their staff and any appointed representative of the National Audit Office, and provide such explanations and information as reasonably necessary for the following purposes:
  - 17.2.1 to enable the National Audit Office to carry out the Authority's statutory audits and to examine and/or certify the Authority's annual and interim report and accounts; and
  - 17.2.2 to enable the National Audit Office to carry out an examination pursuant to Part II of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 17.3 With regard to the records made available to the Authority under Clause 17.1, and subject to the provisions of Clause 6, the Contractor shall permit records to be examined and if necessary copied, by the Authority, or Representative of the Authority, as the Authority may require.
- 17.4 Unless the Contract specifies otherwise the records referred to in this Clause 17 shall be retained for a period of at least 6 years from:
  - a) the end of the Contract term;
  - b) the termination of the Contract; or
  - c) the final payment,

whichever occurs latest.

## **18. CONTRACTOR PERSONNEL - RESEARCH WORKERS**

- 18.1 Unless otherwise agreed in writing, the Authority accepts the students, supervisors or other representatives, agents or employees of the Contractor (or any Sub-Contractor), as stated in the Contractor's Response, to work directly on the Contract ("Research Workers");
- 18.2 The Contractor (and any Sub-Contractor) shall take all reasonable steps to avoid changes in the Research Workers once accepted. Where such a change is necessary, the Contractor shall obtain the prior written consent of the Authority, which shall not be unreasonably withheld.
- 18.3 Should it be necessary to change the Research Workers assigned to and accepted for the work under the Contract the Contractor shall notify the Authority in writing prior to any Contractor Personnel starting work on the Contract. Unless otherwise agreed by the Authority in writing, a Personal Particulars Form shall be completed for each additional person and sent to the Authority's Representative (Commercial) (as identified in the Tasking Form). The appropriate administrative procedures shall need to have been completed to the satisfaction of the Authority before any additional Research Worker(s) may start work on this Contract.
- 18.4 All Research Workers engaged in support of the Contract shall have appropriate qualifications and competence and be in all respects acceptable to the Authority. The Authority reserves the right to reject any proposed Research Worker(s) whom it considers unsuitable for any reason. The decision of the Authority shall be final and it shall not be obliged to provide any reasons.
- 18.5 The only exception to process described in this Clause 18 is when all of the Contractors proposed Research Workers hold a full current SC clearance with no restrictions. In that case, even if the classification of the contract work is below SECRET a Personal Particulars form is not required. The SC provides the Authority with the requisite level of assurance that the individual is who they say they are and is appropriate to work on the contract. The Contractor will be required to provide appropriate evidence to demonstrate to the satisfaction of the Authority that the proposed Research Workers hold a full current SC clearance.

## **19. DELIVERABLE REPORT MARKING**

- 19.1 All Reports included as Contractor Deliverables under the Contract e.g. Progress and/or Final Reports etc. must comply with the Defence Research Reports Specification (DRRS) at <https://www.gov.uk/guidance/submit-a-report-to-athena> which defines the requirements for the presentation, format and production of scientific and technical reports prepared for the Authority.
- 19.2 Interim or Progress Reports: The report should detail, document, and summarise the results of work done during the period covered and shall be in sufficient detail to comprehensively explain the results achieved; substantive performance; a description of current substantive performance and any problems encountered and/or which may exist along with proposed corrective action. An explanation of any difference between planned progress and actual progress, why the differences have occurred, and if behind planned progress what corrective steps are planned.
- 19.3 Final Reports: shall describe the entire work performed under the Contract in sufficient detail to explain comprehensively the work undertaken and results achieved including all relevant technical details of any hardware, software, process or system developed there under. The technical detail shall be sufficient to permit independent reproduction of any such process or system.
- 19.4 The Contractor is to supply, at no additional cost to the Authority, a minutes secretary and produce minutes of the meetings if necessary.
- 19.5 The front page of any minutes produced as a result of any meeting between the 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."

19.6 Reports shall be signed on the Contractor's behalf by a person authorised to commit the Contractor.

19.7 Marking of Contractor Deliverables (documents)

Clauses 19.7.1 – 19.7.6 shall apply to Technical Deliverables subject to Annex S3-A.

19.7.1 In accordance with Annex S3-A there are two categories of Technical Deliverable:

- a) Full Rights Version; and
- b) Limited Rights Version

19.7.2 In accordance with Annex S3-A there are two categories of Technical Information:

- a) Full Rights Information; and
- b) Limited Rights Information

19.7.3 In accordance with Annex S3-A the Contractor shall provide a Full Rights Version of each specified Technical Deliverable.

19.7.4 In any instance where the Full Rights Version does not provide all of the Technical Information the Contractor shall also provide a Limited Rights Version containing the balance of deliverable Technical Information.

19.7.5 In accordance with Annex S3-A paragraph 17, the Contractor shall mark each Technical Deliverable in such a manner that the ownership of the Intellectual Property Rights and the rights of the Authority are clearly stated.

19.7.6 If Sub-Contractor information is to be included in reports subject to Annex S3-A then, unless the IPR in that information is owned by the Contractor, the name of the Sub-Contractor(s) should be entered in the bracketed fields below in addition to the name of the Contractor.

Clauses 19.7.7 – 19.7.8 shall apply to Technical Deliverables subject to Annex S3-B.

19.7.7 In accordance with Annex S3-B clause 4, the Contractor shall mark each Technical Deliverable, as subject to '© Crown-owned Copyright [year]' (or in the case of a Contractor that is a Crown Body, '© Crown Copyright [year]').

19.7.8 If any Background IPR is included in a Technical Deliverable, this shall be acknowledged, the owner of it identified, and the Authority's rights in that Background IPR clearly stated. The Contractor shall seek and follow guidance from the Authority as to whether such Background IPR should be included in the body of the Technical Deliverable, or kept separate in an Annex thereto.

## 20. IPR – SUB-CONTRACTS

20.1 The Contractor shall not place any Sub-Contract or order involving the design or development of equipment required under this Contract without the prior written consent of the Authority. Unless otherwise agreed, such consent will be conditional on the proposed Sub-Contractor concluding a direct agreement with the Authority. Wherever possible the request for approval should be accompanied by two copies of the agreement signed by the Sub-Contractor. If, in any case the Contractor is unable to comply with this Clause 20 they shall report the matter to the Authority's Representative (Project) (as identified in the Tasking Form) and await further instructions before placing the Sub-Contract or order.

## 21. GOVERNMENT FURNISHED ASSETS

21.1 The Government Furnished Assets as detailed in the Contract (including the Tasking Form) shall be made available to the Contractor by the Authority, free of charge, for the purpose of performing the Contract under the loan terms of either contract embodiment item, contract support item, or

contract work item as specified by the Authority. Any such issue shall be in accordance with the provisions of Clauses 21.4 - 21.16, unless otherwise stated in the Tasking Form.

21.2 The Government Furnished Assets provided to the Contractor will be returned on completion of the Contract or disposed of with written consent.

#### Government Furnished Information

21.3 The Authority does not give any warranty or undertaking as to the completeness, accuracy or fitness for any purpose of any of the Authority provided Information and neither the Authority nor its agents or employees shall be liable to the Contractor in contract (save as expressly provided elsewhere in the Contract), tort, statute or otherwise as a result of any inaccuracy, omission, unfitness for any purpose, or inadequacy of any kind in the Authority provided Information.

#### Issued Property

21.4 All Issued Property shall remain the property of the Authority. It shall be used in the execution of the Contract and for no other purpose, without the prior approval in writing of the Authority.

21.5 Neither the Contractor, nor any Sub-Contractor, nor any other person, shall have a lien on Issued Property, for any sum due to the Contractor, Sub-Contractor or other person, and the Contractor shall take all such steps as may be necessary to ensure that the title of the Authority, and the exclusion of any such lien, are brought to the notice of all Sub-Contractors and other persons dealing with any Issued Property.

#### Receipt

21.6 Subject to Clauses 21.7 and 21.10 below, within 14 days of receipt of Issued Property, or such other longer period as may be specified in the Contract (including the Tasking Form), the Contractor shall:

- 21.6.1 check the Issued Property to verify that it corresponds with the Issued Property specified in the Contract;
- 21.6.2 conduct a reasonable visual inspection; and
- 21.6.3 conduct any additional inspection and testing as may be necessary and practicable to check that the Issued Property is not defective or deficient for the purpose for which it has been provided; and notify the Authority of any defects, deficiencies or discrepancies discovered.

21.7 Where Issued Property is packaged it shall not be unpacked earlier than is necessary. The period identified at Clause 21.6 shall count from the date on which packages are opened.

21.8 The Authority shall within a reasonable time after receipt of any notice under Clause 21.6.3 of this Clause 21 replace, re-issue or authorise repair of Issued Property agreed to be defective or deficient and, if appropriate, the Authority shall revise the Contract Price, delivery schedule or both. If appropriate, it shall also issue written instructions for the return or disposal of the defective or deficient Issued Property.

21.9 In the event that the Authority fails to provide, replace, or authorise repair of defective or deficient Issued Property within a reasonable time of receipt of a notice in accordance with Clause 21.6, fair and reasonable revisions of the Contract Price, delivery schedule or both shall be made as may be appropriate provided that the Contractor has taken all reasonable measures to mitigate the consequences of any such delay.

21.10 Clauses 21.6 to 21.9 do not apply in the following circumstances:

- a) where Issued Property is issued for the purpose of repair, overhaul, conversion or other work to be performed on the Issued Property, inspection of such property shall be as specified in the Contract (including the Tasking Form);

- b) where the Contractor can show that the Issued Property cannot be fully tested until it has been integrated with other items, inspection of such property shall be as specified in the Contract (including the Tasking Form);
- c) where Special Jigs and Tools etc. become Issued Property, as stated by the Authority in writing.

#### Custody

- 21.11 Subject to Clause 21.14 and any limitation or exclusion of liability as may be specified in the Contract (including the Tasking Form), the Contractor shall be responsible for the safe custody and due return of Issued Property, whether or not incorporated into the Articles, and shall be responsible for all loss or damage thereto, until re-delivered in accordance with the Authority's instructions or until the expiry of the period specified in Clause 21.16.
- 21.12 The Contractor shall be responsible for such calibration and maintenance of the Issued Property as is specified in the Contract (including the Tasking Form).
- 21.13 If requested, the Authority, within a reasonable time, and where practicable before delivery of the Issued Property, shall notify the Contractor of the value of the Issued Property.
- 21.14 The Contractor shall not be liable in respect of:
  - 21.14.1 defects or deficiencies notified to the Authority in accordance with Clause 21.6 of this Clause 21 or latent defects which the Contractor can show could not reasonably have been discovered by means of the activities described at Clause 21.6;
  - 21.14.2 fair wear and tear in Issued Property resulting from its normal and proper use in the execution of the Contract (except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance by the Contractor);
  - 21.14.3 Issued Property rendered unserviceable as a direct result of ordinary performance of the Contract;
  - 21.14.4 any loss or damage to Issued Property arising from:
    - a) aircraft or other aerial devices or objects dropped from them, including pressure waves caused by aircraft or such devices whether travelling at sonic or supersonic speeds;
    - b) ionising radiation or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel;
    - c) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof;
    - d) riot, civil commotion, civil war, rebellion, revolution, insurrection, military or usurped power or acts of the Queen's enemies.

#### Accounting and Return of Issued Property

- 21.15 The Contractor shall maintain records of all Issued Property as required by the Authority.
- 21.16 At Contract completion the Contractor shall forward a list of Issued Property still held to the Authority's Representative (Project) named in the Contract. Return or disposal of such Issued Property will be as specified in the Contract, or as instructed by the Authority at Contract completion. If no disposal instructions are specified in the Contract the Authority shall provide such instructions within two months of the Contractor's written request to do so.

## **22. TEST AND EVALUATION**

- 22.1 The Contractor shall provide the Authority's Representative (Project) (as identified in the Tasking Form) with all appropriate paperwork, to the requirements of the Authority's Representative (Project) to support conduct of test and evaluation; including but not limited to:

- a) Trial Plans;
- b) Evaluation Plans;
- c) Risk Assessment;
- d) Health and Safety;
- e) Certificates of Insurance.

## 23. LIMITATION OF CONTRACTORS LIABILITY

### 23.1 Indemnities

#### Performance/Non-performance of Obligations

23.1.1 The Contractor shall indemnify the Authority against all claims, proceedings, actions, damages, costs, expenses and other liabilities which may arise out of, or as a result of, the supply of the Contractor Deliverables or the performance or non-performance by the Contractor of its obligations under the Contract, including in respect of any death or Personal Injury and Loss of Property (including GFA). The Contractor shall not be responsible for any injury, loss, damage, cost or expense referred to in Clause 23.1 if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.

#### Contractor Personnel at Government Establishments

23.1.2 The Contractor shall, except as otherwise provided for in the Contract, make good or, at the option of the Authority, pay compensation for all damage occurring to any Government property, which includes land or buildings, occasioned by the Contractor, or by any of its Representatives, arising from its or their presence on a Government Establishment in connection with the Contract, provided that this Clause shall not apply to the extent that the Contractor is able to show that any such damage was not caused or contributed to by any circumstances within its or their reasonable control.

### 23.2 No Consequential Loss

23.2.1 There shall be no right to claim damages for breach of the Contract, in tort or on any other basis whatsoever to the extent that any loss claimed by either party is for consequential loss or indirect loss of any nature suffered or allegedly suffered by either party.

### 23.3 Total Liability

#### 23.3.1 Save for the Contractor's liability for:

- a) death or Personal Injury caused by the negligence of the Contractor, its employees or agents;
- b) any act of wilful misconduct or fraud or fraudulent misrepresentation on the part of the Contractor, his employees or agents;
- c) any liability concerning IPR under a Contract or the R-Cloud Agreement; or
- d) any liability under Clauses 7.5, 8.18, and/or, 12.13 of the R-Cloud Agreement,

Unless otherwise agreed in accordance with Clause 23.4, the total liability of the Contractor in relation to each Contract shall be uncapped.

### 23.4 Limiting a Contractor's Liability

23.4.1 A Contractor may seek a Limitation of a Contractor's Liability (LoCL) as part of a Tasking Procedure which shall be considered by the Authority on a case-by-case basis.

23.4.2 Contractors must submit any request for a LoCL at the earliest opportunity and prior to the deadline for Responses under the relevant Tasking Procedure

23.4.3 If seeking a LoCL, the Contractor shall be required to provide the necessary evidence to support their case and to allow the Authority to conduct a realistic and robust risk assessment to understand the potential financial liability being passed from the Contractor to the Authority. The Contractor must demonstrate that it is reasonable for the Authority to limit their liability against any proposed risk(s) and the Authority must be satisfied that it is value for money to do so.

23.4.4 Agreement from the Authority in respect of any LoCL does not set a precedent for any extant contracts or subsequent contracts which the Contractor may enter into with the Authority.

23.4.5 Where the Authority deems it appropriate to include a LoCL, the following Clause shall be included in the Acceptance Notice.

1. *The Contractor's liability under or in relation to the contract shall be limited in respect of the following risks as set out below:*
  - a) *[loss of, or damage to, Issued Property - £XM];*
  - b) *[loss of, or damage to, Articles - £XM];*
  - c) *[Default - £XM];*
  - d) *[other [insert description] - £XM]*
2. *The Authority has agreed the above limitation[s] of the Contractor's liability [based on the risk assessment and proposed risk mitigation activities provided by the Contractor and set out at Annex S3-A of the Tasking Form (Part B)].*
3. *Nothing in this Clause shall exclude or limit the Contractor's liability in respect of the following:*
  - a) *Any liability arising under or by reason of the Contractor's indemnities granted to the Authority set out in Clauses 7.2 - 7.4, 7.5, 7.11 & 7.15 of the R-Cloud Agreement and Clause 23.1 of this Contract, as applicable.*
  - b) *Death or personal injury.*
  - c) *Fraud or fraudulent misrepresentation.*
  - d) *Wilful misconduct.*

Note: The Authority shall insert the information at the square brackets as necessary.

## 24. CONTRACTOR'S PROPERTY

24.1 All property of the Contractor and its representatives shall be at the risk of the Contractor whilst it is on any Government Establishment, and the Authority shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby, except as follows:

- a) where any such loss or damage was caused or contributed to by any act, neglect or default of any Servant of the Crown, agent or Contractor then the Authority shall accept liability therefor to the extent to which such loss or damage is so caused or contributed to as aforesaid; and
- b) where any property of the Contractor has been taken on charge by the Authority's Representative (Project), and a proper receipt has been given therefor, then the Authority shall be liable for any loss or damage occurring to that property while held on such charge as aforesaid.

## 25. INSURANCES

25.1 The Contractor shall maintain necessary insurance coverage, commensurate with the potential costs and losses to cover the indemnity liability under this Agreement and any Contract and shall at the request of the Authority produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereunder.

## 26. OFFICIAL SENSITIVE SECURITY REQUIREMENTS

26.1 Clause 26 shall apply to any and all Contracts where any matter connected with the Contract is to bear the Government Security Classification OFFICIAL-SENSITIVE and requires a Security Aspects Letter (SAL).

26.2 In this Clause 26 "Information" means information recorded in any form disclosed or created in connection with the Contract.

26.3 The Contractor shall protect all Information relating to the aspects designated OFFICIAL-SENSITIVE as identified in the security aspects letter annexed to the Contract, in accordance with the official security conditions contained in the contract or annexed to the Security Aspects Letter.

26.4 The Contractor shall include the requirements and obligations set out in Clause 26.3 in any Sub-Contract placed in connection with or for the purposes of the Contract which requires disclosure of OFFICIAL-SENSITIVE Information to the Sub-Contractor or under which any Information relating to aspects designated as OFFICIAL-SENSITIVE is created by the Sub-Contractor. The Contractor shall also include in the Sub-Contract a requirement for the Sub-Contractor to flow the requirements of this Clause to its Sub-Contractors and through all levels of the supply chain to the lowest level where any OFFICIAL-SENSITIVE Information is handled.

## 27. SECRET (OR ABOVE) SECURITY REQUIREMENTS

27.1 Clause 27 shall apply to any and all Contracts awarded to a United Kingdom (UK) Contractor, where any matter connected with the Contract is to bear the Government Security Classification SECRET or above

27.2 The Official Secrets Acts

The Contractor shall:

- a) take all reasonable steps to ensure that all Employees engaged on any work in connection with the Contract have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the completion or termination of the Contract; and
- b) if directed by the Authority, ensure that any Employee shall sign a statement acknowledging that, both during the term of the Contract and after its completion or termination, they are bound by the Official Secrets Acts 1911-1989 (and where applicable any other legislation).

27.3 Security Measures

Unless they have the written authorisation of the 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:

- a) who is not a British citizen;
- b) who does not hold the appropriate authority for access to the protected matter;
- c) in respect of whom the Authority has notified the Contractor in writing that the Secret Matter shall not be disclosed to or acquired by that person;
- d) who is not an Employee of the Contractor;

- e) who is an Employee of the Contractor and has no need to know the information for the proper performance of the Contract.

27.4 Unless they have the written authorisation of the 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:

- a) no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of the Contract;
- b) any Secret Matter is at all times strictly safeguarded in accordance with the GovS 007: Security (as amended from time to time) and upon request, is delivered up to the Authority who shall be entitled to retain it.

A decision of the Authority on the question of whether the Contractor has taken or is taking reasonable steps as required by this Clause, shall be final and conclusive.

27.5 The Contractor shall:

- a) provide to the Authority:
  - (i) upon request, such records giving particulars of those Employees who have had at any time, access to any Secret Matter that is required to be kept in accordance with Clause 27.4(b);
  - (ii) upon request, such information as the 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 Clause 27, including the measures taken or proposed by the Contractor so as to comply with their obligations and to prevent any breach of them;
  - (iii) full particulars of any failure by the Contractor and their Employees to comply with any obligations relating to Secret Matter arising under this Clause 27 immediately upon such failure becoming apparent;
- b) ensure that, for the purpose of checking the Contractor's compliance with the obligation in Clause 27.4(b), a representative of the Authority shall be entitled, at any time, to enter and inspect any premises used by the Contractor, which are in any way connected with 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.

27.6 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 Authority of the matter with full particulars thereof.

#### 27.7 Sub-Contracts

If the Contractor proposes to make a Sub-Contract which will involve the disclosure of Secret Matter to the Sub-Contractor, the Contractor shall:

- a) submit for approval of the Authority the name of the proposed Sub-Contractor, a statement of the work to be carried out and any other details known to the Contractor which the Authority shall reasonably require;
- b) incorporate into the Sub-Contract the terms of Annex C (Security Measures) and such secrecy and security obligations as the Authority shall direct. In the appendix "Agreement" shall mean the "Sub-Contract", "First Party" shall mean the "Contractor" and "Second Party" shall mean the "Sub-Contractor";

- c) inform the 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 Authority, terminate the Sub-Contract.

**27.8 Termination**

The Authority shall be entitled to terminate the Contract immediately if:

- a) the Contractor is in breach of any obligation under this Clause 27; or
- b) the Contractor is in breach of any secrecy or security obligation imposed by any other contract with the Crown;

where the Authority considers the circumstances of the breach jeopardises, or has the potential to jeopardise, the secrecy or security of the Secret Matter and claim such damages as may have been sustained as a result of the Contractor's breach of this Clause 27.

**28. ADDITIONAL PROJECT SPECIFIC TERMS AND CONDITIONS**

**28.1 Any additional terms and conditions shall be as stated in the Tasking Form.**

## ANNEX S3-A: IPR TERMS AND CONDITIONS (VESTING IN THE CONTRACTOR)

Note: These IPR terms set out the user rights for the Authority, with options to extend the user rights to one or more other UK Government Departments where specified in the Tasking Form, and to include as a user right publication by the Authority of Technical Deliverable(s), where specified in the Tasking Form – see paragraphs 1.2 and 12(g) below.

### DEFINITIONS

1.1 For the purpose of this Annex S3-A, the following definitions apply:

- a) '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.
- b) 'Foreground Technical Information' means Technical Information which is generated in the performance of work under the Contract.
- c) '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.
- d) 'Full Rights Information' means Foreground Technical Information together with the following (which may not wholly consist of Foreground Technical Information):
  - (i) data and information resulting from studies analyses or tests that are conducted in the performance of work under the Contract;
  - (ii) 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
  - (iii) a requirement document or specification which is specifically required to be produced in the performance of work under the Contract.
- e) 'Full Rights Version' means a version of a Technical Deliverable which comprises Full Rights Information and which is coherent in itself.
- f) '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.
- g) 'Limited Rights Version' means a version of a Technical Deliverable specifically comprising or including Limited Rights Information.
- h) '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.
- i) '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.

- j) 'UK National Defence Agreement' means any invitation to tender, agreement, or contract, issued or entered into by or on behalf of the Authority in any territory pursuant to its own defence, civil defence, or security or intelligence purposes and 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.
- k) 'Collaborative Defence Agreement' means any treaty, agreement, MOU or other like formal arrangement entered into by or on behalf of the UK Government, the Authority or any other UK Government Department with another government, government agency, intergovernmental organisation or its agency, for the UK Government's own or its shared defence, civil defence, or security or national or international intelligence purposes.
- l) 'Research and Technology Agreement' means a Collaborative Defence Agreement, not being one established for the development or procurement of a specific equipment, which is within the field of research and technology and which may provide, without limitation, for information exchanges, information awareness or assessment, research projects, or technology demonstrator projects.
- m) '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.
- n) 'for the Services of the United Kingdom Government' means anything done by the Authority, under the authority of, or to the order of, a Minister of the Crown in pursuance of the authority vested in the Minister by Parliament.

#### **Definition of the Authority for Acquired Rights**

1.2 For the purposes of this Annex S3-A, the Authority shall be as set out in Schedule S3-1, however:

1.2.1 If the Tasking Form indicates that one or more other UK Government Department(s) or other UK Central Government Bodies shall have rights under this agreement, , in relation to one or more Technical Deliverables, then the Authority, for the purposes of paragraphs 5, 11, 12, 13, 18.1, 30 and 31 of this Annex S3-A and for the purposes of that/those Technical Deliverable(s), shall include, in addition to the Authority as set out in Schedule S3-1, those UK Government Department(s) or other UK Central Government Bodies. In this regard, references to 'UK Government' or 'Government' per se, or 'HMG' shall be deemed to cover all UK Government Departments and UK Central Government Bodies, whilst any reference to a UK Central Government Body owned by, or sponsored by, a UK Government Department shall be deemed to include a reference to that UK Government Department (unless stated to the contrary).

#### **OWNERSHIP OF IPR**

2 All Foreground IPR shall belong to the Contractor and shall be subject to this Annex S3-A.

3 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 2 above.

4 The Contractor shall ensure that no part of the work to be performed under the Contract is subcontracted to a legal entity without the prior written agreement of the Authority, except as follows:

a) by first ensuring that the Sub-Contractor has entered into an agreement with the Authority, in the form a Sub-Contractor's Agreement (template attached in Design Rights and Patents Sub-Contractor's Agreement (the Appendix to this Annex S3-A), which invokes this paragraph in regard to the Sub-Contract work; or alternatively

- b) 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 Authority by the Contractor under the terms of this Annex S3-A.

5 In the event that the Contractor assigns its ownership of any Foreground IPR, it shall secure for the Authority the continuance of the Authority's rights under this Annex S3-A.

## PUBLICATION

6 The Authority may, at any time, publish or have published a brief summary indicating the nature of work to be carried out under the Contract.

7 The 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 acceptable abstract, the Authority may produce an abstract itself but it shall not publish this without first consulting the Contractor allowing 45 Business Days for a response.

Where indicated on the Tasking Form, the Authority may publish any and all material contained in a Full Rights Version of a Technical Deliverable, as is set out in paragraph 12(g).

8 The Contractor may publish the Foreground Information or any part of it, provided that the Contract, or the pertinent work package within the Contract, is OFFICIAL, unless exceptionally the Authority considers that the publication is not in the national interest. The Contractor shall give written prior notice of intended publication to the Authority and allow 45 Business Days for the Authority to raise an objection on national interest grounds. In the absence of such an objection from the Authority within this period, the Contractor shall be entitled to proceed with publication.

## PROVISION AND USE OF TECHNICAL INFORMATION AND RETENTION OF RECORDS

9 The Contractor shall provide Full Rights Versions of Technical Deliverables as required by the Contract. A Full Rights Version is required for every Technical Deliverable. The Contractor shall not be required to include, and shall not 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.

10 To allow for the provision of further Foreground Technical Information under paragraph 11 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.

11 The 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.

12 The Authority shall have the right to Use all Full Rights Versions and Full Rights Information in confidence, as provided below:

- a) 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;
- b) to disclose to and authorise Use by any party under, and solely for the purposes of, any UK National Defence Agreement;
- c) 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 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;

- d) 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 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:
  - (i) 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 Authority shall not exercise its rights under this sub-paragraph without first informing the Contractor adequately of its intentions and giving the Contractor an opportunity to make representations; and
  - (ii) whilst the Authority's decision shall be final between the Parties, it shall pay due regard to the Contractor's representations when making its decision;
- e) where any Technical Information is to be disclosed to a Contractor of another governmental or inter-governmental body under paragraphs 12(c) or 12(d) above, the Authority will use all reasonable endeavours to release to the Contractor and other Contractors to the 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;
- f) 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 12(b), which is surplus to requirements; and
- g) if the Tasking Form specifies a right to publish, in relation to one or more Technical Deliverable(s), then the Authority has the right to publish any and all material contained in the Full Rights Version of that/those Technical Deliverable(s) into the public domain. This includes the right to issue that material confidentially or non-confidentially to any person, and under any non-exclusive licence including any open source licence.

13 Subject to the availability of the relevant expertise and on a request made by the Authority within the period specified in paragraph 10, the Contractor shall provide assistance in understanding any Full Rights Versions to the Authority or any other Person to whom the Authority may provide it in accordance with paragraph 12. 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.

14 The Authority shall have the right to Use in confidence all Limited Rights Versions and Limited Rights Information as provided below:

- a) 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;
- b) 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 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.

15 Subject to the limitation imposed by paragraph 16, the rights granted under paragraphs 12 and 14 shall be free of payment to the Contractor in respect of any IPR owned or controlled by the Contractor.

16 The freedom from payment granted under paragraph 15 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 Authority arising under any separate contract or agreement or arising under statute.

## MARKING OF INFORMATION

17 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 S3-A included. The legend may also make other IPR statements reserving rights to the Contractor provided that these are stated in terms consistent with the Authority's rights under this Annex S3-A. All Limited Rights Versions shall be clearly marked as such. The markings shall comply with the requirements set out in the Tasking Form.

18 The Authority shall not remove or modify any marking properly applied to Technical Deliverables in accordance with paragraph 17, shall perpetuate the marking on any copies it makes of Technical Deliverables and their contents, and shall require any third parties to whom the Technical Deliverable or Technical Information is provided to preserve that marking on all copies.

18.1 As an exception to the above, where the Authority has the right to publish material from a Full Rights Version of a Technical Deliverable by virtue of paragraph 12(g) of this Annex S3-A, the Authority shall also have the right to modify or remove any marking, provided that the Authority acknowledges the Contractor's copyright.

## APPLICATIONS FOR PATENTS AND REGISTERED DESIGNS

19 The Contractor shall provide the Authority's Director of Intellectual Property Rights with the following notifications and copies:

- a) 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;
- b) 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;
- c) 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.

20 All notifications under paragraph 19, together with the accompanying material as required, shall be provided by the Contractor within 45 Business Days of receipt by him of the corresponding certificate of filing or grant, save as provided in paragraph 21 below.

21 In lieu of providing individual notifications under paragraph 19, 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 S3-A (such as a notification in the form of a data base print or extract), as long as this is provided no less frequently than quarterly and as long as the copies required by paragraph 19 are provided at the same time.

22 The Authority undertakes to hold all copies provided under paragraph 19 in confidence and to use them only for the purpose of ascertaining the Authority's rights, unless and until they are published in the normal way.

23 The Contractor shall, at the request and expense of the Authority, take all reasonable steps necessary to enable the Authority to register, at the UK Patent Office or elsewhere, its interest in inventions or designs notified under this Annex S3-A.

24 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 his 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.

25 If the Contractor's national security laws and procedures require it to make a patent application for an invention to which paragraph 24 applies otherwise than to the UK Patent Office, it shall secure the Authority's consent (which shall not be unreasonably withheld) before making the patent application.

26 When a patent application for an invention to which paragraph 24 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:

- a) 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 Authority in confidence, solely for the purpose of assessing the correct national security grading; and
- b) 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 Authority.

27 Any patent application made in accordance with paragraphs 25 to 27 shall be considered to have been made with the prior consent of the Authority.

28 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.

29 The provisions of paragraphs 24 to 26 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".

#### **PATENTS ETC – RIGHTS OF THE AUTHORITY**

30 The 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:

- a) 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
- b) 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 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).

31 The Authority shall inform the Contractor when the Authority exercises its rights under paragraph 30.

## EXPLOITATION

32 The Contractor shall notify the 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 Authority can consider alternative options. Unless such a notification has been given, paragraphs 34 to 37 shall apply.

33 The responsibility for securing effective utilisation, management and exploitation of the Foreground Technical Information and Foreground IPR shall fall to the Contractor concomitant upon his ownership of these under paragraph 2 of this Annex S3-A.

34 The Authority shall be entitled to require the Contractor, at reasonable intervals during the Contract and for a period of five 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 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 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.

35 If the Contractor wishes to grant a licence including any provision which conflicts with a provision of this Annex S3-A, it shall inform the 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 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 Authority's consent has been given.

36 Subject always to the Authority's existing obligations at the time of the request, the 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 Authority as necessary to enable the Contractor to exploit Foreground Information and Foreground IPR commercially. Such a licence shall be non-exclusive and on fair and reasonable terms, taking account of all the circumstances.

## GENERAL

37 For the avoidance of doubt, nothing in this Annex S3-A shall:

- restrict the entitlement of either party to make use of information once it enters the public domain;
- extinguish any entitlement to use information and IPR which has been acquired under any separate contract or agreement; or
- override any applicable security restriction or constitute an export licence for Technical Information.

38 This Annex S3-A shall constitute 'an agreement to the contrary' for the purposes of Section 48(5) of the Copyright, Designs and Patents Act 1988.

39 The terms of this Annex S3-A shall survive the cessation of the Contract.

**ANNEX S3-B: IPR TERMS AND CONDITIONS (VESTING IN THE CROWN)**

- 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 Authority. The Contractor shall take all necessary measures to secure that vesting. On request, the Contractor shall demonstrate to the 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.
- 2 The Contractor shall waive, or procure a waiver of, any moral rights in the Results.
- 3 The Authority shall determine whether any of the Results should be protected by patent or other protection. The Contractor shall assist the 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 Authority.
- 4 The Contractor shall mark any copyright work comprising Results with the legend: '© Crown-owned copyright [insert the year of generation of the work]'.
- 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. Nothing in this agreement shall prevent the Contractor from using, changing, disclosing, publishing and non-exclusively licencing such Contractor-owned Background IPR, independently of the Results.
 

Except where, and to the extent, agreed to the contrary in writing, the Contractor shall, when delivering the Results, grant the Authority a non-exclusive, perpetual, royalty-free, irrevocable worldwide licence to any Contractor-owned Background IPR, and shall procure for the Authority the same in any 3rd party Background IPR, which is included in, delivered with, or necessary for use of, the Results, permitting the Authority to use, copy, change, disclose, publish, and authorise use and copying of such Background IPR by any person, solely for the purpose of using the Results.
- 6 Unless otherwise agreed by the 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.
- 7 The Authority shall have the right to require the Contractor to furnish to the 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 Authority unless already included in the price of the Contract.
- 8 The Contractor shall treat the Results as if received in confidence from the Authority and:
  - (a) shall not copy, use or disclose to a third party any of the Results without the prior written consent of the 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 Clause 12 of this Annex; and
  - (b) shall take all reasonable precautions necessary to ensure that 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 Authority under the Contract or any Sub-Contract under it.
- 9 The Contractor shall ensure that their employees are aware of their arrangements for discharging the obligations at Clause 8 and take such steps as may be reasonably practical to enforce such arrangements.

- 10 The confidentiality provisions of Clause 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.
- 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 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.
- 12 The Contractor shall be entitled to request consent from the Authority to re-use (under licence or otherwise) the Results and intellectual property rights vested in the Authority by virtue of Clause 1 for other purposes including, but not limited to, tendering for other work for the Authority or work for another UK Government department. Such consent shall be properly considered by the Authority taking into account matters such as national security and the rights of third parties.

**APPENDIX TO ANNEX S3-A and ANNEX S3-B: DESIGN RIGHTS AND PATENTS SUB-CONTRACTOR'S AGREEMENT****Design Rights and Patents (Sub-Contractor's Agreement)**

## Notes for Guidance

- 1 This note has been devised as an aid to the completion of the Sub-Contractor's Agreement.
- 2 This top sheet is to be detached before inclusion of the Agreement in a Contract or before submission to a Sub-Contractor.
- 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) paragraph 1 - the full name of the main Supplier;
  - e) paragraph 1 - the reference number of the main Contract;
  - f) paragraph 1 - the description of the equipment being designed and developed under the main contract as shown on the Schedule of the Contract;
  - g) \*Schedule A - List of items appropriate to the Sub-Contract in question (the Sub-Contractor may insert these himself if necessary);
  - h) Schedule B - List of the relevant IPR conditions applicable to the Contract.
- 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.
- 5 Similarly, as 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 [X] to the Contract".
- 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 Authority. One copy is for the Sub-Contractor to retain, and the other is for retention by the Authority.

\*N.B. 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 "**Authority**"), acting as part of the Crown of the other part

**WHEREAS:**

- 1 The Authority has placed with ..... (hereinafter called "the main Supplier") 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 Supplier 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 Supplier.
- 3 With a view to securing to the Authority rights as regards inventions designs and other related matters in respect of any Sub-Contract the main contract provides that the main Supplier shall not enter into any Sub-Contract for any component aforesaid without obtaining the prior approval of the Authority.
- 4 The main Supplier has now informed the 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 Annex B to this Design Rights and Patents (Sub-Contractor's Agreement) (hereinafter called "the sub-contracted items") and has requested the Authority's approval of the Sub-Contract accordingly.
- 5 The Authority has signified his willingness to approve the Sub-Contract on condition that in consideration of his giving approval the Sub-Contractor enters into a direct Agreement with the Authority concerning the matters hereinafter appearing and the Sub-Contractor has signified his 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 Authority hereby agree to be bound to each other by the provisions of the conditions as set out in Annex B to 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 Supplier and the Sub-Contractor and no other agreement between the main Supplier 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 Authority.....

#### **ANNEX A**

The Sub-Contract Items are:

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

#### **ANNEX B**

The Clauses which apply to this Agreement are:

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

To be inserted as appropriate except that:

- (i) Where "the Supplier" 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.

## ANNEX S3-C: SECURITY MEASURES

Note: This Annex C is applicable in the circumstances set out at Clause 27 (Secret (or Above) Security Requirements). Provisions of this Annex are to be included in relevant Sub-Contracts.

### 1 Definitions

#### 1.1 In this Annex C:

- a) 'Secret Matter' means any matter connected with the Agreement, or its performance which the First Party informs the Second Party in writing has been designated by the Authority as "TOP SECRET" or "SECRET" and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;
- b) 'Employee' shall include any person who is an employee or director of the Second Party or who occupies the position of a director of the Second Party, by whatever title given;
- c) 'GovS 007: Security' means the Government Functional Standard GovS 007: Security relating to the government's expectations for protecting:
  - (i) the government's people, information and assets;
  - (ii) visitors to government property, and third-party suppliers while engaged on government business; and
  - (iii) citizen data.

### 2 The Official Secrets Acts

#### 2.1 The Second Party shall:

- a) Take all reasonable steps to ensure that all Employees engaged on any work in connection with the Agreement have notice that the Official Secrets Acts 1911-1989 apply to them and will continue so to apply after the completion or termination of the Agreement; and
- b) If directed by the First Party or the Authority, ensure that any Employee shall sign a statement acknowledging that, both during the term of the Agreement and after its completion or termination, they are bound by the Official Secrets Acts 1911-1989 (and where applicable any other legislation).

### 3 Security Measures

#### 3.1 Unless they have the written authorisation of the Authority to do otherwise, neither the Second Party nor any of their Employees shall, either before or after the completion or termination of the Agreement, do or permit to be done anything which they know or ought reasonably to know may result in Secret Matter being disclosed to or acquired by a person in any of the following categories:

- a) who is not a British citizen;
- b) who does not hold the appropriate authority for access to the protected matter;
- c) in respect of whom the Authority has notified the Second Party in writing that the Secret Matter shall not be disclosed to or acquired by that person;
- d) who is not an Employee of the Second Party; e. who is an Employee of the Second Party and has no need to know the information for the proper performance of the Agreement.

#### 4 Unless they have the written permission of the Authority to do otherwise, the Second Party and their Employees shall, both before and after the completion or termination of the Agreement, take all reasonable steps to ensure that:

- a) no photograph of, or pertaining to, any Secret Matter shall be taken and no copy of or extract from any Secret Matter shall be made except to the extent necessary for the proper performance of the Agreement;
- b) any Secret Matter is at all times strictly safeguarded in accordance with the GovS 007: Security (as amended from time to time) and upon request is delivered up to the Authority who shall be entitled to retain it.

A decision of the Authority on the question of whether the Second Party has taken or is taking reasonable steps as required by this Clause, shall be final and conclusive.

5 The Second Party shall:

- a) provide to the Authority:
  - (i) upon request, such records giving particulars of those Employees who have had at any time, access to any Secret Matter that is required to be kept in accordance with Clause 4(b);
  - (ii) upon request, such information as the Authority may from time to time require so as to be satisfied that the Second Party and 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;
  - (iii) 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.
- b) ensure that, for the purpose of checking the Second Party's compliance with the obligation in Clause 4(b), a representative of the First Party or the Authority shall be entitled at any time to enter and inspect any premises used by the Second Party which are in any way connected with the Agreement and inspect any document or thing in any such premises, which is being used or made for the purposes of the Agreement. Such representative shall be entitled to all such information as they or it may reasonably require.

6 If at any time either before or after the completion or termination of the Agreement, 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 Authority of the matter with full particulars thereof.

7 Sub-Contracts

7.1 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:

- a) submit for approval of the Authority the name of the proposed Sub-Contractor, a statement of the work to be carried out and any other details known to the Second Party which the Authority shall reasonably require;
- b) incorporate into the Sub-Contract the terms of this Annex and such secrecy and security obligations as the Authority shall direct;
- c) inform the 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 Authority, terminate the Agreement.

8 Termination

8.1 The First Party shall be entitled to terminate the Agreement immediately if:

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

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

## SCHEDULE S3-1: DEFINITIONS AND INTERPRETATION

### Defined Terms

In this Contract, the following expressions and defined terms have the following meanings:

<b>Acceptance Notice</b>	means formal notification of the task award issued by the Authority via the R-Cloud Portal (or otherwise expressly communicated by the Authority in writing), including any associated documents expressly referred to therein.
<b>Agreement</b>	means the R-Cloud (Version 4) Agreement between the Authority and the Contractor.
<b>Authority</b>	means the Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland, (referred to in this document as "the Authority"), acting as part of the Crown.
<b>Authority's Representative</b>	means the person(s) defined within the Tasking Form or as otherwise confirmed by the Authority in writing who will act as the Authority's Representative in connection with the Contract.
<b>Background IPR</b>	means ownership of any intellectual property rights generated independently of this contract
<b>Central Government Body (or Bodies)</b>	means a body or bodies listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: (1) Government Department; (2) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (3) Non-Ministerial Department; or (4) Executive Agency.
<b>Change Control Representative</b>	means the Authority's representative for the purposes of managing any change in control under the Contract.
<b>Contract</b>	means the agreement concluded between the Authority and the Contractor, including the Tasking Form, all terms and conditions, schedules, specifications, plans, drawings, and other documentation, expressly made part of the agreement in accordance with Clause 2.2.
<b>Contract Price</b>	means the amount to be paid (inclusive of packaging and exclusive of any applicable VAT) by the Authority to the Contractor, for the full and proper performance by the Contractor of its obligations under the Contract.
<b>Contractor</b>	means the organisation appointed to this Contract by the Authority in accordance with provision of the Agreement.
<b>Contractor Personnel</b>	means all persons employed by the Contractor, together with the Contractor's agents, suppliers, consultants and Sub-Contractors (and all persons employed by any Sub-Contractor together with the Sub-Contractor's servants, consultants, agents and suppliers) used in the performance of the Contractor's obligations under this Contract.

<b>Contractor Commercially Sensitive Information</b>	means any information notified by the Supplier to the Authority in writing and which is acknowledged by the Authority as being commercially sensitive information.
<b>Contractor Deliverables</b>	means the goods and / or services including packaging (and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with the schedule of requirements.
<b>Effective Date of Contract</b>	means the date that notification of the Contract award is sent via the R-Cloud Portal, unless otherwise stated in writing by the Authority.
<b>Employee</b>	shall include any person who is an employee or director of the Contractor or who occupies the position of a director of the Contractor, by whatever title given.
<b>Firm Price</b>	means a price excluding Value Added Tax (VAT) which is not subject to variation.
<b>GovS 007: Security</b>	means the Government Functional Standard GovS 007: Security relating to the government's expectations for protecting.
<b>Government Establishment</b>	shall be deemed to include any of Her Majesty's Ships or Vessels and Service Stations.
<b>Government Furnished Assets</b>	means any asset, including but not limited to equipment, information or resources, issued by the Authority or made available to the Contractor by the Authority in connection with the Contract.
<b>Issued Property</b>	means any tangible item, such as equipment, loaned by the Authority to the Contractor in connection with the Contract.
<b>Legislation</b>	means, in relation to the United Kingdom, any Act of Parliament, any subordinate legislation within the meaning of section 21 of the Interpretation Act 1978, any exercise of Royal Prerogative or any enforceable community right within the meaning of Section 2 of the European Communities Act 1972.
<b>Notices</b>	means all notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract.
<b>Parties</b>	means the Contractor and the Authority, and Party shall be construed accordingly.
<b>Personal Particulars Form (or Research Worker Form)</b>	means the Form to be completed in accordance with Clause 18 in respect of all Research Workers engaged directly in the Contract.
<b>Reports</b>	means any Interim or Progress Reports or Final Reports (as defined at Clauses 19.2 – 19.3).
<b>Response</b>	means the response submitted by a Supplier as part of the Tasking Procedure.

<b>Secret Matter</b>	means any matter connected with the Contract, or its performance which is designated by the Authority in the security aspects letter annexed to the Contract or otherwise in writing as "Top Secret" or "Secret", and shall include any information concerning the content of such matter and anything which contains or may reveal that matter.
<b>Services</b>	means any services which the Contractor is required under the Contract to perform or to fulfil.
<b>Statement of Requirements</b>	means the Authority's technical and qualitative requirements as set out in the Tasking Form.
<b>Sub-Contractor</b>	means any Sub-Contractor engaged by the Contractor or by any other Sub-Contractor of the Contractor at any level of sub-contracting to provide Contractor Deliverables wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract and 'Sub-Contract' shall be interpreted accordingly.
<b>Supplier</b>	has the meaning given in the Agreement
<b>Tasking Form</b>	means a document or other form of communication containing details of a specific requirement and inviting Suppliers to respond to a Tasking Procedure.
<b>Tasking Procedure</b>	means the procedure by which the Contractor was selected to be appointed to the Contract
<b>Technical Deliverable</b>	means a document or product comprising Technical Information which is required to be provided to the Authority under the terms of the Contract.
<b>Technical Information</b>	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.
<b>Transparency Information</b>	means the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Contractor under the Contract.

## **SCHEDULE S3-2: CONTRACT CHANGE CONTROL PROCEDURE**

### 1. Authority Changes

Subject always to Clause 3 of this Contract (Amendments to Contract), the Authority shall be entitled, acting reasonably, to require changes to the Contractor Deliverables (a "Change") in accordance with this Schedule S3-2.

### 2. Notice of Change

- a) If the Authority requires a Change, it shall serve a Notice (an "Authority Notice of Change") on the Contractor.
- b) The Authority Notice of Change shall set out the change required to the Contractor Deliverables in sufficient detail to enable the Contractor to provide a written proposal (a "Contractor Change Proposal") in accordance with Clause 3 below.

### 3. Contractor Change Proposal

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

### 4. Contractor Change Proposal – Process and Implementation

- a) As soon as practicable after the Authority receives a Contractor Change Proposal, the Authority shall:
  - (i) evaluate the Contractor Change Proposal;
  - (ii) where necessary, discuss with the Contractor any issues arising and following such discussions the Authority may modify the Authority Notice of Change and the Contractor shall as soon as practicable, and in any event not more than ten (10) Business Days (or such other period as the Parties may agree) after receipt of such modification, submit an amended Contractor Change Proposal.
- b) As soon as practicable after the Authority has evaluated the Contractor Change Proposal (amended as necessary) the Authority shall:
  - (i) indicate its acceptance of the Change Proposal by issuing an amendment to the Contract in accordance with Clause 3 of this Contract (Amendments to Contract); or
  - (ii) serve a Notice on the Contractor rejecting the Contractor Change Proposal and withdrawing (where issued) the Authority Notice of Change.
- c) If the Authority rejects the Change Proposal it shall not be obliged to give its reasons for such rejection.

- d) The Authority shall not be liable to the Contractor for any additional work undertaken or expense incurred unless a Contractor Change Proposal has been accepted in accordance with Clause 4b(i) of this Schedule.

5. Contractor Changes

- a) If the Contractor wishes to propose a Change, it shall serve a Contractor Change Proposal on the Authority, which shall include all of the information required by Clause 3b, and the process at Clause 4 of this Schedule shall apply.

### **SCHEDULE S3-3: CYBER SECURITY**

#### 1 Definitions

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

“Associated Company” means:

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

“Cyber Risk Profile” means the outcome of the CSM Risk Assessment Process;

“Cyber Improvement Plan” means the plan referred to in Clause 3 of this Schedule;

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

- a) unauthorised access to a System and/or the Data which resides therein;
- b) disruption or change of the operation (including but not limited to takeover of control) of a System and/or the Data which resides therein;
- c) unauthorised destruction, damage, deletion or the change of Data residing in a System;
- d) unauthorised or unintentional removal or limiting the possibility to use Data residing in a System;
- e) 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 Contract issued by the Authority to the Contractor;

“Cyber Security Model” and “CSM” mean the process by which the Authority, the Contractor and any relevant Sub-contractor ensure that Data is adequately protected from Cyber Security Incidents and includes but is not limited to the CSM Risk Assessment Process, DEFSTAN 05-138 and the CSM Supplier Assurance Questionnaire conducted via the Supplier Cyber Protection Service;

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

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

“Data” means any data or information, irrespective of ownership, that is generated, handled, stored or otherwise processed by the Supplier as necessary to carry out their Functions, including but not limited to that pertaining to a Contractor Deliverable, and that provided by, or to, the UK or its International Partners;

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

“Functions” means any activity carried out by the Supplier whether as a general business operation or specifically in relation to the Contract;

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

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

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

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

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

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

“Substantial Cyber Incident” means a Cyber Security Incident which has given or may give rise to:

- a) disruption of an entity’s ability to engage in business operations;
- b) serious impacts on system safety;
- c) substantial loss(es) of confidentiality; or
- d) a compromise of a service/hosting/Contractor or supply chain that has or may lead to the unauthorised access to an information system or any non-public information.

“Supplier Cyber Protection Service” means the service supporting the CSM which includes but is not limited to the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire;

“System” includes but is not limited to an information management system, industrial control system, electronic communications network, IT system or equivalent function;

“WARP” means the Defence Industry Warning, Advice and Reporting Point or any successor body notified by way of ISN.

## 2 Authority Obligations

### 2.1 The Authority shall:

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

## 3 Contractor Obligations

### 3.1 The Contractor shall, and shall procure that their Sub-contractors shall:

- 3.1.1 comply with DEFSTAN 05-138 or, where applicable, the Cyber Improvement Plan attached to this Contract. The Parties agree that this condition goes to the heart of this Contract and that a breach of this condition may be considered a material breach of this Contract. For

the avoidance of doubt any Cyber Improvement Plan shall be prepared and implemented in accordance with Good Industry Practice taking account of any risk-balance case and any mitigation measures required by the Authority and shall ensure that any measures taken to protect Data are no less stringent than those taken to protect their own proprietary information;

- 3.1.2 diligently complete the CSM Risk Assessment Process in accordance with the Authority's instructions, ensuring that there is full and accurate disclosure of any risks and/or relevant issues 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 supply chain or on receipt of any reasonable request by the Authority;
- 3.1.3 re-perform the CSM Supplier Assurance Questionnaire no less than once in each year of this Contract commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire to demonstrate continued compliance with the Cyber Security Instructions;
- 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 Schedule in accordance with Good Industry Practice provided always that where there is a conflict between the Contractor's obligations under 3.1.1 above and this 3.1.4 the Contractor shall notify the Authority in accordance with the notification provisions in DEFSTAN 05-138 as soon as they become aware of the conflict and the Authority shall determine which standard or measure shall take precedence;
- 3.1.5 comply with all Cyber Security Instructions notified to it by the Authority as soon as reasonably practicable;
- 3.1.6 notify the WARP and the Contractors NSA/DSA, and in the case of a Sub-contractor also notify the Contractor, immediately in writing as soon as they know or believe that a Substantial Cyber Security Incident has or may have taken place. In the case of all other Cyber Security Incidents, notification shall be made in writing 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
- 3.1.7 in coordination with their NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the Authority and its agents and representatives to take all steps to mitigate the impact of the Cyber Security Incident and minimise the likelihood of any further similar Cyber Security Incidents. For the avoidance of doubt, this shall include complying with any reasonable technical or organisational security measures deemed appropriate by the Authority and the Contractors NSA/DSA in the circumstances and taking into account the Cyber Risk Profile; and
- 3.1.8 consent to the 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
- 3.1.9 include provisions equivalent to those set out in the Annex to this Schedule (the "equivalent provisions") in all relevant Sub-Contracts.

3.2 For the avoidance of doubt, where an obligation is placed on a Contractor under this Clause 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 Records

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

- 4.1.1 copies of all documents required to demonstrate compliance with DEFSTAN 05-138 and this Schedule, including but not limited to any information used to inform the CSM Risk Assessment Process and to carry out the CSM Supplier Assurance Questionnaire, together with any certificates issued to the Contractor and/or Sub-Contractor; and
- 4.1.2 copies of all documents demonstrating compliance with 3.1.5 and in relation to any notifications made under 3.1.6 and/or investigation under 3.1.7.

4.2. The Contractor shall, and shall ensure that any Sub-Contractor shall, on request provide the Authority, the Authority's representatives and/or the Contractors NSA/DSA such access to those records under 5.1 as may be required in connection with this Contract.

#### 5 Audit

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

- (i) the cause of the Cyber Security Incident,
- (ii) the impact of the Cyber Security Incident,
- (iii) the information , and
- (iv) the work carried out by the Contractor to resolve the Cyber Security Incident and to mitigate the effects, to ensure that the Cyber Security Incident is resolved to the satisfaction of the Authority and the NSA/DSA.

5.2 In addition to the rights in 6.1 above the 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 termination of the Contract or the end of the Contract term or final payment under the Contract whichever is the later, but not more than once in any calendar year, conduct an audit for the following purposes where the Contractor continues to hold Data relating to this Contract:

- 5.2.1 to review and verify the integrity, confidentiality and security of any Data; and
- 5.2.2 to review the Contractor's and/or any Sub-contractor's compliance with their obligations under DEFSTAN 05-138 or a Cyber Improvement Plan; and
- 5.2.3 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 5.1.1 and 5.1.2 above.

5.3 The Authority, acting reasonably and having regard to the confidentiality and security obligations owed by the Contractor to third parties, shall propose the scope of each audit in writing with a view to seeking the agreement of the Contractor but shall make the ultimate decision on the scope. For the avoidance of doubt the scope of the audit shall not grant the Authority any unsupervised access to any of the Contractor's Systems. The Authority shall use its reasonable endeavours to ensure

that the conduct of each audit does not unreasonably disrupt the Contractor and/or Sub-Contractor or delay the provision of the Contractor Deliverables and supplier information received by the Authority in connection with the audit shall be treated as confidential information.

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

- 5.4.1 all information requested by the Authority within the permitted scope of the audit;
- 5.4.2 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 permitted scope of the audit and, where such Sites are outwith the control of the Contractor, shall secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and
- 5.4.3 access to any relevant staff.

5.5 The Authority shall endeavour to (but is not obliged to) provide at least 15 calendar days' notice of its intention to conduct an audit.

5.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Schedule, unless the audit identifies a material breach of the terms of this Schedule by the Contractor in which case the Contractor shall reimburse the Authority for all the Authority's reasonable costs incurred (which shall be evidence to the Contractor) in the course of the audit.

5.7 The Contractor shall in their Sub-Contracts procure rights for the Authority to enforce the terms of clause 6 of this Schedule in accordance with the Contracts (Rights of Third Parties) Act 1999.

## 6 General

6.1 On termination or expiry of this Contract the provisions of this Schedule excepting 3.1.2 and 3.1.3 above shall continue in force so long as the Contractor and/or and Sub-Contractor holds any information, including Data relating to this Contract.

6.2 Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties under this Schedule 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.

6.3 The Contractor agrees that the Authority has absolute discretion to determine changes to DEFSTAN 05-138 or the Cyber Risk Profile or both and issue new or updated Cyber Security Instructions. In the event that there is such a change to DEFSTAN 05-138 or the Cyber Risk Profile or both, then either Party may seek an adjustment to the Contract Price for any associated increase or decrease in costs and the Contractor may request an extension of time for compliance with such revised or amended DEFSTAN 05-138 or Cyber Risk Profile or both provided always that the Contractor shall seek to mitigate the impact on time and cost to the extent which it is reasonably practicable to do so and further provided that such costs shall not be allowed unless they are considered to be appropriate, attributable to the Contract and reasonable in all the circumstances.

6.4 Subject to 7.3 above, where the Contractor seeks such adjustment or extension, the Authority will proceed in accordance with Schedule S3-2 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 Authority within eight (8) weeks (or other period agreed by the parties) of the occurrence of the change in DEFSTAN 05-138 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 Authority shall not be required to withdraw any Authority Notice of Change which may have been issued insofar as it relates to DEFSTAN 05-138 or the Cyber Risk Profile or

both whether or not the Contractor Change Proposal is rejected. If the Contractor does not agree with the Authority's determination, then the provisions of Schedule 3, Clause 14 or any agreed alternative dispute resolution procedure provided for in the Contract shall apply.

6.5 The Contractor shall not recover any costs and/or other losses under or in connection with this Schedule where such costs and/or other losses are recoverable or have been recovered by the Contractor elsewhere in this Contract or otherwise. For the avoidance of doubt this shall include but not be limited to the cost of implementing any upgrades or changes to any 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 this Contract or has recovered such costs and/or losses in other contracts between the Contractor and the Authority or with other bodies.

### **Annex to Schedule S3-3: Cyber Security**

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

“Cyber Risk Profile” means the outcome of the CSM Risk Assessment;

“Cyber Improvement Plan” means the plan referred to in Clause 2 of this Annex;

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

- a) unauthorised access to a System and/or the Data which resides therein;
- b) disruption or change of the operation (including but not limited to takeover of control) of a System and/or the Data which resides therein;
- c) unauthorised destruction, damage, deletion or the change of Data residing in a System;
- d) unauthorised or unintentional removal or limiting the possibility to use Data residing in a System; or
- e) 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 Authority to the Main Contractor;

“Cyber Security Model” and “CSM” mean the process by which the Authority, the Main Contractor and any relevant Sub-contractor ensure that Data is adequately protected from Cyber Security Incidents and includes but is not limited to the CSM Risk Assessment Process, DEFSTAN 05-138 and the CSM Supplier Assurance Questionnaire conducted via the Supplier Cyber Protection Service;

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

“CSM Supplier Assurance Questionnaire” means the supplier assessment questionnaire which forms part of the Cyber Security Model and is to be used by the Sub-contractor to demonstrate compliance with this Annex;

“Data” means any data, or information, irrespective of ownership, that is generated, handled, stored or otherwise processed by the Supplier as necessary to carry out their Functions, including but limited to that pertaining to a Contractor Deliverable, and that provided by, or to, the UK or its International Partners;

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

“Functions” means any activity carried out by the Supplier whether as a general business operation or specifically in relation to the contract;

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

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

“Main Contract” means [contract reference] [insert details of prime contract] made between the Authority and the Contractor;

“Main Contractor” means the Contractor named in the Main Contract with the Authority;

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

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

“Sub-Contract” means any sub-contract at any level of the supply chain, whether this Sub-Contract which is awarded by the Main Contractor or any related Sub-Contract which is awarded by the Sub-Contractor or any lower tier Sub-Contractor or Associated Company, which is entered into as a consequence of or in connection with this Sub-Contract;

“Sub-Contractor” means a sub-contractor of the Main Contractor or any Associated Company whether a direct Sub-Contractor or at any lower level of the supply chain who provides any Contractor Deliverables in connection with the Main Contract but only to the extent that the Sub-Contractor processes, stores or transmits Data under their Sub-Contract;

“Substantial Cyber Incident” means a Cyber Security Incident which has given or may give rise to:

- a) disruption of an entity’s ability to engage in business operations;
- b) serious impacts on system safety;
- c) substantial loss(es) of confidentiality; or
- d) a compromise of a service/hosting/Contractor or supply chain that has or may lead to the unauthorised access to an information system or any non-public information;

“Supplier Cyber Protection Service” means the service supporting the CSM which includes but is not limited to the CSM Risk Assessment Process and CSM Supplier Assurance Questionnaire;

“System” includes but is not limited to an information management system, industrial control system, electronic communications network, IT system or equivalent function;

“WARP” means the MOD Defence Industry Warning, Advice and Reporting Point or any successor body notified by way of ISN;

## 2 Sub-Contractor Obligations

### 2.1 The Sub-Contractor shall, and shall procure that their lower tier Sub-Contractors shall:

- 2.1.1 comply with DEFSTAN 05-138 or, where applicable, the Cyber Improvement Plan attached to this Sub-Contract. The Parties agree that this condition goes to the heart of this Contract and that a breach of this condition may be considered a material breach of this Contract. For the avoidance of doubt any Cyber Improvement Plan shall be prepared and implemented in accordance with Good Industry Practice taking account of any risk-balance case and any mitigation measures required by the Authority and the Main Contractor and shall ensure that any measures taken to protect Data are no less stringent than those taken to protect the Sub-Contractor's own proprietary information;
- 2.1.2 diligently complete the CSM Risk Assessment Process in accordance with the Authority and the Main Contractor's instructions, ensuring that there is full and accurate disclosure of any risks and/or relevant issues and further that any change in the Cyber Risk Profile is notified to the Authority, the Main Contractor and any affected lower tier Sub-contractor, and complete a further CSM Risk Assessment or CSM Supplier Assurance Questionnaire where a change is proposed to the supply chain or on receipt of any reasonable request by the Authority;
- 2.1.3 re-perform the CSM Supplier Assurance Questionnaire no less than once in each year of this Sub-Contract commencing on the first anniversary of completion of the CSM Supplier Assurance Questionnaire to demonstrate continued compliance with the Cyber Security Instructions;
- 2.1.4 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 2.1.1 above and this 2.1.4 the Sub-Contractor shall notify the Main Contractor and the Authority in accordance with the notification provisions in DEFSTAN 05-138 as soon as they become aware of the conflict and the Authority shall determine which standard or measure shall take precedence;
- 2.1.5 comply with all Cyber Security Instructions notified to them by the Authority and/or the Main Contractor as soon as reasonably practicable;
- 2.1.6 notify the WARP, the Main Contractor and the Sub-Contractor's NSA/DSA immediately in writing 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 in writing 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 Main Contractor and/or any Sub-contractor or a service which is provided to the Main Contractor and/or any Sub-contractor by a provider of cloud computing services
- 2.1.7 in coordination with their NSA/DSA, investigate any Cyber Security Incidents fully and promptly and co-operate with the Authority, the Main 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 Authority and the relevant Main and/or Sub-Contractor's NSA/DSA in the circumstances and taking into account the Cyber Risk Profile; and
- 2.1.8 consent to the 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

2.1.9 include provisions equivalent to this Annex in all lower tier Sub-Contracts (the “equivalent provisions”) and, where a lower tier Sub-Contractor breaches terms implementing this Annex in a Sub-Contract, the Sub-Contractor shall, and shall procure that their lower tier Sub-Contractors shall, in exercising their rights or remedies under the relevant Sub-Contract:

- 2.1.9.1 notify the Main Contractor and the Authority of any such breach and consult with the Main Contractor and the Authority regarding any remedial or other measures which are proposed as a consequence of such breach, taking the Authority’s views into consideration; and
- 2.1.9.2 have regard to the equivalent provisions.

2.2 For the avoidance of doubt, where an obligation is placed on a Sub-contractor under this Clause 2, including but not limited to the controls set out within DEFSTAN 05-138, 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.

### 3 Records

3.1 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 termination of Contract term or final payment under this Sub-Contract, or as long a period as may be agreed between the Parties, full and accurate records including but not limited to:

- 3.1.1 copies of all documents required to demonstrate compliance with DEFSTAN 05-138 and this Annex, including but not limited to any information used to inform the CSM Risk Assessment Process and to carry out the CSM Supplier Assurance Questionnaire, together with any certificates issued to the Sub-Contractor and/or any lower tier Sub-Contractor; and
- 3.1.2 copies of all documents demonstrating compliance with 2.1.5 and in relation to any notifications made under 2.1.6 and/or investigation under 2.1.7.

3.2 The Sub-Contractor shall, and shall ensure that any lower tier Sub-Contractor shall, on request provide the Authority, the Authority’s representatives and/or the relevant Main Contractor or Sub-Contractor’s NSA/DSA such access to those records under 3.1 as may be required in connection with this Sub-Contract.

### 4 Audit

4.1 In the event of a Cyber Security Incident the Sub-Contractor agrees that the Authority and its representatives, in coordination with the relevant Main or Sub-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 Data 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 Authority and the NSA/DSA.

4.2 In addition to the rights in 4.1 above, the Sub-Contractor agrees that the Authority, its representatives and/or the relevant Main or Sub-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 termination

of this Sub-Contract or the end of the Sub-Contract term or final payment under the Sub-Contract whichever is the later, but not more than once in any calendar year, conduct an audit for the following purposes where the Sub-Contractor continues to hold Data relating to this Contract:

- 4.2.1 to review and verify the integrity, confidentiality and security of any Data
- 4.2.2 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
- 4.2.3 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 3.1.1 and 3.1.2 above.

4.3 The Authority, 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 Authority any unsupervised access to any of the Sub-Contractor's Systems. The Authority and the Main Contractor shall use their reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Sub-Contractor and/or lower tier Sub-Contractor or delay the provision of the Contractor Deliverables and supplier information received in connection with the audit shall be treated as confidential information.

4.4 The Sub-Contractor shall, and shall ensure that any lower tier Sub-Contractor shall, on demand provide the Authority and any relevant regulatory body, including the relevant Main 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:

- 4.4.1 all information requested by the Authority within the permitted scope of the audit;
- 4.4.2 reasonable access to any Sites controlled by the Sub-Contractor or any Associated Company and any lower tier Sub-Contractor used in the performance of the Sub-Contract to the extent required within the permitted scope of the audit and, where such Sites are outwith the control of the Sub-Contractor, shall secure sufficient rights of access for the Auditors as shall be necessary to allow audits to take place; and
- 4.4.3 access to any relevant staff.

4.5 Where the Main Contractor is provided with notice of the audit by the Authority and/or the relevant NSA/DSA, the Main 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.

4.6 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 Main Contractor and the Authority as appropriate for all the reasonable costs incurred in the course of the audit.

4.7 The Sub-Contractor shall in their lower tier Sub-Contracts procure rights for the Authority to enforce the terms of this clause 4 of this Annex in accordance with the Contracts (Rights of Third Parties) Act 1999.

5 General

5.1 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 Data relating to this Sub-Contract.

5.2 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.

- 5.3 The Sub-Contractor agrees that the Authority has absolute discretion to determine changes to DEFSTAN 05-138 or the Cyber Risk Profile or both and issue new or updated Cyber Security Instructions. In the event that there is such a change to DEFSTAN 05-138 or the Cyber Risk Profile or both, then the Sub-Contractor may seek an adjustment to the contract price from the Main Contractor for any associated increase or decrease in costs and the Sub-Contractor may request an extension of time for compliance with such revised or amended DEFSTAN 05-138 or Cyber Risk Profile or both provided always that 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 further provided that such costs shall not be allowed unless they are considered to be appropriate, attributable to this Sub-Contract and reasonable in all the circumstances.
- 5.4 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 Contract or otherwise. For the avoidance of doubt this shall include but not be limited to the cost of implementing any upgrades or changes to any information system or electronic communications network whether in response to a Cyber Security Incident or otherwise, where the 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 Main Contractor or with other bodies.

**SCHEDULE 4: FEDERAL ACQUISITION REGULATIONS (FAR'S) AND DEFENSE FEDERAL ACQUISITION REGULATIONS (DFAR'S) SUPPLEMENTS FLOWDOWN PROVISIONS FOR SUBCONTRACTS UNDER A UNITED STATES (US) DEPARTMENT OF DEFENCE (DOD) PRIME CONTRACT**

**INCORPORATION OF FAR AND DFAR CLAUSES**

1. In addition to the terms and conditions of the Agreement, the following shall apply to Firm Price Contracts entered into by the Authority with a Contractor in support of a United States Government prime contract. In such cases (and in the remainder of this Schedule 4), the Contractor will be denoted as the 'subcontractor', and the US terms will use the terminology 'subcontract' and 'subcontractor' to refer to the arrangement/relationship between Dstl and the Contractor. The list below is not exhaustive and there may be some additional FAR's / DFAR's or other US Government Clauses/Conditions included at task level. These will be notified to the Contractor as soon as possible.
2. Nothing in the specific Tasking Agreement (hereinafter in this Schedule 4 referred to as the subcontract (except in paragraph 6 below)) shall grant the Contractor a direct claim or cause of action against the United States Government.
3. The FAR and DFAR clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to the subcontract. The edition of the FAR or DFAR which is detailed in the Prime contract with the United States Government shall apply to the subcontract.
4. Copies of the FAR and the DFAR clauses can be obtained from the US Government Acquisition Internet Site:
 

(FAR) <https://www.acquisition.gov/browse/index/far>

(DFARS) <https://www.acquisition.gov/dfars>
5. The Contractor shall include in any lower-tier subcontracts the appropriate flow down clauses as required by the FAR and DFAR clauses included in the subcontract.
6. When a FAR or DFAR clause uses a specific word or term, those words or terms shall have the meaning as in FAR 2.101 with the following exceptions:
 

**"Contracting Officer"** shall mean the relevant Authority's Representative (Commercial);

**"Contractor"** and **"Offeror"** means the Contractor, which is the party with whom the Authority is contracting for the purposes of this contract;

**"Prime Contract"** means the contract between the US Government and the Authority;

**"Subcontract"** means any contract placed by the Contractor on any lower-tier subcontractors.
7. If there is any inconsistency between the terms and conditions of this Agreement and any subcontract, a descending order of precedence shall be accorded to as follows:
  - (i) The FAR and DFAR clauses;
  - (ii) The terms and conditions of this Agreement;
  - (iii) The requirement and any additional terms, specified as part of the tasking process, incorporated into the subcontract.
8. As this is a subcontract under a US DoD prime contract, the Contractor must not subcontract with any party that the US Government have debarred, suspended, or proposed for debarment and who are excluded from performing work under US Government contracts. The list of ineligible parties is available via the US Government General Services Administration (GSA) web-based System for Award Management (SAM).

**In accordance with paragraph 1 above, the following are an indicative list of those US Government conditions likely to be applicable to all subcontracts. On a case by case basis there may be fewer or additional clauses:**

52.202-01	Definitions
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements
52.204-21	Basic Safeguarding of Covered Contractor Information Systems
52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other covered entities
52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.
52.209-6	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment
52.222-50	Combating Trafficking in Persons
52.225-13	Restrictions on Certain Foreign Purchases
52.227-2	Notice And Assistance Regarding Patent And Copyright Infringement
52.242-15	Stop-Work Order
52.242-15	Stop-Work Order Alternate 1
52.244-6	Subcontracts for Commercial Items
52.252-2	Clauses Incorporated by Reference
252.203-7002	Requirement to Inform Employees of Whistleblower Rights
252.203-9000	Prohibition on the Use of Senior Mentors
252.204-7000	Disclosure Of Information
252.204-7015	Notice of Authorized Disclosure of Information for Litigation Support
252.223-9000	Reporting of Contractor Acquired Radioactive Materials
252.227-7013	Rights in Technical Data - Non-Commercial Items
252.227-7014	Rights in Non-Commercial Computer Software and Non-Commercial Computer Software Documentation
252.227-7016	Rights in Bid or Proposal Information
252.227-7019	Validation of Asserted Restriction - Computer Software
252.227-7037	Validation of Restricted Markings on Technical Data
252.244-7000	Subcontracts for Commercial Items and Commercial Components (DoD Contracts)

**Likely to be applicable to subcontracts over \$150,000 (Simplified Acquisition Threshold):**

52.203-6	Restrictions on Subcontractor Sales to the Government
52.203-7	Anti-Kickback Procedures
52.203-12	Limitation on Payments to Influence Certain Federal Transactions.
52.227-1	Authorization and Consent
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement
252.247-7023	Transportation of Supplies by Sea

**Likely to be applicable to subcontracts over the simplified acquisition threshold which in addition to the meaning at FAR 2.101 (\$150,000) means \$300,000 when soliciting or awarding contracts to be awarded and performed outside the United States**

52.215-23	Limitations on Pass-Through Charges.
52.215-2	Audit and Records – Negotiation.
52.215-14	Integrity of Unit Prices

**Likely to be applicable to subcontracts that exceed the threshold for submission of certified cost or pricing data \$750,000 (FAR 15.403-4):**

52.215-12	Subcontractor Certified Cost or Pricing Data
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**Likely to be applicable to subcontracts exceeding \$1,000,000 with a UK firm:**

252.225-7033	Waiver of United Kingdom Levies
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**Likely to be applicable to subcontracts that may include research involving human subjects:**

252.235-7004	Protection of Human Subjects
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**Likely to be applicable to subcontracts for experimental, developmental, or research work to be performed by a small business concern or non-profit organization:**

For the purposes of the subcontract, the following conditions shall supersede any other IPR conditions of the Agreement or any Contract.

52.227-11	Patent Rights – Ownership by the Contractor
252.227-7013	Rights in technical data - Noncommercial items

On a case by case basis, specific Intellectual Property conditions or arrangements, may be proposed, subject to agreement of both Parties.

### SCHEDULE 5: DATA PROTECTION PARTICULARS

This Schedule forms part of the Agreement and must be completed and attached to each Tasking Form where Personal Data is being processed on behalf of the Authority.

Data Controller	The Data Controller is the Authority. The Personal Data will be provided by: [insert name (or equivalent source), address and contact details]
Data Processor	The Data Processor is the Contractor. The Personal Data will be processed at: [insert location(s), address and contact details]
Data Subjects	The Personal Data to be processed under the Contract concern the following Data Subjects or categories of Data Subjects: [please specify] [Examples include: staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc.]
Categories of Data	The Personal Data to be processed under the Contract concern the following categories of data: [please specify] [Examples include name, address, telephone number, medical records etc.]
Special Categories of data (if appropriate)	The Personal Data to be processed under the Contract concern the following Special Categories of data: [please specify]
Subject matter of the processing	The processing activities to be performed under the Contract are as follows: [please specify] [This should be a high level, short description of what the processing is about i.e. its subject matter]
Nature and the purposes of the Processing	The Personal Data to be processed under the Contract will be processed as follows: [please specify] [The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether by automated means or not) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]
Technical and organisational measures	The following technical and organisational measures to safeguard the Personal Data are required for the performance of this Contract: [please specify] [Cross reference with the Tasking Form (including, the Statement of Requirement)]
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): [please specify] [Describe how long the data will be retained for, how it be returned or destroyed]
Date from which Personal Data is to be processed	Where the date from which the Personal Data will be processed is different from the Effective Date this should be specified here: [please specify]