

MINISTRY OF DEFENCE

PPP/PFI

PROJECT AGREEMENT

VERSION 2

(MOD PAv2)

OCTOBER 2011

This document uses the following colour coding to assist the reader in developing the MOD PAv2 template into a project specific draft contract:

- **green** shading – for projects involving construction. Delete these provisions for projects which do not involve construction operations.
- **blue** shading – for projects involving specialised equipment provision. Delete these provisions for projects which do not involve specialised equipment provision.
- **yellow** shading – retain or delete text (including optional clauses) to reflect the specifics of the project.
- **tan** shading – amend stated time periods or enter project specific details.
- **grey** shading – for projects involving training. Delete these provisions for projects which do not involve training.

NOT USED

Dated [insert date]

THE SECRETARY OF STATE FOR DEFENCE

-and-

CONTRACTOR LIMITED

CONTRACT

relating to

Project name

procured under the

Government's Private Finance Initiative

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NOT USED

THIS CONTRACT is made on [insert date]

BETWEEN

1. **THE SECRETARY OF STATE FOR DEFENCE** (the "**Authority**"); and
2. **CONTRACTOR LIMITED** (company number [insert number]) whose registered office is at [insert address] (the "**Contractor**").

BACKGROUND:

[insert recitals]

IT IS AGREED:

1 **APPOINTMENT**

- 1.1 The Authority appoints the Contractor to undertake and provide the Services and/or procure the provision of the Services, on the Contractor's behalf and in the Contractor's own name, in accordance with this Contract.

PART 1 – PRELIMINARY PROVISIONS (CORE CLAUSES)

2 DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Contract, unless the context otherwise requires:

"Abandon" means not to carry out any Asset Provision contemplated by the Asset Provision Programme for **twenty** consecutive Business Days or for a total of **sixty** Business Days (whether consecutive or not) on any one Site in any Contract Year, unless relieved of the obligation to do so by the express provisions of this Contract;

"ACAS" means the Advisory, Conciliation, and Arbitration Service;

"Acceptance Certificate" means a certificate issued by the **Independent** Certifier pursuant to Clause 35 (Acceptance Certificate, Notice of Non Completion and Snagging List) confirming that the Service Availability Requirements have been met for a given Service Level as specified in the Core Table in Schedule 1 (Authority's Requirements);

"Actual Equity IRR" means the Equity IRR calculated in respect of actual out-turn cashflows properly incurred in connection with the Project from the Commencement Date up to the relevant VFM Review Date, from and to the Contractor and the Shareholders from time to time, including any cashflows in relation to debt provided by the Shareholders and ranking for repayment ahead of equity only;

"Actual Relevant Insurance Cost" means the aggregate of the **annual** insurance premiums reasonably incurred by the Contractor to maintain the Relevant Insurance during the Insurance Review Period but excluding insurance premium tax and all broker's fees and commissions;

"Additional Permitted Borrowing" means on any date, the amount equal to any amount of principal outstanding under the Senior Financing Agreements (as the same may from time to time be amended, whether or not with the approval of the Authority) in excess of the amount of principal scheduled under the Senior Financing Agreements at Financial Close to be outstanding at that date, but only to the extent that:

- (a) this amount is less than or equal to the Additional Permitted Borrowings Limit; and
- (b) in respect of any Additional Permitted Borrowing the Agent is not in material breach of its obligations under paragraph **[to be inserted]** of the Direct Agreement as it applies to such Additional Permitted Borrowing,

and provided further that any such excess amount of principal which is:

- (i) invested as part of any Qualifying Variation; or
- (ii) outstanding from time to time as a result of any drawing under the Senior Financing Agreements as entered into at the Commencement Date, disregarding any subsequent amendment; or
- (iii) outstanding from time to time as a result of any amendment to the Senior Financing Agreements in respect of which the Authority has agreed that its liabilities on a termination may be increased pursuant to Clause 6.3

(Changes to the Financing Agreements),

shall not be counted as Additional Permitted Borrowing;

"Additional Permitted Borrowing Limit" means an amount equal to:

(a) ten percent of the Original Senior Commitment, for any Additional Permitted Borrowing subsisting in the period from the date of Financial Close to the date on which the amount outstanding under the Senior Financing Agreements is reduced to fifty percent or less of the Original Senior Commitment; and thereafter

(b) the higher of:

(i) five percent of the Original Senior Commitment; and

(ii) the amount of any Additional Permitted Borrowing outstanding on the last day of the period referred to in limb (a) above;

"Adjoining Property" means any land and/or property adjoining the Authority Sites and each and every part thereof including all conduits, roads, footpaths, walls, fences, buildings and other erections and all other apparatus on, under or within such land and/or property;

"Adjudicator" means the person selected in accordance with Clause 144.3.2 (Adjudication);

"Adjusted Amount" is as defined in Clause 120.4 (Unavailability of Terms and Conditions);

"Adjusted Estimated Fair Value of the Contract" means the Estimated Fair Value of the Contract, less an amount equal to the aggregate of:

(a) where relevant any Post Termination Service Amounts paid to the Contractor (if a positive number); and

(b) the Tender Costs; and

(c) amounts that the Authority is entitled to set-off or deduct under Clause 69.1 (Rights of Set-Off),

plus an amount equal to the aggregate of:

(i) all credit balances on any bank accounts held by or on behalf of the Contractor on the date that the Estimated Fair Value of the Contract is calculated; and

(ii) any insurance proceeds and other amounts owing to the Contractor (and which the Contractor is entitled to retain) to the extent not included in (i) above; and

(iii) the Post Termination Service Amounts (if a negative number),

to the extent that: (i), (ii) and (iii) have not been directly taken into account in calculating the Estimated Fair Value of the Contract; and the Authority has received such amounts in accordance with this Contract or such amounts are standing to the credit of the Joint Insurance Account;

"Adjusted Highest Compliant Tender Price" means the Highest Compliant Tender Price less the aggregate of:

- (a) any Post Termination Service Amounts paid to the Contractor to date;
- (b) the Tender Costs; and
- (c) amounts that the Authority is entitled to set-off or deduct under Clause 69 (Rights of Set-Off),

plus an amount equal to the aggregate of:

- (i) all credit balances on any bank accounts held by or on behalf of the Contractor on the date that the highest priced Compliant Tender is received; and
- (ii) any insurance proceeds and other amounts owing to the Contractor, to the extent not included in (i) above; and
- (iii) the Post Termination Service Amounts (if a negative number),

to the extent that (i), (ii) and (iii) have not been directly taken into account in that Compliant Tender and the Authority has received such amounts in accordance with this Contract;

"Administrative Change" means a Change to the Contractor's approach to providing the Services, which may include a change to the Contractor's Proposals (but not a change in the Authority's Requirements) including:

- (a) [insert events on a project specific basis (e.g. a change in a training course) that do not constitute small value, medium value or major changes]

and which if implemented will not:

- (i) result in any change in the Unitary Charge payable by the Authority in accordance with Schedule 13 (Payment Mechanism), or
- (ii) change any risk or liability of the Authority (including any liability for Government Furnished Assets), or
- (iii) increase the likelihood of the Contractor failing to meet the Authority's Requirements or materially and adversely affect the Contractor's ability to perform its obligations under this Contract;

"Administrative Change Estimate" is as defined in Clause 83.3.3 (Administrative Changes);

"Affected Party" is as defined in the definition of Force Majeure Event;

"Affiliate" means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and "holding company" and "subsidiary" shall have the meaning given to them in Section 1159 of the Companies Act 2006, save that for the purposes of determining whether one entity is an Affiliate of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;

"Agent" means [insert details] in its capacity as agent for the Senior Lenders under the Senior Financing Agreements;

"**Agreed Form**" is as defined in Clause 2.2.1(f) (Interpretation);

"**Ancillary Documents**" means the Asset Provision Contract, the Service Provision Contract and the guarantees in the Agreed Form under which the obligations of the Asset Provider under the Asset Provision Contract and the Service Provider under the Service Provision Contract are respectively guaranteed (in each case to the Contractor) and any other documents to which the Authority is not a party and which are listed in Schedule 3 Part 4 (Ancillary Documents) as they may be amended or replaced from time to time;

"**Annual Compliance Testing**" is as defined in Clause 21.8 (Annual Compliance Testing);

"**APB Distribution**" means for the period during which the Additional Permitted Borrowing subsists, an amount equal to the aggregate of all Distributions made during that period up to an amount equal to the principal of the Additional Permitted Borrowing on the first day of that period;

"**Appropriate Limit**" is as defined in Clause 114.7 (Freedom of Information);

"**Approved Third Party**" means, in respect of a TP Use Proposal approved by the Authority further to Clause 59.6.1 (The TP Use Proposal) or deemed to be approved further to Clause 59.7 (The TP Use Proposal) or a Third Party Contract entered into further to such TP Use Proposal, the Third Party identified in the relevant TP Outline Proposal or TP Use Proposal (as applicable);

"**Approved Third Party Use**" means a Third Party Use as set out in a TP Use Proposal that has been approved by the Authority further to Clause 59.6.1 (The TP Use Proposal) or deemed to be approved further to Clause 59.7 (The TP Use Proposal);

"**Arbitrator**" means the person selected in accordance with Clause 144.4.1 (Arbitration);

"**Asset Provider**" means [insert details] or such other contractor as the Contractor may, subject to Clause 94.6 (Approval of Sub-contractors and Terms of Sub-contracts), appoint for Asset Provision;

"**Asset Provision**" means the provision (including, to the extent applicable, design, development, construction, manufacture, installation, testing, delivery and commissioning) of the Specified Assets so as to meet the Asset Provision Requirements in accordance with this Contract;¹

"**Asset Provision Contract**" means the contract in the Agreed Form between the Contractor and the Asset Provider relating to Asset Provision;

"**Asset Provision Contract Related Dispute**" is as defined in Clause 144.6 (Related Disputes);

"**Asset Provision Dispute**" means any dispute which relates to the carrying out of, or failure to carry out, Asset Provision;

"**Asset Provision Panel**" is as defined in Clause 144.3.2(a) (Adjudication);

¹ For an explanation of the use of the term "Asset Provision" please see the introduction to the MOD PFI PA Guidance Notes

"Asset Provision Period" means the period from the Commencement Date to the Services Commencement Date for the given Service Level;

"Asset Provision Period Insurance" means the Required Insurance for the Specified Assets used in each Service Level in respect of the period from the Commencement Date for such Service Level to the Services Commencement Date for such Service Level as set out in Schedule 17 Part 1 (Policies to be taken out by the Contractor and maintained during Asset Provision);

"Asset Provision Programme" means the programme for carrying out the Asset Provision as contained in Schedule 7 (Documents and Data referred to in Part 6) or as revised in accordance with Clause 27 (Asset Provision Programme);

"Asset Provision Proposals" means the proposals of the Contractor in relation to the Specified Assets and the manner of their provision as set out in Schedule 2 Part 1 (Asset Provision Proposals);

"Asset Provision Requirements" means the requirements of the Authority in relation to the provision of the Specified Assets as set out in Schedule 1 Part 4 (Service Provision Requirements);

"Assets" means all assets and rights to enable the Authority or a successor contractor to own, operate and maintain the Project in accordance with this Contract including:

- (a) any land or buildings; and/or
- (b) any equipment; and/or
- (c) any books and records (including operating and maintenance manuals, health and safety manuals and other know how); and/or
- (d) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred); and/or
- (e) any revenues and any other contractual rights;
- (f) any IPR; and/or
- (g) any Specified Assets; and/or
- (h) any Existing Assets; and/or
- (i) any Government Furnished Assets;

but excluding any assets and rights in respect of which the Authority is full legal and beneficial owner (other than Government Furnished Assets);

"Associated Company" means in respect of a relevant company, a company which is a subsidiary, a Holding Company, or a company which is a subsidiary of the ultimate Holding Company of that relevant company, and in the case of the Contractor shall include HoldCo and each of the Shareholders, save that for the purposes of determining whether one entity is an Associated Company of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded **N.B. If a fund or limited partnership or "50:50" owned vehicle (which is not a "subsidiary") or similar is in the relevant ownership chain of the Contractor, this definition will need to be expanded to cover it. See further footnote 2 and Section 34 of SOPC 4;**

"**Authority Background IPR**" means the **Background IPR** owned by the Authority whether arising before or after the Commencement Date;

"**Authority Break Point Date**" means [insert details];

"**Authority Damage**" means any damage to any Specified Asset pursuant to Clause 122.2.2 (Damage to the Specified Assets);

"**Authority Default**" means one of the following events:

- (a) an expropriation, sequestration or requisition of a material part of the Assets and/or shares of the Contractor **or HoldCo** by the Authority or other Relevant Authority unless the Authority makes such expropriation, sequestration or requisition pursuant to the provisions of this Contract;
- (b) a failure by the Authority to make payment of any amount of money exceeding **one month's** Unitary Charge (from time to time before deductions) that is due and payable by the Authority under this Contract within twenty Business Days of service of a formal written demand by the Contractor, where the amount fell due and payable one (or more) months prior to the date of service of the written demand;
- (c) a breach by the Authority of its obligations under this Contract which substantially frustrates or renders it impossible for the Contractor to perform its obligations under this Contract for a continuous period of **two months**; or
- (d) a breach by the Authority of Clause 147 (Transfer of this Contract by the Authority);

"**Authority Default Termination Sum**" means the amount payable in accordance with Clause 137 (Compensation on Termination by the Contractor or on Authority's Voluntary Termination);

"**Authority Disclosed Data**" means information relating to the Project disclosed to the Contractor and its Shareholders and advisers including:

- (a) the ITN/ITT; and
- (b) the information memorandum issued by the Authority on [insert date] in relation to the Project; and
- (c) the data room located at [insert details]; and
- (d) comments provided by the Authority under Clause 20.1 (Contractor's Quality Assurance Requirements); and
- (e) [insert details of any other disclosures including, if required, the Authority's Requirements];

"**Authority Foreground IPR**" is as defined in Clause 108.2.3 (Ownership of IPR);

"**Authority Property**" is as defined in Clause 124.2.1(b) (Contractor's Indemnity);

"**Authority Related Parties**" means:

- (a) an officer, agent, **contractor** or employee of the Authority or member of the

armed forces acting in the course of his office, **contract** or employment (as applicable);

(b) in relation to any Specified Asset any person visiting such Specified Asset at the invitation (whether express or implied) of the Authority;

(c) a Permitted Occupier,

but excluding in each case the Contractor and any Contractor Related Parties;

"Authority Site Plans" means the plans of the Authority Sites **copies of/references to** which are set out in Schedule 4 Part 2 (Documents and Data referred to in PART 2);

"Authority Sites" means those sites as set out in Schedule 4 Part 1 (Documents and Data referred to in PART 2) which are in the Authority's control or were in its control immediately prior to the Commencement Date and which are to be used by the Contractor for the purposes of performing the Project;

"Authority Stage 1 Confirmation" is as defined in Clause 84.7.5 (Major Changes – Preliminary Work);

"Authority Stage 1 Notice" is as defined in Clause 83.3.2 (Details of the Change);

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

"Authority's Commercial Officer" is as defined in Clause 90.1 (Authority's Representative);

"Authority's Policies" means the policies of the Authority listed or referred to in Schedule 5 Part 2 (Documents referred to in PART 3);

"Authority's Project Manager" is as defined in Clause 90.1 (Authority's Representative);

"Authority's Representative" is the person or persons appointed pursuant to Clause 90 (Authority's Representative);

"Authority's Requirements" means the requirements of the Authority set out in Schedule 1 (Authority's Requirements);

"Authority's VFM Payment" is as defined in Clause 73.6.1 (Excess IRR);

"Available" is as defined in Schedule 13 (Payment Mechanism), and **"Unavailable"**, **"Availability"** and **"Unavailability"** shall be construed accordingly;

"AVC Transfer Value" means the amount available as a transfer payment under the PCSPS AVC Scheme in respect of the invested contributions made by Consenting Employees to the PCSPS AVC Scheme towards securing Money Purchase Benefits thereunder;

"Background IPR" means any IPR created or subsisting prior to or outside the scope of this Contract;

"Base Case" means the financial model agreed between the Parties prior to the Commencement Date (as updated from time to time in accordance with Clause 65.2 (Submission of Revised Base Case)) for the purpose of, amongst other things, calculating the Unitary Charge;

"Base Case Equity IRR" means [insert number] percent;

"Base Cost" means £[insert number] being the amount as agreed at the Bid Date and set out in the Base Case which represents the insurance costs (which excludes amounts in respect of insurance premium tax and all brokers' fees and commissions) which are proposed to be incurred to maintain the Relevant Insurance in each year following the Services Commencement Date for the first Service Level, expressed in real terms as at the Bid Date;

"Base Relevant Insurance Cost" means, the aggregate of:

- (a) the Base Costs (Indexed) which were (at Bid Date) projected to be incurred to maintain the Relevant Insurance during the Insurance Review Period (where for the purposes of Clause 2.2.3 (Interpretation) the relevant index shall be RPI and the calculation date is the date on which the Relevant Insurance was placed or renewed either immediately before or during the Insurance Review Period (as applicable in respect of the year in question)); less
- (b) any Base Relevant Insurance Reduction;

"Base Relevant Insurance Reduction" means the reduction to be made to the Base Relevant Insurance Cost in respect of a risk which has become Uninsurable or a term or condition which is no longer available and shall be an amount that is either:

- (a) the amount by which the Base Relevant Insurance Cost would have been a lesser amount had such a risk been Uninsurable or such a term or condition been unavailable at the Bid Date (which amount, for the avoidance of doubt, can be £0); or
- (b) if it is impossible to determine an amount pursuant to paragraph (a) above, an amount that is reasonable to deduct from the Base Relevant Insurance Cost having due regard to:
 - (i) the amount by which the Actual Relevant Insurance Cost is less than it would have been as a result of the risk becoming Uninsurable, or the term or condition becoming unavailable (the **"Actual Reduction"**); and
 - (ii) the size of the Actual Reduction as a percentage of the Actual Relevant Insurance Cost immediately prior to the risk becoming Uninsurable, or the term or condition becoming unavailable; and
 - (iii) the changes in RPI (if any) since the Bid Date;

"Base Senior Debt Termination Amount" means, subject to Clause 6.3 (Changes to the Financing Agreements):

- (a) all amounts outstanding at the Termination Date, including interest and Default Interest accrued as at that date, from the Contractor to the Senior

Lenders in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing); and

- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Contractor to the Senior Lenders as a result of a prepayment in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing) or in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Contract, subject to the Contractor and the Senior Lenders mitigating all such costs to the extent reasonably possible,

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below):

- (i) all credit balances on any bank accounts (but excluding the Joint Insurance Account) held by or on behalf of the Contractor on the Termination Date; and
- (ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities; and
- (iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Lenders to the Contractor as a result of prepayment of amounts outstanding in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing) or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Contract; and
- (iv) all other amounts received by the Senior Lenders on or after the Termination Date and before the date on which any compensation is payable by the Authority to the Contractor as a result of enforcing any other rights they may have;

"Breach of Security" means any breach of PART 20 (Security) which prejudices security or contravenes security regulations;

"Business Continuity Plan" is as defined in paragraph 3.1.3.1 of Schedule 1 Part 3 (Service Provision Requirements);

"Business Day" means any day excluding:

- (a) Saturdays, Sundays and any statutory or public holiday in England and Wales; and/or
- (b) privilege days notified in writing by the Authority's Representative to the Contractor's Representative at least ten Business Days in advance; and/or
- (c) such other periods of holiday closure of the Contractor's premises notified in writing by the Contractor's Representative to the Authority's Representative at least ten Business Days in advance;

"Business Interruption Cover" means the Required Insurance in respect of the period from the Services Commencement Date for the first Service Level until the earlier of the Termination Date and the Expiry Date as set out in paragraph 2 of Schedule 17 Part 2 (Insurance);

"Capital Expenditure" means any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time;

"Change" means any deletion, amendment, alteration or addition to the extent of any obligation of a Party under the Contract, or a Change in Law;

"Change in Law" means the coming into effect after the Commencement Date of:

- (a) Legislation, other than any Legislation which on the Commencement Date has been published:
 - (i) in a draft Bill as part of a Government Departmental Consultation Paper;
 - (ii) in a Bill;
 - (iii) in a draft statutory instrument; or
 - (iv) as a proposal in the Official Journal of the European Union;
- (b) any Guidance; or
- (c) any applicable judgement of a relevant court of law which changes a binding precedent;

"Change of Ownership" means:

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Contractor and/or HoldCo and/or [] including the control over the exercise of voting rights conferred on those shares or the control over the right to appoint or remove directors or the right to dividends); and/or
- (b) any other arrangements that have or may have or which result in the same effect as limb (a) above,

and if the Project includes, or shall involve, the disclosure of information about a Secret Matter, for the purposes of this definition, **"Sub-contractor"** shall mean a sub-contractor to the Contractor, a sub-contractor of a sub-contractor to the Contractor, and any other sub-contractor of whatever tier involved in Asset Provision and/or Service Provision who has or may have access to the Secret Matter;

"Change Payment Schedule" is as defined in Clause 85.3.1(d)(i) (Documenting Agreement of the Estimate);

"Change Proposer" is as defined in Clause 83.1.1 (Change Initiation);

"Change Recipient" is as defined in Clause 83.1.1 (Change Initiation);

"Code" is as defined in Clause 114.8 (Freedom of Information);

"Code of Practice on Workforce Matters Compliant Pension Scheme": in accordance with the Code of Practice on Workforce Matters In Public Sector Service Contracts issued by Cabinet Office in March 2005 this means any one of the following:

- (a) a contracted out pension scheme; or
- (b) a final salary pension scheme; or
- (c) a defined contribution pension scheme where, as a minimum, the employer matches employee contributions up to 6%; or
- (d) a stakeholder pension scheme under which, as a minimum, the employer will match the employee contributions up to 6%.

"Collateral Warranty" means each collateral warranty executed as a deed between the Authority and the Sub-contractors in the form set out in Schedule 20 (Collateral Warranty);

"Column" means a column in a Table;

"Commencement Date" means the date of this Contract;

"Commercial Service Provider" means any commercial service provider (including each or any of their sub-contractors) not being in any way part of any Contracting Authority, such provider having been engaged by or on behalf of the Authority to provide works and/or services to the Authority and constituting an Authority Related Party;

"Commercially Sensitive Information" means the subset of Confidential Information listed in Column 1 of Section 1 (Commercially Sensitive Contractual Provisions) and Column 1 of Section 2 (Commercially Sensitive Material) of Schedule 16 Part 2 (Commercially Sensitive Information) in each case for the period specified in Column 2 of Section 1 (Commercially Sensitive Contractual Provisions) and Section 2 (Commercially Sensitive Material) of Schedule 16 Part 2 (Commercially Sensitive Information);

"Commissioning Tests" means each and every test, review and audit carried out by or on behalf of the Contractor in respect of a Specified Asset prior to the issue of a Notice of Service Availability, as shown in the Asset Provision Programme as being carried out by the Contractor including any Joint Commissioning;

"Commissioning Test Schedule" means the document detailing all the tests, inspections, reviews, and audits comprising the Commissioning Tests, and set out as required in Clause 34 (Commissioning Tests and Joint Commissioning);

"Committed Standby Facility" means a standby facility committed by the Senior Lenders at or at a date later than the Commencement Date or, without prejudice to Clause 6.3.2(a), as the same may be amended as allowed by Clause 6.3.1 for the purposes of funding any unforeseen cost overrun, increased expenses or loss of revenues to be incurred by the Contractor;

"Compensation Date" means:

- (a) if Clause 140.2 (Retendering Procedure) applies, the earlier of:
 - (i) the date that the New Contract is entered into; and
 - (ii) the date on which the Authority pays the Adjusted Highest Compliant Tender Price to the Contractor; or
- (b) if Clause 140.4 (No Retendering Procedure) applies, the date on which the Adjusted Estimated Fair Value of the Contract has been agreed or

determined;

"Compensation Event" means:

- (a) a breach by the Authority of any of its obligations under this Contract which affects a Service Level during the Asset Provision Period for that Service Level; and/or
- (b) material damage to the Contractor's Sites caused by the Authority's Representative and/or an Authority Related Party in exercising its rights under Clause 13.1 (Authority's Monitoring and Inspection Rights), pursuant to Clause 13.2.2 (Authority's Conduct on Contractor Sites); and/or
- (c) the discovery of Finds and/or unforeseen ground conditions and/or Contamination on an Authority Site if the Table in Clause 14.4.4 (Finds, Ground Conditions and Contamination at Authority Sites) shows the effect of such Finds and/or unforeseen ground conditions and/or Contamination to be a Compensation Event and such Find and/or unforeseen ground conditions and/or Contamination has not resulted from the actions, breaches, omissions or defaults of the Contractor or Contractor Related Parties; and/or
- (d) delay to Service Provision caused by the effects of an inspection by the Authority's Representative showing that there is no SA Defect in the relevant part or parts of the Specified Assets, pursuant to Clause 21.2.3(a) (Monitoring and Inspection during Asset Provision); and/or
- (e) the acceleration or deferral of planned maintenance to allow the Authority to perform its legal duties or other functions pursuant to Clause 28.4 (Interruption of Planned Maintenance); and/or
- (f) if the Contractor does not proceed with further design or construction at its own risk pursuant to paragraph 4.2.1 of Schedule 6 (Design Review Procedure) and it is subsequently agreed or determined that the Authority's Representative's comments were not in accordance with paragraph 3.2 of Schedule 6 (Design Review Procedure);
- (g) a breach by the Authority of its obligations under Clause 80.3.1(b) (Effect of Step-In Without Contractor Breach)

"Compliance Test Schedule" means the document detailing all the tests, inspections, reviews, audits (and all results of such) comprising the Annual Compliance Tests, and set out as required in Clause 21.8 (Annual Compliance Testing);

"Compliant Tender" means any tender submitted by a Compliant Tenderer that meets the qualification criteria notified under Clause 140.2 (Retendering Procedure);

"Compliant Tenderer" means a tenderer who is a Suitable Substitute Contractor;

"Conditions Precedent" means the conditions referred to in Schedule 3 Part 1 (Conditions Precedent);

"Conduits" means service media (here meaning pipes, sewers, drains, mains, ducts conduits, gutters, watercourses, wires, cables, channels, subways, flues, and all other conducting media including any fixing louvers, cowls and other covers);

"Confidential Information" means:

- (a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, IPR or know-how of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998; and
- (b) Commercially Sensitive Information;

"Confirmation of Outline Receipt" is as defined in Clause 58.3 (The TP Outline Proposal);

"Confirmation of Receipt" is as defined in Clause 59.4 (The TP Use Proposal);

"Contamination" means all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour) and including genetically modified organisms;

"Contingent Funding Liabilities" means contingent or future liabilities to subscribe for equity or subordinated debt (if any) at the relevant time of:

- (a) the Shareholders; and/or
- (b) the Subordinated Lender; and/or
- (c) any other parties providing equity or subordinated debt,

owed under any of the Financing Agreements to the Contractor, Holdco and/or the Senior Lenders together with, without double counting, any security (by way of letter of credit, guarantee or otherwise) for those liabilities;

"Contract" means this contract (including its Schedules);

"Contract Period" is as defined in Clause 5.1 (Contract Period);

"Contract Year" means a period of twelve months commencing on the **Commencement Date/Effective Date** or an anniversary of the **Commencement Date/Effective Date**;

"Contracting Authority" means any of the bodies identified in Regulation 3 and schedule 1 of the Public Contracts Regulations 2006 (SI 2006/05);

"Contractor Default" means any one or more of the following:

- (a) a breach by the Contractor of any of its obligations under this Contract which materially and adversely affects the performance of the Services;
- (b) a Persistent Breach occurs;
- (c) a court makes an order that the Contractor **or HoldCo** be wound up or a resolution for a voluntary winding-up of the Contractor **or HoldCo** is passed;
- (d) any receiver or receiver manager in respect of the Contractor **or HoldCo** is appointed or possession is taken by or on behalf of any creditor of any property of the Contractor **or HoldCo** that is the subject of a charge;

- (e) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of the Contractor **or HoldCo**;
- (f) an administration order is made, or an administrator is appointed, in respect of the Contractor **or HoldCo**;
- (g) a breach by the Contractor of its obligations under Clause 146 (Assignment of this Contract by the Contractor) or Clause 94.6.5 (Approval of Sub-contractors and Terms of Sub-contracts) occurs;
- (h) a breach of Clause 10.3 (Change of Ownership) occurs;
- (i) the Contractor Abandons the Project;
- (j) a failure to commence the provision of any Service Level described in Column A of the Core Table in Schedule 1 (Authority's Requirements) by the relevant Long Stop Date;
- (k) in any three month period the Authority has been entitled to reduce the amount of the Unitary Charge by more than **twenty five** percent through Unavailability Deductions;
- (l) in each and every month of any six month period the Authority has been entitled to reduce the amount of the Monthly Unitary Charge by more than **twenty** percent through Service Performance Deductions;
- (m) in any three month period an individual Specified Asset has been Unavailable for **twenty** days or more and the Authority has been entitled to reduce the amount of the Monthly Unitary Charge by more than **[insert number]** percent through Unavailability Deductions;
- (n) a breach by the Contractor of its obligations to take out and maintain any of the Required Insurances;

"Contractor Stage 1 Response" is as defined in Clause 83.3.3(b) (Details of the Change);

"Contractor Background IPR" means the Background IPR owned by the Contractor at the time it is licensed to the Authority under Clause 108.5 (Licence of Contractor Background IPR and Contractor Foreground IPR);

"Contractor Foreground IPR" means any IPR (other than Authority Foreground IPR) created by the Contractor or its Sub-contractors and their Holding Companies or Subsidiaries from time to time for the purposes of this Contract (excluding the manifestations of any Contractor Background IPR and/or any Third Party IPR and/or Authority Background IPR);

"Contractor Related Parties" means:

- (a) an officer, servant or agent of the Contractor, or any Affiliate of the Contractor; and
- (b) the Sub-contractors and/or any sub-contractor of the same acting in connection with the Project; and
- (c) any person on or at any of the Authority Sites at the express or implied invitation of the Contractor (other than an Authority Related Party); and

- (d) any person undertaking Third Party Use; and
- (e) any officer, servant or agent of such a person;

"**Contractor Stage 1 Response**" is as defined in Clause 83.3.3(b) (Details of the Change);

"**Contractor System**" the information and communications technology system used by the Contractor in performing the Services (but excluding the Authority System);

"**Contractor's IPR Indemnity Claim**" is as defined in Clause 126.3.1 (Contractor's IPR Indemnity Claims);

"**Contractor's Proposals**" means the Asset Provision Proposals and the Service Provision Proposals;

"**Contractor's Representative**" is the person or persons appointed pursuant to Clause 89 (Contractor's Representative)

"**Contractor's Share**" means the percentage figure corresponding to that part of the Cumulative Capital Expenditure at the relevant time, shown in the first column of the table set out below:

Cumulative Capital Expenditure	Contractor's Share
£0 to £[a] inclusive	100 percent
£[a+1]–£[b] inclusive	80 percent
£[b+1]–£[c] inclusive	60 percent
£[c+1]–£[d] inclusive	40 percent
£[d+1]–£[e] inclusive	20 percent
£[e+1]–£[f] inclusive	10 percent
£ >£[f]	0 percent

"**Contractor's Sites**" means those sites or parts of sites which are not Authority Sites but which are used by Contractor Related Parties in connection with the Project;

"**Contractor's Termination Notice**" means the notice given pursuant to Clause 131.2 (Termination Notice Prior to Termination by the Contractor);

"**Contractor's Warranted Data**" means the information relating to the Contractor and its Affiliates contained in Schedule 3 Part 9 (Contractor Warranted Data);

"**Contractors' All Risks Insurance**" means the contractors' all risks insurance policy effected in accordance with Item 1 (Contractors' All Risks Insurance) of Schedule 17 Part 1 (Policies to be taken out by the Contractor and maintained during Asset Provision);

"**Core Table**" means the table in Schedule 1 Part 1 (Authority's Requirements);

"**Core Working Hours**" means those periods set out in categories [insert details] of Table 1 (Operational Periods) in Schedule 1 Part 0 (Introduction to Authority's Requirements);

"**Cumulative Capital Expenditure**" means, in relation to a Change which is necessary to comply with a Change in Law, taking effect after the Services Commencement Date for Service Levels affected by the Change, the amount of Capital Expenditure, if any, that is agreed or determined to be required under PART 18 (Changes and Change in Law);

"**Deemed New Contract**" means an agreement on the same terms and conditions as this Contract as at the Termination Date, but with the following amendments:

- (a) if this Contract is terminated before the Services Commencement Date for the final Service Level, then in respect of any Service Level for which an Acceptance Certificate has not been issued, the relevant Planned Services Commencement Dates in Column E of the Core Table in Schedule 1 (Authority's Requirements) shall be extended by such period as would have been granted to allow a New Contractor to achieve Service Commencement for such Service Level for the Specified Services in question; and
- (b) any accrued warning notices issued pursuant to Clause 132.6 (Termination Notices Prior to Termination for Persistent Breach by the Contractor), Unavailability Deductions or Service Performance Deductions shall, for the purposes of termination only, and without prejudice to the Authority's rights to make financial deductions, be cancelled; and
- (c) the term of such agreement shall be for a period equal to the term from the Termination Date to the Expiry Date;

"**Default Interest**" means any increased margin that is payable to the Senior Lenders or which accrues as a result of any payment due to the Senior Lenders not being made on the date on which it is due;

"**Delay in Start Up Insurance**" means the Required Insurance as set out in paragraph 2 of Schedule 17 Part 2 (Insurance);

"**Design Review Programme**" is as defined in Clause 22.1 (Design Review Programme);

"**Development Site(s)**" means in respect of a given stage of the Asset Provision works the construction site(s) for such stage(s) of the Asset Provision works, as set out in Schedule 2 Part 1 (Contractor's Proposals);

"**Direct Agreement**" means the direct agreement dated on or about the Commencement Date and made between the Authority, the Contractor and the **Agent** under the Senior Financing Agreements;

"**Direct Losses**" means all Losses other than Indirect Losses;

"**Discriminatory Change in Law**" means a Change in Law, the terms of which apply expressly to:

- (a) the Project and not to similar projects procured under the PFI; and/or
- (b) the Contractor and not to other persons; and/or

(c) PFI Contractors and not to other persons,

which was not foreseeable at the Commencement Date;

"**Dispute**" is as defined in Clause 144 (Disputes);

"**Disputed Amount**" is as defined in Clause 67 (Disputed Amounts);

"**Dispute Forum**" is as defined in Clause 10.2.1(a) (Disputed Amounts);

"**Dispute Resolution Procedure**" means the procedure for the resolution of disputes set out in Clause 144 (Disputes);

"**Distribution**" means:

(a) whether in cash or in kind any:

- (i) dividend or other distribution in respect of share capital;
- (ii) reduction of capital, redemption or purchase of shares or any other reorganisation or variation to share capital;
- (iii) payments under the Subordinated Financing Agreements (whether of principal, interest, breakage costs or otherwise);
- (iv) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms;
- (v) the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms; or

(b) the early release of any Contingent Funding Liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain;

"**DPA**" means the Data Protection Act 1998;

"**EEA**" means from time to time the European Economic Area as created by The Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the function and responsibilities of the European Economic Area;

"**Effective Date**" means the date on which all of the Conditions Precedent have been satisfied;

"**Environmental Information Regulations**" means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;

"**Environmental Management Plan**" is as defined in Clause 15.3.1 (Environmental Management System);

"**Environmental Management System**" is as defined in Clause 15.3.1 (Environmental Management System);

"Equity IRR" means the projected blended rate of return to the Relevant Persons over the Contract Period, having regard to Distributions made and projected to be made;

"Equity IRR Excess" is as defined in Clause 73.6.1 (Excess IRR);

"Estimate" means any one of:

- (a) an Administrative Change Estimate;
- (b) a Minor Change Estimate; or
- (c) a Higher Value Change Estimate,

in each case, as the context may require;

"Estimated Change in Project Costs" means the aggregate of any estimated increase in Capital Expenditure, Operating Expenditure and financing costs less the aggregate of any estimated reduction in Capital Expenditure, Operating Expenditure and financing costs;

"Estimated Fair Value of the Contract" means the amount determined in accordance with Clause 140.4 (No Retendering Procedure) that a third party would pay to the Authority as the market value of the Deemed New Contract;

"Exceptional Cost" means, for an Insurance Review Period, the extent to which there is an Insurance Cost Increase which exceeds in amount thirty percent of the Base Relevant Insurance Cost for that Insurance Review Period;

"Exceptional Saving" means, for an Insurance Review Period, the extent to which there is an Insurance Cost Decrease which exceeds in amount thirty percent of the Base Relevant Insurance Cost for that Insurance Review Period;

"Exempt Refinancing" means:

- (a) any Refinancing that was fully taken into account in the calculation of the Unitary Charge;
- (b) a change in taxation or change in accounting treatment;
- (c) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters, and which are in respect of:
 - (i) breach of representations and warranties or undertakings;
 - (ii) movement of monies between the Project Accounts in accordance with the terms of the Senior Financing Agreements as at Financial Close (or as amended with the prior written approval of the Authority);
 - (iii) late or non-provision of information, consents or licences;
 - (iv) amendments to Sub-contracts;
 - (v) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Financing Agreements as at Financial Close (or as amended with the prior written approval of the Authority));

- (vi) restrictions imposed by the Senior Lenders on the dates at which the Senior Debt can be advanced to the Contractor under the Senior Financing Agreements as at Financial Close (or as amended with the prior written approval of the Authority) and/or amounts released from the **Escrow Account** during the **Asset Provision Period drawdown period**, each as defined in the Senior Financing Agreements² as at Financial Close (or as amended with the prior written approval of the Authority) and which are given as a result of any failure by the Contractor to ensure that Asset Provision is performed in accordance with the Asset Provision Programme and which are notified in writing by the Contractor or the Senior Lenders to the Authority prior to being given;
- (vii) changes to milestones for drawdown and/or amounts released from the **Escrow Account** during the Asset Provision Period drawdown period set out in the Senior Financing Agreements as at Financial Close (or as amended with the prior written approval of the Authority) and which are given as a result of any failure by the Contractor to ensure that Asset Provision is performed in accordance with the agreed Asset Provision Programme and which are notified in writing by the Contractor or the Senior Lenders to the Authority prior to being given;
- (viii) failure by the Contractor to obtain any consent by statutory bodies required by the Senior Financing Agreements as at Financial Close (or as amended with the prior written approval of the Authority); or
- (ix) voting by the Senior Lenders and the voting arrangements between the Senior Lenders in respect of the levels of approval required by them under the Senior Financing Agreements as at Financial Close (or as amended with the prior written approval of the Authority);
- (d) any amendment, variation or supplement of any agreement approved by the Authority as part of any Qualifying Variation under this Contract;
- (e) any sale of shares in the Contractor **or HoldCo** by the Shareholders or securitisation of the existing rights and/or interests attaching to shares in the Contractor **or HoldCo provided that this Clause(s) shall, in respect of shares in HoldCo, only apply for so long as HoldCo holds 100% of the issued share capital of the Contractor;**
- (f) any sale or transfer of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements or securitisation of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements; or
- (g) any Qualifying Bank Transaction;

"Existing Facilities" means those buildings existing on the Authority Sites at the Commencement Date which are to be used as Specified Assets in accordance with Schedule 1 (Authority's Requirements) to deliver the Service Availability Requirements as set out in Schedule 9 Part 4 (Existing Facilities);

"Expiry Date" means the **[insert number]** anniversary of the **Effective Date/Commencement Date;**

² These definitions should follow those contained in the Senior Financing Agreements and will need to be checked by project teams

"**Fair Value**" means the amount at which an asset or liability could be exchanged in an arm's length transaction between informed and willing parties, other than in a forced or liquidation sale;

"**Fees Regulations**" means The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;

"**Final Warning Notice**" is as defined in Clause 132.6.2 (Termination Notices prior to Termination for Persistent Breach by the Contractor);

"**Financial Close**" shall have the meaning given to it in the Senior Credit Agreement as at the Commencement Date;

"**Financial Records**" is as defined in Clause 116.2.1 (Financial Records and Open Book Accounting);

"**Financing Agreements**" means all or any of the agreements or instruments entered into or to be entered into by the Contractor or any of its Associated Companies relating to the financing of the Project (including the Initial Financing Agreements and any Contracts or instruments to be entered into by the Contractor or any of its Associated Companies relating to the re-scheduling of their indebtedness or any Refinancing);

"**Financing Default**" means the occurrence of an event of default (which is continuing and has not been remedied or waived) under clause [insert details] (Default) of the Senior Credit Agreement (being an Initial Financing Agreement);

"**Finds**" means all materials and objects of any kind found on or at any Authority Site that are or appear to be:

- (a) fossils; or
- (b) antiquities; or
- (c) other objects having artistic, historic or monetary value; or
- (d) human remains; or
- (e) ordnance;

"**First Insurance Review Date**" means the first Business Day following the first anniversary of the Relevant Insurance Inception Date;

"**Five Year Maintenance Plan**" means [insert definition];

"**FOIA**" means the Freedom of Information Act 2000 and any subordinate legislation (as defined in Section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;

"**Follow-on Contractor**" is as defined in Clause 135.1 (Duty to Co-operate);

"**Force Majeure Event**" means the occurrence after the Commencement Date of:

- (a) war, civil war, armed conflict or terrorism other than as provided for in this Contract and/or any Project Document; or

(b) nuclear, chemical or biological contamination unless the source or cause of the contamination is as a result of the acts of or breaches by the Contractor or its sub-contractors of any tier and other than as provided for in this Contract and/or any Project Document; or

(c) pressure waves caused by devices travelling at supersonic speeds,

which directly causes either Party (the "**Affected Party**") to be unable to comply with all or a material part of its obligations under this Contract;

"**Force Majeure Termination Sum**" is as defined in Clause 141.1 (Amount);

"**General Change in Law**" means a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law;

"**Good Industry Practice**" means the exercise of that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator seeking in good faith to comply with all its contractual obligations and all applicable Legislation and engaged in the same type of undertaking as that of the Contractor and/or any Sub-contractor under the same or similar circumstances;

"**Guidance**" means:

(a) British Standards and Codes of Practice; and

(b) the Manual of Protective Security and/or Joint Service Publication 440³; and

(c) the edition current at the Commencement Date of "Good Practice in the Selection of Construction Materials" published by Ove Arup and Partners; and

(d) the Montreal Protocol on substances that deplete the ozone layer as agreed on 16 September 1987 as amended as at the Commencement Date; and

(e) [insert details of other non MoD-specific guidance appropriate to the jurisdiction in which the Specified Assets are located/Services are being performed],

as relevant to Asset Provision and/or Service Provision;

"**Handback Standard**" is the document included at Schedule 5 Part 1 (Documents referred to in PART 3 (Quality and Performance Standards));

"**Help Desk Service**" is as defined in paragraph 3.1.6 (Help Desk Service) of Schedule 1 Part 3 (Service Provision Requirements);

"**Higher Value Change**" means:

(a) a Medium Value Change; or

(b) a Major Change,

³ The Manual of Protective Security applies if the Contractor will not be performing Asset Provision and/or Service Provision on Authority Sites and if the Project does not involve, or could not involve, Secret Matters. JSP 440 applies in all other cases.

as the context may require;

"**Higher Value Change Estimate**" is as defined in Clause 84.9.3 (Higher Value Changes – Providing the Estimate);

"**Highest Compliant Tender Price**" means the price offered by the Compliant Tenderer (if any) with the highest tender price and, if no Compliant Tenders are received, zero;

"**HoldCo**" means [insert details of the Contractor's 100% holding company];

"**Holding Company**" is as defined in Section 1159 of the Companies Act 2006 save that for the purposes of determining whether one entity is a Holding Company of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;

"**ICT**" means information and communications technology;

"**ICT Environment**" means the Authority System and the Contractor System;

"**Income Share Dispute Notice**" is as defined in Clause 63.2 (Payment of Third Party Income Share);

"**Indemnified Party**" is as defined in Clause 126.2 (Conduct of Indemnity Claims);

"**Indemnifying Party**" is as defined in Clause 126.2 (Conduct of Indemnity Claims);

"**Independent Certifier**" means [insert details], to be appointed jointly by the Authority and the Contractor [and the Senior Lenders] to act as independent certifier to the Project in accordance with the Independent Certifier's Deed of Appointment;

"**Independent Certifier's Deed of Appointment**" means the deed of appointment of the Independent Certifier in the form set out in Schedule 8 (Independent Certifier's Deed of Appointment);

"**Independent Person**" means a person listed as an independent person for the purpose of alternative dispute resolution on an approved list provided by ACAS;

"**Independent Technical Adviser**" means a person who is independent of the Authority, the Contractor and any Contractor Related Parties who has not less than five years' experience in PFI projects and expertise in pricing works and/or services of the type required by the relevant Change and has relevant experience in the defence sector [insert name of Independent Technical Adviser] or such replacement as may be agreed between the Parties;⁴;

"**Index**" means RPIX (as defined in this Clause 2.1);

"**Indexation Review Date**" means [insert date];

"**Indirect Losses**" means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, loss of revenue, loss of contract, loss of goodwill or any claim for consequential loss or for indirect loss of any nature;

⁴ The Parties may either use the generic drafting option and choose an Independent Technical Advisor as and when required or name a specified person/firm in this Contract prior to financial close (the drafting option for this also provides for the pre-selected Independent Technical Advisor to be replaced by agreement if required).

"**Information**" has the meaning given under Section 84 of the Freedom of Information Act 2000;

"**Initial Financing Agreements**" means the Financing Agreements put in place upon signature of this Contract as set out in Schedule 3 Part 5 (Initial Financing Agreements), copies of which have been initialled by the Parties for the purposes of identification;

"**Instalment Dates**" is as defined in Clause 143.2.1(a) (Time for Payment of the Termination Sum);

"**Insurance Cost Decrease**" means the Insurance Cost Differential if the value thereof is less than zero, multiplied by minus one;

"**Insurance Cost Differential**" shall, subject to the Insurance Review Procedure, be determined as follows:

$$\text{Insurance Cost Differential} = (\text{ARIC} - \text{BRIC}) - (\text{PIC})$$

where:

ARIC is the Actual Relevant Insurance Cost

BRIC is the Base Relevant Insurance Cost

PIC is any Project Insurance Change

"**Insurance Cost Increase**" means the Insurance Cost Differential if the value thereof is greater than zero;

"**Insurance Cost Index**" means any index introduced by the United Kingdom Government or the Office of National Statistics after the Commencement Date and which is anticipated to be published annually to provide an independent and objective measure of changes in prevailing market insurance costs;

"**Insurance Review Date**" means the First Insurance Review Date and, thereafter, each date falling on the second anniversary of the previous Insurance Review Date, except where such date lies beyond the end of the Contract Period, in which case the Insurance Review Date shall be the last renewal date of the Relevant Insurance prior to the end of the Contract Period;

"**Insurance Review Period**" means a two year period from the Relevant Insurance Inception Date and each subsequent two year period commencing on the second anniversary of the Relevant Insurance Inception Date except where the end of such period lies beyond the end of the Contract Period, in which case the Insurance Review Period shall be the period from the end of the penultimate Insurance Review Period to the last day of the Contract Period;

"**Insurance Review Procedure**" means the procedure set out in Clause 118 (Insurance Review Procedure);

"**Insurance Summary Sheet**" is as defined in Clause 118.2.3 (Insurance Review Procedure);

"**Insurance Term**" means any terms and/or conditions required to be included in a policy of insurance by PART 23 (Insurance) and/or Schedule 17 (Documents and Data referred to in PART 23) but excluding any risk;

"**Insurance Undertaking**" has the meaning given in the rules from time to time of the Financial Services Authority;

"**Insured Incident**" is as defined in Clause 123.2 (Contractor's Obligations);

"**IPR**" means all trade marks, trade and business names, patents, copyright (including copyright in computer programs), database rights, design rights, registered designs, utility models, semi conductor topography rights, inventions, know-how, moral rights, confidential information and all other intellectual property and rights of a similar or corresponding nature in any part of the world, whether or not registered or capable of registration, in respect of such rights which are registerable the right to apply for registration and all applications for registration of any of the foregoing rights;

"**Irrecoverable VAT**" means input VAT incurred by the Contractor on any supply which is made to it which is to be used exclusively in providing Asset Provision or Service Provision or any of the obligations or provisions of this Contract together with any input VAT incurred as part of its overhead in relation to such activities) to the extent the Contractor is not entitled to repayment or credit from HM Revenue and Customs in respect of such input VAT;

"**Joint Commissioning**" means any installation, commissioning, testing or running in of plant, machinery or facilities as shown in the Asset Provision Programme as being carried out by the Contractor and the Authority together;

"**Joint Insurance Account**" is the joint bank account (in accordance with Clause 121.1 (Joint Insurance Account)) in the names of the Authority and the Contractor and the Senior Lenders, having account number [insert number] and held with [insert name];

"**Joint Insurance Cost Report**" shall bear the meaning ascribed to it in Clause 118.2 (Insurance Review Procedure);

"**Junior Debt**" means all amounts outstanding at the Termination Date under the Subordinated Financing Agreements;

"**Latent Defect**" means a defect or deficiency in the structure, physical envelope, fabric, infrastructure or utilities of any Existing Facility which exists on the Commencement Date but:

(a) which is not apparent or reasonably discoverable from the surveys listed in Schedule 22 (Surveys); and which is not apparent or reasonably discoverable through the inspections carried out before the Commencement Date jointly by the Contractor[,][and] the Authority [and the Independent Certifier]; and

(b) when it does become apparent:

(i) renders the relevant Existing Facility to be Unavailable; or

(ii) prevents Asset Provision or Service Provision from being provided in accordance with this Contract; or

(iii) renders the relevant Existing Facility to be in breach of applicable Legislation, and

(c) provided that any such defect or deficiency shall not be a Latent Defect if it:

- (i) costs less than [£5,000 (five thousand pounds sterling)] (Indexed) to remedy; or
- (ii) arises as a result of any negligence, default, omission or act of the Contractor or a Contractor Related Party;

"**Legislation**" means:

- (a) any Act of Parliament; or
- (b) any subordinate legislation within the meaning of Section 21 of the Interpretation Act 1978; or
- (c) any exercise of the Royal Prerogative; or
- (d) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972,

in each case in the United Kingdom;

"**Liquid Market**" means there are sufficient willing parties (being at least two parties, each of whom is capable of being a Suitable Substitute Contractor) in the market for PFI contracts or similar contracts for the provision of services (in each case the same as or similar to this Contract) for the price that is likely to be achieved through a tender to be a reliable indicator of Fair Value provided always that any vehicle controlled and established by the Senior Lenders specifically for the purposes of this Project and to which this Contract may be novated shall be discounted in assessing whether there are sufficient willing parties in the market for such purposes;

"**Liquidated Damages**" means in relation to a given Service Level, the amount shown in Schedule 7 Part 4 (Liquidated Damages for Delay in Service Commencement);

"**List X Organisation**" means a Government approved commercial body authorised to handle protectively marked information as further detailed in the Manual of Protective Security;

"**Lock In Period**" means the period commencing on the Commencement Date and expiring on the date that is one Year after the final Services Commencement Date;

"**Long Stop Date**" means any of the dates specified in Column F of the Core Table in Schedule 1 (Authority's Requirements);

"**Losses**" means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges whether arising under statute, contract or at common law, or in connection with judgements, proceedings, internal costs or demands;

"**Major Change**" means a Change which, in the reasonable opinion of the Authority, is likely (if implemented) to result in a net cost or net saving for the Contractor, or a net saving for the Authority, at least equal to the greater of £1,000,000 (one million pounds sterling) (Indexed) or 2% of the annual Unitary Charge⁵, or which, in the reasonable opinion of the Authority, will increase the

⁵ These values will be linked to the values of Medium Value Changes (i.e. anything above the Medium Value Change threshold is a Major Change). The values should be set on a Project-specific basis taking account of the size of the deal and delegated spending powers, which should not be breached.

likelihood of the Contractor failing to meet the Authority's Requirements or materially and adversely affect the Contractor's ability to perform its obligations under this Contract;

"Malicious Software" means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

"Management Plan" means a management plan prepared by the Contractor pursuant to Schedule 19 (Project Management);

"Manual of Protective Security" means the Manual of Protective Security issued by the Cabinet Office as amended from time to time;

"Market Value Availability Deduction Amount" means for any month or part of a month, an amount equal to the Unavailability Deductions that were made to the Unitary Charge under Schedule 13 (Payment Mechanism) in the month immediately preceding the Termination Date, less an amount equal to any Unavailability Deductions that were made for an Available Asset which was Unavailable at the Termination Date but which has subsequently become Available whether as a result of the Authority incurring Rectification Costs or otherwise;

"Maximum Unitary Charge" means, in respect of a month, the Unitary Charge payable in respect of that month before any deductions are made under PART 12 (Payment and Base Case) and Schedule 13 (Payment Mechanism) but allowing for indexation in accordance with Clause 71 (Indexation);

"Measures in a Crisis" means any measures of Authority taken pursuant to Clause 78.4 (Effect of Implementation of Measures in a Crisis) and/or 78.5 (Authority's Overriding Rights) if the circumstances in Clause 78 (Measures in a Crisis) apply;

"Medium Value Change" means a Change, which is not a Minor Change, and which, in the reasonable opinion of the Authority, is likely (if implemented) to result in a net cost or net saving for the Contractor, or a net saving for the Authority, that is less than the greater of one million pounds (£1,000,000)⁶ (Indexed) or 2⁷% of the annual Unitary Charge, and which will not increase the likelihood of the Contractor failing to meet the Authority's Requirements or materially and adversely affect the Contractor's ability to perform its obligations under this Contract;

"MIAC Required Action" is as defined in Clause 78.6.1(a) (Authority's Indemnity on Measures in a Crisis);

"Minor Change" means a Change which, in the reasonable opinion of the Authority, is likely (if implemented) to result in a net cost or saving to the Contractor, or a net saving to the Authority, of less than or equal to £25,000 (twenty five thousand pounds sterling) (Indexed)⁸, and which, in the reasonable opinion of the Authority, will not increase the likelihood of the Contractor failing to meet the Authority's Requirements or materially and adversely affect the Contractor's ability to perform its obligations under this Contract;

⁶ The Project Team should specify this amount in its tender documentation.

⁷ As footnote for Medium Value Change above.

⁸ As footnote for Medium Value Change above

"**Minor Change Estimate**" is as defined in Clause 84.5.3 (Minor Changes);

"**Minor Rates**" means the schedule of rates for Minor Changes included in Schedule 14 Part 2 (Minor Rates) which shall apply for **five** Years from the Commencement Date, such rates being Indexed at the commencement of each Contract Year, and thereafter such rates shall be agreed pursuant to PART 18 (Changes and Change in Law);

"**Money Purchase Benefits**" means money purchase benefits as defined in Section 181 of the Pension Schemes Act 1993;

"**Monthly Unitary Payment**" has the meaning given in Schedule 13 (Payment Mechanism);

"**Named Employee**" means any of the Contractor's and/or a Sub-contractor's employees, staff, directors or officers performing Asset Provision and/or Service Provision (other than Relevant Employees/Transferring Employees). If the Project includes, or shall involve, the disclosure of information about a Secret Matter, for the purposes of this definition, "Sub-contractor" shall mean a sub-contractor to the Contractor, a sub-contractor of a sub-contractor to the Contractor, and any other sub-contractor of whatever tier involved in Asset Provision and/or Service Provision who has or may have access to the Secret Matter;

"**Necessary Consents**" means all permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of any of the Contractor's obligations under this Contract, whether required in order to comply with Legislation or as a result of the rights of any third party;

"**Net Present Value**" means the aggregate of the discounted values, calculated as of the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Threshold Equity IRR;

"**New Contract**" means an agreement on the same terms and conditions as this Contract at the Termination Date, but with the following amendments:

- (a) if this Contract is terminated before the Services Commencement Date for the final Service Level, then in respect of any Service Level for which an Acceptance Certificate has not been issued, the relevant Planned Services Commencement Dates in Column E of the Core Table in Schedule 1 (Authority's Requirements) shall be extended by such period as would have been granted to allow a New Contractor to achieve Service Commencement for such Service Level for the Specified Services in question;
- (b) any accrued warning notices issued pursuant to Clause 132.6 (Termination Notices Prior to Termination for Persistent Breach by the Contractor), Unavailability Deductions or Service Performance Deductions shall, for the purposes of termination only, and without prejudice to the Authority's rights to make financial deductions, be cancelled;
- (c) the term of such agreement shall be equal to the term from the Termination Date to the Expiry Date;
- (d) any other amendments which do not adversely affect the Contractor;

"**New Contractor**" means the person who has entered or who shall enter into the New Contract with the Authority;

"New Provider" means any replacement service provider nominated by the Authority to provide the Services or the Authority itself where the Services or substantially similar services continue to be provided by the Authority upon or after the termination or expiry of this Contract;

"Non-Core Working Hours" means those periods set out in categories [insert details] of Table 1 (Operational Periods) in Schedule 1 Part 0 (Introduction to Authority's Requirements);

"Notice Date" means the later of the Termination Date and (if applicable) the date that the Adjusted Estimated Fair Value is agreed between the Parties pursuant to Clause 140.4 (No Retendering Procedure);

"Notice of Change" is as defined in Clause 83.1.1 (Change Initiation);

"Notice of Possible Future Change" is as defined in Clause 82.1.3 (Consideration of a Change);

"Notice of Service Availability" means the notice issued by the Contractor's Representative to the Authority's Representative stating that the relevant Service Availability Requirements have been met for a given Service Level as specified in the Core Table in Schedule 1 (Authority's Requirements);

"Notice to Proceed" is as defined in Clause 86.2.1 (Step 4 – Confirmation or Withdrawal of the Notice of Change);

"Notifiable Financings" means any Refinancing described in paragraphs (a) or (c) of the definition of Refinancing and any other arrangement which has or would have a similar effect of which has or would have the effect of limiting the Contractor's or any Contractor's Associated Company's ability to carry out any such refinancing or other arrangements which would have a similar effect;

"Operating Expenditure" means operating costs including maintenance costs, staffing costs and utility costs;

"Option Period" is as defined in Clause 119.4 (Uninsurability);

"Original Senior Commitment" means the amount committed under the Senior Financing Agreements as at Financial Close (as adjusted to take into account any Qualifying Variation);

"Outline Written Request" is as defined in Clause 58.5.3 (The TP Outline Proposal);

"Outstanding Principal" means the principal amount outstanding at the Termination Date of each borrowing (other than any borrowing under any equity bridge facility) under the Senior Credit Agreement;

"Outstanding Work on Handback" is as defined in Clause 134.3 (Outstanding Work on Handback);

"Parties" means the parties to this Contract;

"Payment Approval" means completion by the Authority's Representative, including signature where required, of the appropriate parts of the Relevant Form, sufficient for submission as a claim for payment;⁹

"Payment Period" means each calendar month during the Contract Period;

"Permitted Borrowing" means without double counting, any:

- (a) advance to the Contractor under the Senior Financing Agreements (disregarding any amendments that have not been approved for the purposes of Clause 6.3.2 (Changes to the Financing Agreements)), provided that such advance is not made under any Committed Standby Facility; and
- (b) Additional Permitted Borrowing; and
- (c) advance to the Contractor under any Committed Standby Facility which is made solely for the purpose of funding any cost overruns, increased expenses or loss of revenue which the Contractor incurs, provided that such funds are not used in substitution for other sources of committed funding designated for those purposes; and
- (d) interest on the above amounts and (disregarding any amendments that have not been approved for the purposes of Clause 6.3.2 (Changes to the Financing Agreements)) other amounts accrued or payable under the terms of the Senior Financing Agreements,

except where the amount referred to in paragraphs (a) to (d) above is, or is being used to fund, a payment of Default Interest on any Additional Permitted Borrowing;

"Persistent Breach" is as defined in Clause 132.7 (Termination Date on termination for Persistent Breach);

"Personal Data" means personal data as defined in the DPA which is supplied to the Contractor by the Authority or obtained by the Contractor in the course of the Project;

"PFI" means the United Kingdom's Private Finance Initiative;

"PFI Contractor" means a person that has contracted with the Government, a local authority or other public or statutory body to provide services under the PFI;

"Physical Damage Policies" means the Required Insurance set out in paragraph 1 of Schedule 17 Part 1 (Policies to be taken out by the Contractor and maintained during Asset Provision) and paragraph 1 of Schedule 17 Part 2 (Policies to be taken out by the Contractor and maintained during Service Provision);

"Planned Maintenance Programme" means the Contractor's annual programme for the maintenance of each Specified Asset to satisfy the Service Provision Requirements as included in Schedule 7 Part 2 (and as set out in Clause 28 (Planned Maintenance Programme));

⁹This option is appropriate where the P2P system will not be used.

"Planned Services Commencement Date" means in relation to Service Level #, the date shown as the Planned Service Level # Commencement Date in Column E of the Core Table in Schedule 1 (Authority's Requirements) or such later date as may be allowed in accordance with the terms of this Contract;

"Portfolio Cost Saving" means any insurance cost saving which arises from the Contractor changing the placement of the Required Insurances from being on a stand-alone project-specific basis assumed at Financial Close and reflected in the Base Cost, to being on the basis of a policy (or policies) also covering risks on other projects or other matters which are outside the scope of the Project so as to benefit from portfolio savings. A Portfolio Cost Saving is defined to be a positive sum and cannot be less than zero;

"Post Termination Service Amounts" means for the purposes of Clause 140.2 (Retendering Procedure), for the whole or any part of a month for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Unitary Charge which would have been payable in that month under this Contract had this Contract not been terminated, less an amount equal to the aggregate of:

- (a) the Market Value Availability Deduction Amount for that month; and
- (b) the Rectification Costs incurred by the Authority in that month; and
- (c) (where relevant) the amount by which the Post Termination Service Amount for the previous month was less than zero;

"Pre-Refinancing Equity IRR" means the nominal post-tax (i.e. post-tax with respect to the Contractor, pre-tax with respect to Shareholders) Equity IRR calculated immediately prior to the Refinancing¹⁰;

"Prescribed Rate" means two percent above the base rate from time to time of [insert name] Bank plc;

"Pro Forma" means the pro forma contained in Schedule 21 (Third Party Income Report Pro Forma);

"Prohibited Act" means:

- (a) offering, giving or agreeing to give to any servant of the Crown any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Crown; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Crown; or
- (b) entering into this Contract or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority's Representative; or

¹⁰ This is the nominal post-Contractor tax, pre-Shareholder tax Equity IRR and is further explained in the guidance in Annex 2 of SoPCv3

- (c) committing any offence:
 - (i) under the Bribery Act 2010; or
 - (ii) under Legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Crown; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Crown; or
- (e) a Breach of Security.

"Prohibited Activity" means activities which are prohibited by Legislation and/or activities which may be likely to expose persons to a significant risk to their health, safety or welfare (whether or not present at the Authority Sites or an Asset at the relevant time);

"Project" means [insert details] including the carrying out of Asset Provision and Service Provision;

"Project Accounts" means the accounts referred to in and required to be established under the Senior Financing Agreements;

"Project Data" means:

- (a) all Design Data; and
- (b) any other materials, documents or data acquired brought into existence or used in relation to Asset Provision, Service Provision or this Contract;

"Project Documents" means the agreements entered into by the Contractor for the performance of its obligations under this Contract to which the Authority is a party and which are listed in Schedule 3 Part 3 (Project Documents), copies of which have been initialled by the Parties for the purposes of identification;

"Project Insurance Change" means any net increase (which shall be expressed as a positive number) or net decrease (which shall be expressed as a negative number) in the Actual Relevant Insurance Cost relative to the Base Relevant Insurance Cost, arising from:

- (a) the claims history or re-rating of the Contractor or any Contractor Related Party;
- (b) the effect of any change in deductible unless the following applies:
 - (i) such change is attributable to circumstances generally prevailing in the Relevant Insurance Market; and
 - (ii) the deductible, further to such change, is either greater than or equal to the maximum in Schedule 17 (Documents and Data Referred to in PART 23); and
- (c) any other issue or factor other than circumstances generally prevailing in the Relevant Insurance Market, except for any Portfolio Cost Saving.

For the purpose of determining the Insurance Cost Differential, if there is a net increase, the Project Insurance Change shall have a positive value. If there is a net decrease the Project Insurance Change shall have a negative value;

"Project Management" is the procedure set out in Schedule 19 (Project Management);

"Project Management Fee" means a fee in respect of project management services calculated in accordance with Clause 84.8 (Project Management Fee);

"Project Management Group" means the group made up of the Authority's Representative, Contractor's Representative and other persons as required by Schedule 19 (Project Management);

"Project Records" is as defined in Clause 116.1.1 (Records Relating to Asset Provision and/or Service Provision);

"Property Damage Insurance" means the Required Insurance as set out in paragraph 1 of Schedule 17 (Insurance);

"Proposed Reinstatement Plan" is as defined in Clause 123.2 (Contractor's Obligations);

"Prospective Tenderer" is defined in Clause 84.9.6(a)(ii)(1) (Calculating the Estimated Change in Project Costs and/or Capital Expenditure – Higher Value Change (Major Changes));

"Qualifying Bank Transaction" means:

- (a) the syndication by a Senior Lender, in the ordinary course of its business, of any of its rights or interests in the Senior Financing Agreements; or
- (b) the grant by a Senior Lender of any rights of participation, or the disposition by a Senior Lender of any of its rights or interests (other than as specified in paragraph (a) above), in respect of the Senior Financing Agreements in favour of:
 - (i) any other Senior Lender; or
 - (ii) any institution which is recognised or permitted under the law of any member state of the EEA to carry on the business of a credit institution pursuant to Council Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state; or
 - (iii) a local authority or public authority; or
 - (iv) a trustee of a charitable trust which has (or has had at any time during the previous two Years) assets of at least £10,000,000 (ten million pounds sterling) (or its equivalent in any other currency at the relevant time); or
 - (v) a trustee of an occupational pension scheme or stakeholder pension scheme where the trust has (or has had at any time during the previous two Years) at least 50 members and assets under management of at least £10,000,000 (ten million pounds sterling) (or its equivalent in any other currency at the relevant time); or
 - (vi) an EEA or Swiss Insurance Undertaking; or
 - (vii) a Regulated Collective Investment Scheme; or

- (viii) any [Qualifying Institution]; or
 - (ix) any other institution in respect of which the prior written consent of the Authority has been given; and/or
- (c) the grant by a Senior Lender of any other form of benefit or interest in either the Senior Financing Agreements or the revenues or assets of the Contractor or HoldCo, whether by way of security or otherwise, in favour of:
- (i) any other Senior Lender; or
 - (ii) any institution specified in paragraphs (b)(ii) to (vii) above; or
 - (iii) any Qualifying Institution; or
 - (iv) any other institution in respect of which the prior written consent of the Authority has been given;

"Qualifying Institution" means [insert definition]¹¹;

"Qualifying Refinancing" means any Refinancing that shall give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing;

"Qualifying Tenderers" is as defined in Clause 84.9.6(a)(ii)(4)I (Calculating the Estimated Change in Project Costs and/or Capital Expenditure – Higher Value Change (Major Changes));

"Qualifying Variation" means a Change in Asset Provision and/or Service Provision in respect of which a Notice of Change has been served and:

- (a) if the Authority is the Change Proposer, the Authority has confirmed the Change pursuant to Clause 86 (Step 4 – Confirmation or Withdrawal of the Notice of Change) and, if the Contractor is not funding all or part of the required Capital Expenditure, the Authority has agreed to meet all or the remaining part (as appropriate) of such Capital Expenditure pursuant to Clause 85 (Step 3 – Agreeing the Estimate); or
- (b) if the Contractor is the Change Proposer, the Authority has confirmed the Change pursuant to Clause 86 (Step 4 – Confirmation or Withdrawal of the Notice of Change),

and in respect of which any documents or amendments to the Project Documents which are required to give effect to such Change in Asset provision and/or Service Provision have become unconditional in all respects;

"Quality Plan" is as defined in Clause 20.1.1 (Contractor's Quality Assurance Requirements);

"Receipting" is as defined in Clause 66.3.1(b) (Payment Approval/Receipting)¹²;

"Rectification Costs" means for the purposes of any Termination Date that occurs during Service Provision, an amount equal to the reasonable and proper

¹¹ In defining "Qualifying Institution" project teams should have regard to footnote 17 of chapter 34 (Refinancing) of SoPCv4

¹² This option is appropriate where the P2P system will be used.

costs incurred by the Authority in a particular month or part of a month in ensuring that the Services are Available and/or that a Change to the Services is completed;

"Rectification Period" is as defined in Schedule 13 (Payment Mechanism);

"Reference Assessment" means an estimate, calculated by the Independent Technical Adviser, of the effect on costs of implementing a proposed Change and which shall include and show separately the information specified in Clause 84.9.6(f)(iii) (Independent Technical Adviser);

"Refinancing" means:

- (a) any amendment, variation, novation, supplement or replacement of any Financing Agreement (other than any Subordinated Financing Agreement);
or
- (b) the exercise of any right, or the grant of any waiver or consent, under any Financing Agreement (other than any Subordinated Financing Agreement);
or
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, any Financing Agreement (other than any Subordinated Financing Agreement) or the creation or granting of any other form of benefit or interest in either the Financing Agreements (other than the Subordinated Financing Agreements) or the contracts, revenues or assets of the Contractor whether by way of security or otherwise; or
- (d) any other arrangement put in place by the Contractor or another person which has an effect which is similar to any of (a) to (c) above or which has the effect of limiting the Contractor's or any Associated Company's ability to carry out any of (a) to (c) above;

"Refinancing Gain" means an amount equal to the greater of zero and $\{(A-B)-C\}$, where:

A = the Net Present Value of the Distributions projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and using the Base Case as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person (without double counting) over the remaining term of this Contract following the Refinancing

B = the Net Present Value of the Distributions projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Base Case as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person (without double counting) over the remaining term of this Contract following the Refinancing

C = any adjustment required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR;

"Refinancing Notice" is as defined in Clause 74.5.1 (Authority's Right to Request Refinancing);

"Regulated Collective Investment Scheme" has the meaning given in the rules from time to time of the Financial Services Authority;

"**Reinstatement Plan**" is as defined in Clause 123.2.1 (Contractor's Obligations);

"**Reinstatement Works**" are as defined in Clause 123.2.1 (Contractor's Obligations);

"**Relevant Assumptions**" means the assumptions that the sale of the Contractor is on the basis that there is no default by the Authority, that the sale is on a going concern basis, that no restrictions exist on the transfer of share capital, that no Additional Permitted Borrowing has taken place and therefore that the effect of the Additional Permitted Borrowing on the calculation of such amount is disregarded but that otherwise the actual state of affairs of the Contractor and the Project is taken into account;

"**Relevant Authority**" means any court with the relevant jurisdiction and any local, national or supra-national agency, authority, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;

"**Relevant Day**" means the day which is thirty days after the later of:

(a) the day upon which a valid request for Payment Approval is received by the Authority's Representative in accordance with Clause 66.2 (Report and Invoice); and

(b) the date of completion or performance of the part of the Services for the relevant Payment Period,

excluding the number of days that elapse from the date the Contractor receives a Relevant Form showing Payment Approval to the date the Authority's Bill Paying Branch receives a valid, properly completed claim for payment;¹³

OR

(a) the day upon which a valid delivery label is received by the Authority's Representative in accordance with Clause 66.2 (Report and Invoice); and

(b) the date of completion or performance of the part of the Services for the relevant Payment Period;¹⁴

"**Relevant Form**" means form AG 173 or any replacement form notified to the Contractor's Representative by the Authority's Representative for the purpose of seeking Payment Approval. A copy, such as a photocopy or fax, of a Relevant Form showing Payment Approval is not acceptable.¹⁵

"**Relevant Employee**" means the Authority Employees and the Third Party Employees;

"**Relevant Incident**" is as defined in Clause 123.2.1 (Contractor's Obligations);

"**Relevant Insurance**" means the Required Insurance and any other insurances as may be required by law other than:

¹³ This option is appropriate where the P2P system will not be used.

¹⁴ This option is appropriate where the P2P system will be used.

¹⁵ This option is appropriate where the P2P system will not be used.

- (a) Asset Provision Period Insurance;
- (b) Business Interruption Cover except to the extent that it relates to Unavoidable Fixed Costs; and
- (c) any ancillary insurances;¹⁶

"**Relevant Insurance Inception Date**" means the date on which the Relevant Insurance is first providing active insurance cover to the Contractor, being a date no earlier than the Services Commencement Date for first Service Level;

"**Relevant Insurance Market**" means the insurance market where insurance for the majority of all PFI projects across all of the PFI sectors is placed (as determined by the number of PFI projects). At the Commencement Date, the Relevant Insurance Market is in the **United Kingdom**;

"**Relevant Insured Loss**" means any Losses incurred by the Contractor and/or any Contractor Related Party in respect of which:

- (a) any amount is recovered under any Required Insurance; and
- (b) any amount is recovered under any insurance not identified in (a) above taken out and maintained by the Contractor and/or any Contractor Related Party in connection with the Project;

"**Relevant Payment**" is as defined in Clause 119.4 (Uninsurability);

"**Relevant Person**" means a Shareholder and any of its Affiliates;

"**Relevant Proceeds**" means any amounts standing to the credit of the Joint Insurance Account in accordance with Clause 123.4.1(c) (Reinstatement Works);

"**Relief Event**" means any of the following:

- (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion;
- (b) failure by any statutory undertaker, utility company, local authority or other like body to carry out works or provide services;
- (c) any accidental loss or damage to the Authority Sites or any roads servicing them;
- (d) any **national** failure or shortage of power, fuel or transport;
- (e) any blockade or embargo which does not constitute a Force Majeure Event; or
- (f) any:
 - (i) official or unofficial strike;
 - (ii) lockout;

¹⁶ If the Required Insurance contains any other ancillary (*i.e.* non-standard) insurances, these must also be referred to here.

- (iii) go-slow; or
- (iv) other dispute,

generally affecting the **Asset Provision and/or Service Provision** industries or a significant sector of such industries,

in the country in which the Specified Assets are located unless any of the events listed in paragraphs (a) to (f) inclusive arises (directly or indirectly) as a result of any wilful default or wilful act of the Contractor or any Contractor Related Parties in which case such event shall not be a Relief Event;

"Repair Costs" means the cost of any repair or replacement needed to ensure that following any incident of damage an Asset is returned to the standard required in accordance with this Contract;

"Requests for Information" shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply);

"Required Action" is as defined in Clause 80.2.2 (Procedure for Authority Step-In);

"Required Insurances" means the insurances specified in Parts 1 and 2 inclusive of Schedule 17 (Insurances);

"Required Period" means **[insert definition]**;

"Retention Fund Account" is as defined in Clause 134.4.1 (Retention Fund);

"Review Date" means the First Review Date and, thereafter, each date falling on the second anniversary of the previous Review Date, except where such date lies beyond the Termination Date, in which case the Review Date shall be the last renewal date of the Relevant Insurance prior to the Termination Date;

"Review Period" means the period from the Relevant Insurance Inception Date to the First Review Date and each subsequent period commencing on the previous Review Date and ending on the Review Date;

"Reviewable Design Data" means the plans, drawings, documents and information relating to Asset Provision listed in Schedule 6 (Design Review Procedure);

"Revised Senior Debt Termination Amount" means, subject to Clause 6.3 (Changes to the Financing Agreements):

- (a) all amounts outstanding at the Termination Date, including interest and (other than in respect of Additional Permitted Borrowing), or, in the case of early termination or interest rate hedging arrangements only, as a result of termination of this Contract, Default Interest accrued as at that date, from the Contractor to the Senior Lenders in respect of Permitted Borrowing; and
- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Contractor to the Senior Lenders as a result of a prepayment in respect of Permitted Borrowing, or, in the case of early termination or interest rate hedging arrangements only, as a result of termination of this Contract subject to the Contractor and the Senior Lenders mitigating all such costs to the

extent reasonably possible,

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Revised Senior Debt Termination Amount or the amounts below):

- (i) all credit balances on any bank accounts (but excluding the Joint Insurance Account) held by or on behalf of the Contractor on the Termination Date; and
- (ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities; and
- (iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Lenders to the Contractor as a result of prepayment of amounts outstanding in respect of Permitted Borrowing or, in the case of early termination or interest rate hedging arrangements only, as a result of termination of this Contract; and
- (iv) all other amounts received by the Senior Lenders on or after the Termination Date and before the date on which any compensation is payable by the Authority to the Contractor as a result of enforcing any other rights they may have; and
- (v) all APB Distributions;

"Risk Change" is as defined in Clause 61.3.10 (Approved Third Party Use and Third Party Use);

"RPI" means the index published in table 4.1 of the Focus on Consumer Price Indices published by the Office for National Statistics or failing such publication or in the event of a fundamental change to the index, such other index as the Parties may agree (with the intention of putting the Parties in no better nor worse position than they would have been had the index not ceased to be published or the relevant fundamental change not been made) or, failing agreement, as may be determined in accordance with PART 27 (Dispute Resolution);

"RPIX" or **"the Index"** means the index published in table 4.4 of the Focus on Consumer Price Indices published by the Office for National Statistics or failing such publication or in the event of a fundamental change to the index, such other index as the Parties may agree (with the intention of putting the Parties in no better nor worse position than they would have been had the index not ceased to be published or the relevant fundamental change had not been made) or, failing agreement, as may be determined in accordance with PART 27 (Dispute Resolution);

"SA Defect" is as defined in Clause 21.2.1(b) (Monitoring and Inspection during Asset Provision);

"Secret Matter" means any matter connected with any Project Document or the performance of the Project which is designated in writing by the Authority as "Top Secret", "Secret", or "Confidential", and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;

"Security Proposals" means the proposals of the Contractor detailing how the Contractor will satisfy the Security Requirements and set out in Schedule 2 Part 3 (Security Proposals);

"Security Requirements" means the requirements of the Authority in relation to the security aspects of Asset Provision and/or Service Provision set out in Schedule 1 Part 4 (Security Requirements);

"Senior Civil Servant" means an Authority member of staff at the senior civil service two star level (or equivalent grade such as NATO officer rank OF-7, Air Vice-Marshal, Rear Admiral, Major-General) or above;

"Senior Credit Agreement" means [insert details] as at the Commencement Date or as amended with the prior written approval of the Authority pursuant to Clause 6.3 (Changes to the Financing Agreements);

"Senior Debt" means the financing provided by the Senior Lenders under the Senior Financing Agreements;

"Senior Debt Rate" means the non-default interest rate as defined in the Senior Credit Agreements or such lower rate as the Parties may agree pursuant to Schedule 19 (Project Management);

"Senior Financing Agreements" means those of the Financing Agreements listed in Schedule 3 Part 6 (Senior Financing Arrangements) as at the Commencement Date or, without prejudice to Clause 6.3.2 (Changes to the Financing Agreements), as the same may be amended as allowed by Clause 6.3.1 (Changes to the Financing Agreements).

"Senior Lenders" means [insert details] who are providing finance to the Contractor under the Senior Financing Agreements;

"Service Availability" means in relation to any given Service Level that such Service Level satisfies the Service Availability Requirements;

"Service Availability Requirements" means the specification of Services in respect of each Service Level as set out in Column B of the Core Table in Schedule 1 (Authority's Requirements), such specification being as set out in Schedule 1 Part 3 (Service Provision Requirements);

"Service Level" means that part of Service Provision numbered in the Core Table in Schedule 1 (Authority's Requirements) to be provided in relation to the given Specified Services at the given time;

"Service Performance Deductions" are as defined in Schedule 13 (Payment Mechanism);

"Service Provider" means [insert details] or such other contractor as the Contractor may, subject to Clause 94.6 (Approval of Sub-contractors and Terms of Sub-contracts), appoint for Service Provision;

"Service Provision" means the provision of the Services (including as required the operation, maintenance, repair and replacement of the Specified Assets) to meet the Service Provision Requirements in accordance with this Contract;

"Service Provision Contract" means the contract in the Agreed Form between the Contractor and the Service Provider relating to Service Provision;

"**Service Provision Contract Related Dispute**" is as defined in Clause 144.6 (Related Disputes);

"**Service Provision Dispute**" means any dispute which relates to the provision of, or failure to provide, the Services in accordance with this Contract and which is not an Asset Provision Dispute;

"**Service Provision Panel**" is as defined in Clause 144.3.2(a) (Contractor's Obligations);

"**Service Provision Proposals**" means the proposals for the method of providing the Services to satisfy the Service Provision Requirements set out in Schedule 2 Part 2 (Service Provision Proposals);

"**Service Provision Requirements**" means the specification of Services in respect of each Service Level as set out in Column C of the Core Table in Schedule 1 (Authority's Requirements), such specification being as set out in Schedule 1 Part 3 (Service Provision Requirements);

"**Services**" means the services and Service Levels described or specified in Schedule 1 (Authority's Requirements);

"**Services Commencement**" means the commencement of a given Service Level in relation to any given Specified Service;

"**Services Commencement Date**" means in relation to the Service Level for any given Specified Services, the date on which the relevant Acceptance Certificate is issued (except for Service Level 0 which shall commence on the Commencement Date);

"**Shareholder**" means any person from time to time holding share capital in the Contractor **or HoldCo** or a Sub-contractor;

"**Site Conditions**" means the conditions of the Sites including (but not limited to) climatic, hydrological, hydrogeological, ecological, environmental, geotechnical and archaeological conditions;

"**Sites**" means the Authority Sites, the Contractor's Sites and the Development Sites;

"**Snagging Items**" means minor defects, deficiencies or omissions of a snagging nature which do not impact upon the Service Availability Requirements and which do not prevent the **Independent** Certifier from issuing an Acceptance Certificate in respect of a given Service Level;

"**Snagging List**" is as defined in Clause 35.2.1(a) (Snagging Items);

"**Snagging Programme**" is as defined in Clause 35.2.1(b) (Snagging Items);

"**Specific Change in Law**" means any Change in Law which specifically refers to the provision of **services the same as or similar to the Services**¹⁷ or to the holding of shares in companies whose main business is providing **services the**

¹⁷ In a Project involving construction, the "provision" of the Service will include the related construction of an asset to enable the Service to be provided. The Project Team and its advisers will need to arrive at a definition of Specific Change in Law that gives protection in relation to Changes in Law which are targeted at companies delivering similar services to those being carried out by the Contractor (e.g. in an accommodation project, Specific Change in Law covers changes in law relating to the provision or operation of services or works to the defence sector).

same as or similar to the Services which was not foreseeable at the Commencement Date;

"Specified Assets" means the assets specified in Schedule 2 Part 1 (Asset Provision Proposals) and any software embedded in such assets;

"Specified Services" means in relation to any of the cells in Column A of the Core Table in Schedule 1 (Authority's Requirements), the Services described or referred to therein;

"Sub-contractor" means each of the Asset Provider and the Service Provider or any other person engaged by the Contractor from time to time as may be permitted by this Contract to perform Asset Provision and/or Service Provision (or any part of Asset Provision and/or Service Provision);

"sub-contractor" means a sub-contractor (of any tier) of the Contractor;

"Sub-contractor Breakage Costs" means Losses that have been or shall be reasonably and properly incurred by the Contractor as a direct result of the termination of this Contract, but only to the extent that:

- (a) the Losses are incurred in connection with the Project and in respect of Service Provision or completion of Asset Provision, including:
 - (i) any materials or goods ordered or Sub-contracts placed that cannot be cancelled without such Losses being incurred; and/or
 - (ii) any expenditure incurred in anticipation of Service Provision or the Asset Provision in the future; and/or
 - (iii) the cost of demobilisation including the cost of any relocation of equipment used in connection with the Project; and/or
 - (iv) redundancy payments; and
- (b) the Losses are incurred under arrangements and/or contracts that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms and [insert details]¹⁸; and
- (c) the Contractor and the relevant Sub-contractor has each used its reasonable endeavours to minimise and mitigate the Losses;

"Sub-contracts" means the contracts entered into between the Contractor and the Sub-contractors;

"Subordinated Financing Agreements" means [insert details] as at the Commencement Date or as amended with the prior written approval of the Authority's Representative;

"Subordinated Lenders" means [insert details] who is providing finance under a Subordinated Financing Agreement;

"Subsequent Contract" means the contract for Services with the New Provider;

¹⁸ Authorities should consider inserting a relevant Sub-contractor loss of profit cap as recommended by Section 21.1.3.7 of SOPC 4.

"Subsequent Contract Award" means the award of a contract for the Services to a New Provider;

"Suitable Substitute Contractor" means a person who is a Suitable Third Party and who is approved by the Authority's Representative (such approval not to be unreasonably withheld or delayed) as:

- (a) having the legal capacity, power and authority to become a party to and perform the obligations of the Contractor under this Contract; and
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Contractor under this Contract;

"Suitable Substitute Sub-contractor" means a person who is a Suitable Third Party and who is approved by the Authority's Representative (such approval not to be unreasonably withheld or delayed) as:

- (a) having the legal capacity, power and authority to become a party to and perform the obligations it is proposed to undertake in relation to the Project; and
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations it is proposed to undertake in relation to the Project,

and if the Project includes, or shall involve, the disclosure of information about a Secret Matter, for the purposes of this definition, **"Sub-contractor"** shall mean a sub-contractor to the Contractor, a sub-contractor of a sub-contractor to the Contractor, and any other sub-contractor of whatever tier involved in Asset Provision and/or Service Provision who has or may have access to the Secret Matter;

"Suitable Third Party" means any person who is not an Unsuitable Third Party;

"Support Document" shall mean any document including information required for support of any of the Services or Assets subject to this Contract;

"Table" means a table in this Contract;

"Tax" means any kind of tax, duty, levy or other charge (other than VAT) whether or not similar to any in force at the Commencement Date and imposed by a Relevant Authority;

"Tender Costs" means the reasonable and proper costs of the Authority incurred in carrying out the Tender Process and/or in connection with any calculation of the Estimated Fair Value of the Contract;

"Tender Process" means the process by which the Authority requests tenders from any parties interested in entering into a New Contract, evaluates the responses from those interested parties and enters into a New Contract with a new service provider, in accordance with Clause 140.2 (Retendering Procedure);

"Tender Process Monitor" means a third party appointed by the Contractor under Clause 140.2.1(e) (Retendering Procedure);

"Termination Date" means the date of early termination of this Contract in accordance with its terms;

"Termination Date Discount Rate" means a discount rate expressed as $(1 + \text{real base case project IRR} + \text{Gilt B} - \text{Gilt A}) * (1 + i) - 1$

where:

"real base case project IRR" is the real pre-tax Project IRR as set out in the Base Case

"i" is the agreed assumed forecast rate of increase in the Index for the remaining term of the Contract;

"Gilt A" is the real yield to maturity as at Financial Close on a benchmark government Gilt instrument of the same maturity as the average life determined from the Base Case as at Financial Close of the Senior Debt; and

"Gilt B" is the real yield to maturity as at the Termination Date on a benchmark government Gilt instrument of the same maturity as the average life, as determined from the Base Case as at the Termination Date of the Senior Debt outstanding on that date;

"Termination Notice" means a notice of termination issued in accordance with this Contract;

"Termination Sum" means any compensation payable by the Authority to the Contractor on an early termination of this Contract under Clauses:

- (a) 131.3 (Termination Date and Compensation on Authority's Voluntary Termination); or
- (b) 139 (Compensation on Termination for Refinancing Breaches and Prohibited Acts); or
- (c) 140 (Compensation on Termination for Contractor Default) less the Adjusted Highest Compliant Tender Price; or
- (d) 141 (Compensation on Termination for Force Majeure or on Uninsurability);

"Termination Sum Instalment Dates" is as defined in Clause 143 (Time for Payment of the Termination Sum);

"Third Party" means any entity or individual other than the Authority, Authority Related Party (excluding any Commercial Service Provider) or the Contractor but including any Contractor Related Parties;

"Third Party Business" means the generation of Third Party Contract Gross Revenue;

"Third Party Contract" means an individual agreement or arrangement between the Contractor or a Contractor Related Party (as applicable) with a Third Party relating to Third Party Use;

"Third Party Contract Gross Revenue" means all income received whether directly or indirectly and whether by payment, set-off or otherwise by the Contractor or Contractor Related Party;

"Third Party Contract Profit" means the Third Party Contract Gross Revenue less the Total Third Party Operating Costs for that period;

"Third Party Employees" means the employees of any third party employer contracted to provide services to the Authority the same as or similar to any of the Services who immediately before any relevant transfer of those services (within the meaning of the Transfer Regulations) to the Contractor or any Sub-contractor is employed or engaged to carry out those services;

"Third Party Income Notice" is as defined in Clause 63.1 (Payment of Third Party Income Share);

"Third Party Income Share" is as defined in Clause 60.1 (Third Party Income Share);

"Third Party IPR" means IPR owned by a third party;

"Third Party Liability Insurance" means the Required Insurances set out in paragraph 3 of Schedule 17 Part 1 (Policies to be taken out by the Contractor and maintained during Asset Provision) and paragraph 3 of Schedule 17 Part 2 (Policies to be taken out by the Contractor and maintained during Service Provision);

"Third Party Public and Products Liability Insurance" means the Required Insurances set out in paragraph 3 of Schedule 17 Part 2 (Policies to be taken out by the Contractor and maintained during Service Provision);

"Third Party Use" means the provision of a service by the Contractor or a Contractor Related Party by use of a Specified Asset during the Contract Period to a Third Party;

"Threshold Equity IRR" means [insert number] percent¹⁹;

"Title" means the title of the Authority in respect of each of the Authority Sites evidenced by office copy entries of the registered title and/or such title as is ascertainable or derivable from the title deeds set out in Schedule 4 (Documents and Data referred to in PART 2);

"Total Third Party Income Share" is as defined in Clause 63.1.4 (Payment of Third Party Income Share);

"Total Third Party Operating Costs" means the proper and reasonable additional costs (identified in the Pro Forma) incurred in good faith by the Contractor directly in relation to the due and proper performance of the obligations arising under all Third Party Contracts. Where cost items or lines are proposed by the Contractor which are not included within the Pro Forma, then the prior agreement of the Authority must be sought before they are included in Total Third Party Operating Costs. Total Third Party Operating Costs shall exclude:

- (a) profits or losses of a capital nature made on the realisation of the shares, intellectual property, goodwill or freehold or leasehold property of the Contractor or Contractor Related Party, or on their revaluation (other than by reason of their depreciation), unless specifically agreed with the Authority in advance and/or unless such profits or losses arise further to a Third Party Contract; and

¹⁹ This is the nominal post-Contractor tax, pre-Shareholder tax Equity IRR as set out in the Base Case and is further explained in the guidance in Annex 2 of SoPCv3.

- (b) all extraordinary and exceptional items for which there is not expected to be a corresponding cash flow; and
- (c) all costs and/or expenses incurred in relation to the performance of any of the Contractor's obligations in the Contract (other than under PART 11) and/or any Project Documents or any other costs not directly incurred in connection with the Third Party Use; and
- (d) any amount in excess of £5,000 (five thousand pounds sterling) payable by the Contractor or Contractor Related Party directly or indirectly to any Contractor Related Party or undertaking under any such Third Party Contract (whether governed by one or more than one contractual document or instrument) which has not been put out to tender (such tender to be carried out in accordance with Good Industry Practice and all applicable Legislation) to at least two parties, one of which must be a non-Contractor Related Party, unless otherwise agreed in writing by the Authority, such agreement not to be unreasonably withheld; and
- (e) any Relevant Insured Losses; and
- (f) any other costs, expenses, charges and/or liabilities relating to the provision of the Services or in respect of which the Authority is obliged to pay any sum pursuant to the terms of this Contract; and
- (g) Tax;

"**TP Outline Proposal**" is as defined in Clause 58.1 (The TP Outline Proposal);

"**TP Use Proposal**" is as defined in Clause 59.1 (The TP Use Proposal);

"**TPL Risk**" is as defined in Clause 119.3.5 (Uninsurability);

"**Unavailability Deductions**" is as defined in Schedule 13 (Payment Mechanism);

"**Uninsurable**" means in relation to a risk, either that:

- (a) insurance is not available to the Contractor in respect of the Project in the worldwide insurance market with reputable insurers of good standing in respect of that risk; or
- (b) the insurance premium payable for insuring that risk is at such a level that the risk is not generally being insured against in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom;

"**Unitary Charge**" means the fee payable by the Authority under PART 12 (Payment Provisions) and calculated in accordance with Schedule 13 (Payment Mechanism);

"**Unsuitable Third Party**" means:

- (a) whose activities do, in the reasonable opinion of the Authority, pose or could pose a threat to national security, providing that the Authority's opinion shall be deemed to be reasonable if personally confirmed to the Contractor by a Senior Civil Servant; or
- (b) whose activities are, in the reasonable opinion of the Authority, incompatible with any operations or activities carried out by the Authority for the purposes contemplated by this Contract or any other of the Authority's legal duties or other functions; or

(c) who is, in the reasonable opinion of the Authority, inappropriate because the Authority has received specific information from the Crown, the Serious Fraud Office or the Crown Prosecution Service about the suitability of the proposed new third party to act in relation to the Project or

(d) if the Project includes, or shall involve, the disclosure of information about a Secret Matter, who is not a List X Organisation;

"VAT" means any value added taxes;

"Vesting Date" means [insert date];

"VFM Bank Account" means an interest bearing designated bank account in the joint names of the Authority and the Contractor having account number [insert number] and held with [insert name]. All payment instructions in respect of the VFM Bank Account shall require the signature of both the Contractor and the Authority. Monies in the VFM Bank Account shall be held on trust solely for the benefit of the Authority, conditional only upon reconciliation in accordance with Clause 73.7 (Adjustment of VFM Bank Account after the VFM Review Date) and/or Clause 73.8 (Adjustment of VFM Bank Account on Termination or Expiry);

"VFM Review Date" means [insert dates];

"Whole Life Cost" means, in relation to any Higher Value Change, the estimated and (to the extent that such information is available) the actual cost of operating and maintaining such Higher Value Change over its intended design life (consistent with the Contractor Stage 1 Response);

"Written Request" is as defined in Clause 59.6.3 (The TP Use Proposal);

"Year" means the twelve month period from and including a day to (but not including) the day bearing the same number in the same month of the following year (or, in the case only of a period commencing on 29 February, ending on the next following 28 February).

2.2 Interpretation

2.2.1 In this Contract except where the context otherwise requires:

- (a) the masculine includes the feminine and vice-versa; and
- (b) the singular includes the plural and vice versa; and
- (c) a reference in this Contract to any Clause, Sub-clause, Part, paragraph, Schedule or Annex is, except where it is expressly stated to the contrary, a reference to such Clause, Sub-clause, Part, paragraph, Schedule or Annex of this Contract; and
- (d) save where otherwise provided in this Contract, any reference to this Contract or to any other document shall include any permitted variation, amendment or supplement to such document; and
- (e) any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted; and

- (f) references to any documents being "in the Agreed Form" means such documents have been initialled by or on behalf of each of the Parties for the purpose of identification; and
- (g) a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees; and
- (h) headings are for convenience of reference only; and
- (i) words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words.

2.2.2 The Schedules to this Contract form part of this Contract and shall not be taken into account in interpretation of this Contract.

2.2.3 In this Contract, references to amounts expressed to be "Indexed" are references to such amounts at [the price reference date prices] multiplied by:

$$\frac{I_1}{I_2}$$

where I_1 is the value of RPIX most recently published prior to the relevant calculation date, and I_2 is the value of RPIX on [the pricing reference date for the Project].

2.3 No Better and No Worse

2.3.1 Any reference in this Contract to "no better and no worse" or to leaving a Party in a "no better and no worse position" shall be construed:

- (a) by reference to such Party's rights, duties and liabilities including the timing of any payments to be made or Losses to be incurred under or arising pursuant to performance of this Contract (and, in the case of the Contractor, the Financing Agreements and the Sub-contracts) and ability to perform its obligations and exercise its rights under this Contract (and, in the case of the Contractor, the Financing Agreements and the Sub-contracts); and
- (b) so as to ensure that:
 - (i) the Contractor is left in a position which is no better and no worse in relation to the [key ratios (to include loan life cover and debt service reserve) and internal rate of return] by reference to the version of the Base Case applicable immediately prior to the adjustment to the Base Case pursuant to Clause 65.2 (Submission of Revised Base Case); and
 - (ii) the Contractor's ability to comply with this Contract is not improved or adversely affected in comparison with its ability immediately prior to the relevant event as a consequence of the adjustment to the Base Case pursuant to Clause 65.2 (Submission of Revised Base Case).

3 PRECEDENCE OF DOCUMENTATION

3.1 If there is any inconsistency between the provisions of the body of this Contract and the Schedules, or between any of the Schedules, the conflict shall be resolved according to the following descending order of priority:

- 3.1.1 the body of this Contract, subject to Clause 130 (Core Provisions);
- 3.1.2 the Authority's Requirements;
- 3.1.3 the Schedules (excluding the Authority's Requirements and the Contractor's Proposals);
- 3.1.4 the Contractor's Proposals.

3.2 If a Party becomes aware of any inconsistency within or between the documents referred to in Clause 2.3.1 (Precedence of Documentation) such Party's Representative shall notify the other's Representative forthwith and the Parties will seek to resolve such inconsistency in accordance with Schedule 19 (Project Management) and if either Party considers the inconsistency to be material then the matter shall be determined in accordance with Clause 144 (Disputes).

4 EXCLUSION OF LEGISLATION

4.1 No term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Contract. Notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a party to the Contract to enforce any term of the Contract in his own right and the Parties declare that they have no intention to grant any such right.

4.2 This Contract is entered into under the Private Finance Initiative. This Contract is excluded from Part II of the Housing Grants, Construction and Regeneration Act 1996 by operation of paragraph 4 of the Construction Contracts (England and Wales) Exclusion Order 1998. The Contractor acknowledges that the operation of the Housing Grants, Construction and Regeneration Act 1996 upon any Project Document shall not affect the Parties' rights or obligations under this Contract.

5 COMMENCEMENT AND DURATION

5.1 Contract Period

5.1.1 Subject to Clause 5.2 (Conditions Precedent), this Contract and the rights and obligations of the Parties to this Contract shall take effect on the Commencement Date and, except as set out in Clause 136 (Continuing Obligations), shall terminate on the earlier of:

- (a) the Expiry Date; and
- (b) the Termination Date

and the period from the Commencement Date until the date of termination further to this Clause 5.1.1 shall be referred to as the "**Contract Period**".

5.2 Conditions Precedent

5.2.1 Clause 136 (Continuing Obligations) and the following Parts of this Contract shall commence on the Commencement Date: PART 1 (Preliminary Provisions), PART 15 (Refinancing), PART 16 (Supervening Events and Measures In A Crisis), PART 18 (Changes and Change in Law), PART 19 (People and Sub-contractors), PART 20 (Security), PART 21 (TUPE, CONDO and Sponsored Reserves), PART 22 (Intellectual Property, Information and Disclosure), PART 27 (Dispute Resolution) and PART 28 (General).

5.2.2 Each Party shall procure that the Conditions Precedent for which it is responsible and which are to be satisfied after the Commencement Date as set out in Schedule 3 Part 1 (Conditions Precedent) are satisfied as soon as reasonably practicable after the Commencement Date and in any event by the relevant date set out in Schedule 3 Part 1 (Conditions Precedent).

5.2.3 On the satisfaction or waiver of all of the Conditions Precedent, the Contractor shall notify the Authority's Representative, whereupon this Contract shall become unconditional and effective (and the date of such notification shall be referred to as the "Effective Date").

5.2.4 If all of the Conditions Precedent are not satisfied or waived by [the final date set out in Schedule 3 Part 1 (Conditions Precedent)] this Contract shall terminate from such date and no payment will be due by either Party to the other by way of compensation or for services provided. Clause 136 (Continuing Obligations) shall apply to such termination.

6 PROJECT DOCUMENTS, ANCILLARY DOCUMENTS AND FINANCING AGREEMENTS

6.1 Collateral Warranties

6.1.1 The Contractor shall:

- (a) prior to or on the appointment of the Sub-contractors provide to the Authority's Representative a Collateral Warranty in favour of the Authority from each such person; and
- (b) not engage any new Sub-contractor in connection with the Project unless such person has provided a Collateral Warranty in favour of the Authority and in each case such Collateral Warranty must be delivered to the Authority's Representative before such entity commences any services for the Contractor in connection with the Project.

6.2 Compliance with and Changes to Project Documents or Ancillary Documents

6.2.1 The Contractor has provided to the Authority copies of the Project Documents, the Ancillary Documents and the Initial Financing Agreements.

6.2.2 The Contractor shall perform its obligations under, and observe all of the provisions of, the Project Documents and the Ancillary Documents and shall not:

- (a) terminate or agree to the termination of all or part of any Project Document or Ancillary Document; or
- (b) make or agree to any material variation of any Project Document or Ancillary Document; or
- (c) in any material respect depart from its obligations (or waive or allow to lapse any rights it may have in a material respect), or procure that any counterparty to a Project Document or Ancillary Document in any material respect departs from its obligations (or waives or allows to lapse any rights they may have in a material respect), under any Project Document or Ancillary Document; or
- (d) enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any Project Document or Ancillary Document,

unless the proposed course of action (and any relevant documentation) has been submitted to the Authority's Representative for review under Schedule 19 (Project Management) and there has been no objection in accordance with Schedule 19 (Project Management) (such objection to be reasonable) within twenty Business Days of receipt by the Authority's Representative of the submission of the proposed course of action (and any relevant documentation), or such shorter period as may be agreed by the Parties, and, in the circumstances specified in Clause 6.2.2(a), the Contractor has complied with Clauses 147 (Assignment of this Contract by the Contractor) and 10.2 (Contractor's Undertakings).

- 6.2.3 Without prejudice to the provisions of this Clause 6.2 or Clause 6.3 (Changes to the Financing Agreements) or to the definition of Senior Financing Agreements in Clause 2.1 (Definitions), if at any time an amendment is made to any Project Document or Ancillary Document, or the Contractor enters into a new Project Document or Ancillary Document (or any agreement which affects the interpretation or application of a Project Document or Ancillary Document), the Contractor shall deliver to the Authority's Representative a conformed copy of each such amendment or agreement within ten Business Days of the date of its execution or creation (as the case may be), certified as a true copy by an officer of the Contractor.

6.3 Changes to the Financing Agreements

- 6.3.1 Subject to PART 15 (Refinancing) and Clause 6.3.2, the Contractor shall be free at any time to enter into, terminate, amend, waive its rights and generally deal with its Financing Agreements on such terms and conditions as it sees fit provided that (at the time such action is contemplated and effected) the same will not materially and adversely affect the ability of the Contractor to perform its obligations under the Project Documents or this Contract. Following any such entry into, amendment, waiver or other action permitted under this Clause 6.3.1, the Contractor shall deliver to the Authority's Representative a copy of such new Financing Agreement, amendment or waiver within ten Business Days of the date of its execution or creation (as the case may be), certified by an officer of the Contractor.

6.3.2 No amendment, waiver or exercise of a right under any Financing Agreement or Ancillary Document shall have the effect of increasing the Authority's liabilities on early termination of this Contract unless:

- (a) the Contractor has obtained the prior written consent of the Authority's Representative to such increased liability for the purposes of this Clause 6.3.2; or
- (b) it is an Additional Permitted Borrowing.

In the event of any conflict between the provisions of this Clause 6.3.2 and any other provision of this Contract the provisions of this Clause 6.3.2 shall prevail.

7 CONTRACTOR RELATED PARTIES

7.1 Subject to the provisions of this Contract, the Contractor shall be responsible and liable for the acts and omissions of the Contractor Related Parties as if they were the acts and omissions of the Contractor. The Contractor shall, as between itself and the Authority, be responsible for the selection of and pricing by all Contractor Related Parties.

7.2 Without limitation to its actual knowledge, the Contractor shall for all purposes of this Contract, be deemed to have such knowledge in respect of the Project as is held (or ought reasonably to be held) by any Contractor Related Party.

8 AUTHORITY RELATED PARTIES

8.1 The Authority shall be responsible and liable for the acts and omissions of the Authority Related Parties as if they were the acts and omissions of the Authority.

9 APPROVAL BY THE AUTHORITY

9.1 Except for a confirmation of a Change pursuant to PART 18 (Changes and Change in Law) which expressly changes the Contractor's obligations or liabilities or the Authority's rights under this Contract, no review, comment or approval by the Authority shall operate to exclude or limit the Contractor's obligations or liabilities or the Authority's rights under this Contract.

9.2 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Authority, shall unless otherwise expressly stated in this Contract, relieve the Contractor of any of its obligations under the Project Documents or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

10 CONTRACTOR WARRANTIES AND UNDERTAKINGS

10.1 Contractor Warranties

10.1.1 The Contractor warrants and represents to the Authority that that on the date hereof, and as regards warranties in this Clause 10.1.1 that relate to future occurrences, that at the time of such future occurrences:

- (a) it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its

assets and to carry on its business as it is now being conducted;
and

- (b) it has the corporate power to enter into and to exercise its rights and perform its obligations under the Project Documents, Ancillary Documents and Financing Agreements; and
- (c) all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under the Project Documents, Ancillary Documents and Financing Agreements has been taken or, in the case of any such document executed after the Commencement Date, shall be taken before such execution; and
- (d) the legal and beneficial ownership of the Contractor **and HoldCo** at the Commencement Date is as set out in Schedule 3 Part 9 (Contractor Warranted Data) and that no arrangements are in place that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the Contractor **or HoldCo**; and
- (e) the obligations expressed to be assumed by the Contractor under the Project Documents, Ancillary Documents and Financing Agreements are, or in the case of any such document executed after the Commencement Date shall be, legal, valid, binding and enforceable to the extent permitted by law and each Project Document, Ancillary Document and Financing Agreement is or shall be in the proper form for enforcement in England; and
- (f) the execution, delivery and performance by it of the Project Documents, Ancillary Documents and Financing Agreements does not contravene any provision of:
 - (i) any existing Legislation binding on the Contractor including Legislation which has been enacted but is not yet in force;²⁰ or
 - (ii) the memorandum and articles of association of the Contractor; or
 - (iii) any order or decree of any court or arbitrator which is binding on the Contractor; or
 - (iv) any obligation which is binding upon the Contractor or upon any of its assets or revenues; and
- (g) the Contractor's Warranted Data is true and accurate in all respects; and
- (h) the Contractor has not, other than in connection with the Project, traded at any time since its incorporation as a company pursuant to the Companies Act 2006; and
- (i) no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in

²⁰ If relevant, references to UK treaty obligations should be included here.

progress or, to the best of the knowledge of the Contractor (having made all due enquiry), pending or threatened against it or any of its assets which shall or might have a material adverse effect on the ability of the Contractor to perform its obligations under the Project Documents, Ancillary Documents or Financing Agreements; and

- (j) it is not the subject of any other obligation, compliance with which shall or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under the Project Documents, Ancillary Documents or Financing Agreements; and
- (k) no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, having made all due enquiry, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues; and
- (l) the copies of the Ancillary Documents and Financing Agreements which the Contractor has delivered or, when executed, shall deliver to the Authority's Representative are or, as the case may be, shall be true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any of the Project Documents, Ancillary Documents or Financing Agreements which would materially affect the interpretation or application of any such document; and
- (m) in entering into this Contract it has not committed any Prohibited Act; and
- (n) there is no nor has there been any infringement or alleged infringement of any third party's IPR in connection with the Project; and
- (o) for the duration of the Contract Period all personnel used to provide the Services will be vetted in accordance with Good Industry Practice, the Security Policy and the Standards; and
- (p) it has and will throughout the duration of this Contract have in place adequate procedures (as referred to in Section 7(2) of the Bribery Act 2010) designed to prevent persons associated with the Contractor from bribing any person with the intention of obtaining or retaining business for the Contractor or with the intention of obtaining or retaining an advantage in the conduct of business for the Contractor,

and the Authority relies upon such warranties and representations.

10.2 Contractor Undertakings

10.2.1 The Contractor undertakes that for so long as this Contract remains in force:

- (a) it shall give the Authority's Representative notice of any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator,

administrator or adjudicator or mediator or Relevant Authority ("**Dispute Forum**") against itself or a Sub-contractor which would adversely affect, to an extent which is material in the context of the Project, the Contractor's ability to perform its obligations under this Contract, unless such notice is precluded by the rules of the Dispute Forum. Such notice shall be given within twenty Business Days of the Contractor's becoming aware such proceedings may be threatened or pending, and immediately after the commencement thereof; and

- (b) it shall not cease to be resident in the United Kingdom or sell, transfer, lend or dispose of (other than by way of security) in whole or in part its undertaking, business or trade outside the United Kingdom; and
- (c) it shall not undertake the performance of its obligations under this Contract for Asset Provision and/or Service Provision otherwise than through itself or a Sub-contractor; and
- (d) it shall not without the written consent of the Authority's Representative (such consent not to be unreasonably withheld or delayed) incorporate any company or purchase or acquire or subscribe for any shares in any company unless such company is involved in Asset Provision and/or Service Provision; and
- (e) it shall not without the written consent of the Authority's Representative (such consent not to be unreasonably withheld or delayed) make any loans or grant any credit or give any guarantee or indemnity to or for the benefit of any person or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any other person except in the ordinary course of business and/or as contemplated by the Project Documents, Ancillary Documents and/or Financing Agreements; and
- (f) it shall not change or cease its business or start any other business which is materially different from that to be carried on by it under this Contract.

10.3 **Change of Ownership**

10.3.1 Subject to Clause 10.3.2:

- (a) no Change of Ownership may occur during the Lock In Period; and
- (b) the Contractor shall provide the Authority's Representative with not less than twenty Business Days prior written notice of all proposed sales, transfers or disposals contemplated by Clause 10.3.1(c); and
- (c) after the Lock In Period, a Change in Ownership may only occur to a Suitable Third Party; and
- (d) the Contractor shall inform the Authority's Representative as soon as reasonably practicable and, in any event, within twenty Business Days of any Change in Ownership and the Contractor shall, at the request of the Authority's Representative at any time, confirm to the Authority's Representative the details of

the legal and beneficial ownership of its **and HoldCo's** and a Sub-contractor's shares and whether any arrangements contemplated by paragraph (b) of the definition of "Change in Ownership" have been entered into.

10.3.2 In the event of a Change of Ownership of any shares:

- (a) of a Sub-contractor **and/or HoldCo** which is listed on a Regulated Investment Exchange as defined in section 285(1)(a) Financial Services and Markets Act 2000, the provisions of Clause 10.3.1 shall not apply;
- (b) of the Contractor, a Sub-contractor and/or HoldCo which are being transferred as a consequence of the exercise by the Senior Lenders of their rights in respect of shares of the Contractor **and/or HoldCo** and/or a Sub-contractor granted in any document conferring security over any of the shares of the Contractor **and/or HoldCo** and/or a Sub-contractor provided that any such document **has been approved by the Authority** (such approval not to be unnecessarily withheld or delayed) the provisions of Clause 10.3.1(a) shall not apply;
- (c) of the Contractor **and/or HoldCo** by **[insert name of parent company ("Parentco") of group of which Contractor and/or HoldCo is a member]** and/or an Affiliate of **[Parentco]** to **[Parentco]** and/or an Affiliate of **[Parentco]** the provisions of Clause 10.3.1(a) shall not apply²¹.

Where during the Lock In Period the holder of any shares in the Contractor **[or HoldCo]** is an Affiliate of **[Parentco]** and that holder ceases to be an Affiliate of **[Parentco]** it shall be a breach of this Clause 10.3 if the shares held by that holder are not within 20 Business Days of that holder ceasing to be Affiliate of **[Parentco]** transferred to **[Parentco]** or an Affiliate of **[Parentco]**.

10.4 **Status of Contractor Warranties and Undertakings**

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

11 **AUTHORITY DISCLOSED DATA AND UNDERTAKINGS**

11.1 **Authority Disclosed Data**

- 11.1.1 Subject to Clause 11.4 (Fraudulent Statements) the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Authority Disclosed Data set out in Schedule 3 Part 8 (Authority Disclosed Data) and neither the Authority nor any of its agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

²¹ Depending on the structure this clause may need to be repeated for more than one shareholder of Contractor of HoldCo.

- (a) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Authority Disclosed Data; or
- (b) any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to the Project.

11.2 Contractor's Due Diligence

11.2.1 The Contractor shall be deemed to have:

- (a) satisfied itself as to the assets to which it shall acquire rights and the nature and extent of the risks assumed by it under this Contract; and
- (b) gathered all information necessary to perform its obligations under this Contract and other obligations assumed including:
 - (i) information as to the nature, location and condition of the Sites (including hydrological, geological, geotechnical and sub-surface conditions); and
 - (ii) information relating to archaeological finds, areas of archaeological, scientific or nature interest; and
 - (iii) information relating to local conditions and facilities and the quality of existing structures; and
 - (iv) [insert details of any other relevant information e.g. information on Government Furnished Assets and/or Existing Assets and/or Existing Contracts].

11.3 No Relief

11.3.1 Subject to Clause 11.4 (Fraudulent Statements), the Contractor shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

11.4 Fraudulent Statements

11.4.1 Nothing in this Clause 11 shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the Contractor in respect of any statements made fraudulently or fraudulent omissions to make statements prior to the Commencement Date.

11.5 Risk Assessment

11.5.1 The Contractor further acknowledges that any risk assessment which has been, or may be, undertaken in connection with this Contract has been, or will be, a project management function only. Such risk assessment does not affect the legal relationship between the Parties. The issuing of any risk assessment questionnaire and the process of risk assessment generally, including, without limitation, the identification of (or failure to identify):

- (a) particular risks and their impact; or
- (b) risk reduction measures, contingency plans and remedial actions,

shall not in any way limit or exclude the Contractor's obligations under this Contract and shall be entirely without prejudice to the Authority's rights, privileges and powers under this Contract. The risks identified as a result of any risk assessment questionnaire and risk assessment process remain the risks of the Contractor and are not assumed by the Authority except to the extent that the Authority expressly and unequivocally accepts those risks under the Contract.

12 CO-OPERATION

- 12.1 Each Party agrees to co-operate, at its own expense, with the other Party in the fulfilment of the purposes and intent of this Contract. Neither Party shall be under any obligation to perform any of the other's obligations under this Contract.
- 12.2 The Parties shall give effect to the procedure set out in Schedule 19 (Project Management).
- 12.3 The Authority undertakes to the Contractor that it shall not, except insofar as it is exercising any entitlement provided in this Contract and/or any other Project Document, wilfully and materially impede the Contractor in the performance of its obligations under this Contract (having regard always to the interactive nature of the activities of the Authority and of the Contractor and to any operations or activities carried out by the Authority on or at the Authority Sites for the purposes contemplated by this Contract or any other of the Authority's legal duties or other functions).

PART 2 – SITE ISSUES (CORE CLAUSES)

13 CONTRACTOR'S SITES

13.1 Authority's Monitoring and Inspection Rights

13.1.1 The Contractor shall procure that the Authority's Representative and/or any other Authority Related Party, upon giving reasonable notice to the Contractor's Representative, shall have the right at all reasonable times (but not so as to materially delay or impede the progress of the Project):

- (a) to enter any of the Contractor's Sites in order to inspect the state and progress of Asset Provision (and to ascertain whether it is being properly executed in accordance with this Contract) and/or Service Provision and to monitor compliance by the Contractor with its obligations under this Contract provided that the Authority's Representative shall not be obliged to give any notice prior to accessing the Contractor's Sites in an emergency relating to the Project; and
- (b) subject to obtaining the consent of the relevant manufacturer or supplier (which the Contractor shall procure is obtained in respect of Sub-contractors and shall use all reasonable endeavours to obtain otherwise), to visit any property, site or workshop other than the Contractor's Sites where materials, plant or equipment are being manufactured, prepared or stored for use in the Project for the purposes of general inspection and of attending any test or investigation being carried out in respect of Asset Provision and/or Service Provision or any property other than the Contractor's Sites used by the Contractor as training or workshop facilities and places where work is being prepared or materials are being obtained for the Project.

13.1.2 The Contractor shall provide and shall procure the Sub-contractors provide to the Authority's representatives for the purposes of this Clause 13.1:

- (a) all reasonable access to premises and such accommodation and facilities for representatives of the Authority as the Authority may reasonably require. All accommodation provided shall be adequately furnished, lit, heated and ventilated and shall include suitable cloakroom and communication facilities; and
- (b) that satisfactory facilities are made available and that reasonable assistance is given to representatives of the Authority,

subject to the Contractor's and the Sub-contractors' construction or operational requirements not being adversely affected.

13.2 Authority's Conduct on Contractor Sites

13.2.1 In exercising any right under Clause 13.1 (Authority's Monitoring and Inspection Rights), the Authority's Representative and/or Authority Related Party shall comply with all relevant safety procedures, which shall include any relevant health and safety plans for Asset Provision, the Contractor's site rules from time to time and any reasonable

directions with regard to site safety that may be issued by or on behalf of the Contractor's Representative from time to time.

13.2.2 Subject to Clause 127.2 (Contractor's Claims in Relation to this Contract), if the Authority's Representative and/or other Authority Related Party causes material damage to the Contractor's Sites in exercising any right under Clause 13.1 (Authority's Monitoring and Inspection Rights), then such damage shall be a Compensation Event.

14 AUTHORITY SITES

14.1 Contractor's Rights over Authority Sites

14.1.1 During the Contract Period, the Authority shall afford the following rights to the Contractor and the Contractor Related Parties for the purpose of the carrying out of Asset Provision and/or Service Provision:

- (a) subject to Clause 14.1.4, a non-exclusive licence to enter and remain upon those parts of the Authority Sites that the Contractor and/or any Contractor Related Party requires access to as shown on the Authority Site Plans; and
- (b) subject to Clause 14.1.4, such non-exclusive rights of access to and egress from the Authority Sites as are necessary for the Contractor and/or Contractor Related Parties to perform their obligations and exercise their rights under this Contract or their relevant contracts and in particular for the purposes of implementing Asset Provision and/or Service Provision provided that such routes may be varied by the Authority to such alternative routes as the Authority may reasonably specify from time to time if such variation does not have a material adverse effect on Asset Provision and/or Service Provision at the relevant Authority Site; and
- (c) subject to Clause 14.3 (Utilities on Authority Sites), rights of free and uninterrupted passage and running of services and utilities including water, soil, gas, electricity, telephone and other services serving the Authority Sites provided that such rights of passage may be varied by the Authority to such alternative routes as the Authority may reasonably specify from time to time where such variation shall not have a material adverse effect on Asset Provision and/or Service Provision at the Authority Sites; and
- (d) the right where necessary to inspect repair maintain or renew the Conduits and the right (at the cost of the Contractor) to connect into the Conduits and to construct such new Conduits as may from time to time be necessary to serve the Authority Sites provided that:
 - (i) the prior written consent of the Authority's Representative is obtained (such consent not to be unreasonably withheld or delayed); and
 - (ii) the Contractor causes as little damage to such Conduits as is reasonably possible acting in accordance with Good Industry Practice and making good any such damage within a reasonable time of its cause. Such making good shall be at the Contractor's cost and shall

be subject to the Authority's Representative's reasonable satisfaction,

provided that:

- (e) the rights are granted insofar as the Authority is capable of granting them and such rights are subject to any valid restriction in the Title or otherwise disclosed in writing to the Contractor prior to the Commencement Date; and
- (f) the rights shall not in any circumstances entitle the Contractor or any Contractor Related Party to exclusive occupancy or exclusive possession of any part of the Authority Sites (save as may be required by the Contractor and approved by the Authority (such approval not to be unreasonably withheld or delayed) in order to comply with relevant health and safety legislation) on a temporary basis; and
- (g) the Contractor and the Contractor Related Parties do not cause any material disruption to the operations or activities carried out by the Authority on or at the Authority Sites or any of the Authority's legal duties or other functions; and
- (h) such rights, when exercised for the purpose of Asset Provision and/or Service Provision will not have a material adverse impact upon the Authority's continuing occupation of any Existing Asset.

14.1.2 If at any time the Contractor requires access to Authority Sites or any interest in any land which does not form part of the Authority Sites or any additional rights beyond those which the Contractor has in relation to any part of the Authority Sites, the responsibility and cost of securing or acquiring such access or interest shall be entirely the responsibility of the Contractor.

14.1.3 In carrying out Asset Provision and/or Service Provision at the Authority Sites the Contractor shall, and shall procure that any Sub-contractor shall, not gain access to and egress from the Authority Sites except as contemplated by the Security Requirements and Security Proposals.

14.1.4 As from the Effective Date until the issue of the relevant Acceptance Certificate for a given stage of the Asset Provision as set out in Schedule 2 Part 1 (Asset Provision Proposals) or (if earlier) the Termination Date, the Authority shall afford to the Contractor solely for the purposes of carrying out such stage(s) of the Asset Provision an exclusive licence of the Development Site(s) in respect of such stage of the Asset Provision.

14.2 Contractor's Conduct on Authority Sites

14.2.1 Subject to Clause 14.2.2, the Contractor shall, and/or shall procure, that in carrying out Asset Provision and/or Service Provision at the Authority Sites it and/or any Contractor Related Party shall:

- (a) not breach any provisions of the Authority's Title; and
- (b) not act or omit to act in any way which shall give rise to a right for any person to obtain title to or any right or interest over an Authority Site or any part of it (save in accordance with the terms of this Contract); and

- (c) observe and comply with any third party rights (including public rights) which may exist from time to time in respect of land comprising and adjoining the Authority Sites, and the Contractor shall ensure that Asset Provision and/or Service Provision are carried out in such a way as not to interfere with access to and use and occupation of public or private roads or footpaths by any person who is entitled to any such access, use or occupation; and
- (d) not use or occupy the Authority Sites for any purpose other than the carrying out of Asset Provision and/or Service Provision; and
- (e) not deposit or manufacture on the Authority Sites any materials which are not required for the carrying out of Asset Provision and/or Service Provision; and
- (f) not sell or dispose of any earth, clay, sand, gravel, chalk or other material from the Authority Sites or permit or suffer the same to be removed, except so far as shall be necessary for the proper execution of Asset Provision, without the consent of the Authority's Representative which shall not be unreasonably withheld; and
- (g) at the Contractor's sole cost transport all surplus materials arising from Asset Provision and arrange for the tipping of the same at such places as may lawfully be used for tipping and the Contractor shall ensure that such materials shall not cause or give rise to pollution of the environment as defined by Section 29 Environmental Protection Act 1990; and
- (h) provide adequate retaining and supporting walls to support any Adjoining Property and, where appropriate, the Existing Assets during the carrying out of any construction works as part of Asset Provision and/or Service Provision; and
- (i) not store materials or park vehicles in the immediate external vicinity of the boundaries of the Authority Sites other than for reasonable periods necessary for loading and unloading or as set out in the Contractor's Proposals; and
- (j) ensure that all of their vehicles leaving the Authority Sites are adequately cleaned to prevent the deposit of waste materials and debris on the Adjoining Property and if any such material or debris is so deposited the Contractor shall forthwith employ such measures as shall be necessary to remove the material and debris and to clean and reinstate the Adjoining Property to the reasonable satisfaction of the owners or occupiers of the Adjoining Property; and
- (k) not discharge any oil, grease or deleterious, dangerous, poisonous, explosive or radioactive matter from the Authority Sites into any rivers or any ditches or Conduits on the Authority Sites and/or any Adjoining Property and not permit or suffer the blockage of any of such rivers, ditches and Conduits by reason of anything done or omitted on the Authority Sites by the Contractor or Contractor Related Parties, and shall comply at the Contractor's expense with any requirements of the

Environment Agency or any other Relevant Authority so far as such requirements relate to or affect Asset Provision and/or Service Provision; and

- (l) procure that those parts of such Authority Site which are from time to time occupied by the Contractor and/or Contractor Related Parties for the purpose of carrying out Asset Provision and/or Service Provision are maintained in a clean, orderly, safe and secure state, and their working areas on the Authority Sites are secure against trespassers and clean and tidy so far as practicable having regard to the nature of Asset Provision and/or Service Provision; and
- (m) in accordance with the Asset Provision Programme (or, if not required by the Asset Provision Programme, as soon as is reasonably practicable following issue of an Acceptance Certificate relating to a Service Level on an Authority Site) clear from the relevant Authority Site to the reasonable satisfaction of the Authority's Representative all temporary structures, rubbish and all building and surplus material and equipment of the Contractor, the Asset Provider, the Service Provider and in default the Authority shall be entitled to employ an alternative contractor to clear them and shall be entitled to be reimbursed by the Contractor for any costs reasonably incurred in clearing or procuring the clearing of them provided that the Authority shall not be entitled to exercise such right for a period of one week following the date of the relevant Acceptance Certificate; and
- (n) not without the written consent of the Authority's Representative (not to be unreasonably withheld or delayed) erect any temporary structure except site accommodation as contemplated by the Contractor's Proposals; and
- (o) take all necessary steps in accordance with Legislation and all relevant Authority Policies including DEFSTAN 00-56²² with regard to ensuring that the health and safety of all:
 - (i) occupants of the Authority Sites; and
 - (ii) individuals invited onto the Authority Sites; and
 - (iii) occupants of Adjoining Properties,
 - (iv) is not adversely impacted upon.

14.2.2 No act or omission of the Authority or an Authority Related Party shall result in the Contractor being in breach of Clause 14.2.1 unless such act or omission arises out of or in connection with the Authority or an Authority Related Party:

- (a) acting on the instruction of the Contractor or a Sub-contractor; and/or

²² Acquisition teams should note that it is mandatory to seek verification of all Defence Standards included in MOD contracts from the Defence Standards branch (DStan) of the Defence Procurement Agency.

- (b) failing to supervise and/or take reasonable care to supervise the performance of any person engaged in Asset Provision and/or Service Provision).

14.3 Utilities on Authority Sites

14.3.1 To the extent that either it is practical for the Contractor to investigate or survey (and for this purpose the Contractor shall carry out such surveys as are in accordance with Good Industry Practice) or services or utilities serving the Authority Sites were discovered by any survey undertaken as identified in Schedule 22 Part 1 (Authority Surveys) and Schedule 22 Part 2 (Contractor's Surveys) (or ought to have been discovered by the Contractor (acting in accordance with Good Industry Practice) from the same or could be expected to be identified or discovered by the Contractor (acting in accordance with Good Industry Practice) from all information contained in the data room as identified in Schedule 22 Part 3 (Data Room Contents)) the Contractor shall:

- (a) be responsible for determining the location of, and make and rely upon all necessary investigations and surveys as to the services and utilities serving the Authority Sites and for the maintenance of such services and utilities at the Authority Sites; and
- (b) make provision for lawfully diverting, disconnecting, connecting into or otherwise dealing with any services and utilities serving the Authority Sites (but not so as to overload their existing capacity) as set out in the Asset Provision Programme and/or the Planned Maintenance Programme and causing as little damage to such services and utilities as is reasonably possible acting in accordance with Good Industry Practice and making good any such damage within a reasonable time of its cause. Such making good shall be at the Contractor's cost and shall be subject to the Authority's Representative's reasonable satisfaction; and
- (c) pay to all Relevant Authorities or undertakings all costs and expenses incurred in diverting, disconnecting, connecting into or otherwise carrying out works in respect of such services and utilities serving the Authority Sites; and
- (d) otherwise do all that is required in relation to the utilities required as a result of the carrying out of Asset Provision and/or Service Provision as set out in the Contractor's Proposals.

14.3.2 To the extent that any services and/or utilities serving the Authority Sites exist in any part of the Authority Sites which it is not practical for the Contractor to investigate or survey (and for this purpose the Contractor shall carry out such surveys as are in accordance with Good Industry Practice) then, unless such utilities were discovered by the surveys undertaken as identified in Schedule 22 Part 2 (Contractor's Surveys) or ought to have been discovered by the Contractor (acting in accordance with Good Industry Practice) from the same or could have been expected to have been identified or discovered by the Contractor (acting in accordance with Good Industry Practice) from any information contained in the data room as identified in Schedule 22 Part 3 (Data Room Contents) then the obligations under Clause 14.3.1 shall not apply

in respect of such utilities. The parts to which this Clause 14.3.2 applies are the Authority Sites only.

14.3.3 Subject to Clause 14.3.2, if any services and/or utilities serving the Authority Sites are discovered which prevent or impede Asset Provision and/or Service Provision and such services and/or utilities exist in any part of the Authority Sites which it is not practical for the Contractor to investigate or survey, and for this purpose the Contractor shall carry out such surveys as are in accordance with Good Industry Practice, then, unless such utilities were discovered by the surveys undertaken as identified in Schedule 22 Part 2 (Contractor's Surveys) or ought to have been discovered by the Contractor (acting in accordance with Good Industry Practice) from the same or could have been expected to have been identified or discovered by the Contractor (acting in accordance with Good Industry Practice) from any information contained in the data room as identified in Schedule 22 Part 3 (Data Room Contents) then such prevention or impedence shall be deemed to be a Compensation Event for the purposes of this Contract.

14.4 Condition of Authority Sites

14.4.1 Except as otherwise expressly provided in this Contract and subject to Clause 14.5 (Latent Defects), the Contractor shall take the Authority Sites in their state and condition in all respects as at the Commencement Date and nothing in this Contract or otherwise shall constitute or imply a warranty by or on the part of the Authority as to the fitness and suitability of the Authority Sites or any part thereof for Asset Provision and/or Service Provision or for any other purpose.

14.4.2 Subject to Clause 14.4.4, the Site Conditions of Authority Sites shall be the sole responsibility of the Contractor and accordingly (but without prejudice to any other obligation of the Contractor under this Contract) the Contractor shall be deemed to have:

- (a) subject to Clause 14.4.4, carried out a ground physical and geophysical investigation and to have inspected and examined the Authority Sites and their surroundings and (where applicable) any existing structures or works on, over or under the Authority Sites; and
- (b) subject to Clause 14.4.4, satisfied itself as to the nature of the Authority Site Conditions, the ground and the subsoil, the form and nature of the Authority Sites, the load bearing and other relevant properties of the Authority Sites, the risk of injury or damage to property affecting the Authority Sites, the nature of any materials (whether natural or otherwise) to be excavated and the nature of any design, works and materials necessary for Asset Provision; and
- (c) satisfied itself as to the adequacy of the means and rights of access to and through the Authority Sites and any accommodation it may require for the purposes of fulfilling its obligations under this Contract (such as additional land or buildings outside the Authority Sites); and
- (d) satisfied itself as to the possibility of interference by persons of any description whatsoever (other than the Authority or Authority Related Parties unless the Authority is exercising its

rights under PART 20 (Security)) with access to or use of, or rights in respect of, the Authority Sites with particular regard to the owners of Adjoining Properties; and

- (e) satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to third parties.

14.4.3 The Contractor accepts full responsibility for all matters referred to in Clause 14.3.2 (Condition of Authority Sites) and the Contractor shall, subject to Clauses 14.4.4 and 76 (Relief Events), not be entitled to make any claim against the Authority of any nature whatsoever on any grounds including the fact that incorrect or insufficient information on any matter relating to the Authority Sites was given to it by any person, whether or not an Authority Related Party.

14.4.4 Finds, Ground Conditions and Contamination at Authority Sites

- (a) Upon the discovery of a Find and/or unforeseen ground conditions and/or Contamination on an Authority Site the Contractor's Representative shall immediately inform the Authority's Representative of such discovery and its location.

- (b) All Finds shall be, or shall become upon discovery, the absolute property of the Authority and:

- (i) the Contractor shall not disturb the Find and, if necessary, cease any Asset Provision and/or Service Provision works in so far as the carrying out of such works would endanger the Find and/or the Authority Site or prevent or impede excavation of the Find; and

- (ii) the Contractor shall take all necessary steps to preserve the Find in the same position and condition in which it was found; and

- (iii) if the Find is or appears to be ordnance, the Contractor shall in addition immediately contact the police and then proceed promptly and diligently as directed by them and/or as directed by the explosive ordnance team attending the Authority Site for the purpose of disposing of such ordnance.

- (c) Following notification pursuant to Clause 14.4.4(a) the Authority's Representative shall promptly, and in any event within **five** Business Days, issue an instruction to the Contractor's Representative specifying what action the Authority's Representative requires to be taken in relation to such Find and/or unforeseen ground conditions and/or Contamination provided that if no such instruction is forthcoming within **five** Business Days the Contractor may continue to carry out Asset Provision and/or Service Provision unless there has been a Find of ordnance, in which case, the provisions of Clause 14.4.4(b)(iii) shall apply.

- (d) The Contractor shall promptly and diligently comply with any instruction issued by the Authority's Representative referred to in Clause 14.4.4(c) (except and to the extent that compliance with the Authority's Representative's instruction requires a

change to the Authority's Requirements and/or Contractor's Proposals, in which case the provisions of PART 18 (Changes and Change in Law) shall apply.

- (e) The responsibility for the cost of cleaning up or otherwise dealing with a Find and/or unforeseen ground conditions and/or Contamination and the relief from obligations to the extent the Find and/or unforeseen ground conditions and/or Contamination prevents or impedes Asset Provision and/or Service Provision shall be allocated between the Authority and/or the Contractor in accordance with the Table below:

	Responsibility for the cost of cleaning up or otherwise dealing with the Find and/or unforeseen ground conditions and/or Contamination	Relief from obligations to the extent the Find and/or unforeseen ground conditions and/or Contamination prevents or impedes Asset Provision and/or Service Provision
Finds of ordnance on an Authority Site	Compensation Event	Compensation Event
Finds other than ordnance and/or unforeseen ground conditions and/or Contamination arising or being discovered in any part of an Authority Site which it is not practical for the Contractor to investigate or survey as specified in Clause 14.4.4(f) provided that, in the case of Contamination, the Contamination arose from a source on the Authority Site and was not caused by the Contractor or a Contractor Related Party	Compensation Event	Compensation Event
Contamination arising or being discovered in any part of an Authority Site which it is not practical for the Contractor to investigate or survey as specified in Clause 14.4.4(f) and arising from a source outside the Authority Site (not being a Contractor Site)	At the cost of the Contractor	Relief Event and, if discovered after the Services Commencement Date, for a Service Level on the relevant Authority Site no Unavailability Deductions or Service Performance Deductions may be made insofar as is reasonable for any affected Specified Service pursuant to Schedule 13 (Payment

		Mechanism)
Contamination arising or being discovered in any part of an Authority Site which it is not practical for the Contractor to investigate or survey as specified in Clause 14.4.4(f) and arising from a source outside the Authority Site which is a Contractor Site	At the cost of the Contractor	None
Finds other than ordnance and/or unforeseen ground conditions and/or Contamination arising or being discovered in any part of an Authority Site which it is practical for the Contractor to investigate or survey as specified in Clause 14.4.4(f)	At the cost of the Contractor	None

- (f) For the purposes of determining those parts of the Authority Sites which are not practical for the Contractor to investigate or survey, the areas shall be:

[parts to be defined e.g. under existing buildings or operational land such as ranges]

unless they were discovered by the [identify any survey undertaken] or could have been reasonably expected to have been identified or discovered from such survey or unless they were capable of being discovered by an expert's visual inspection of the Authority Site.

- (g) If the Table above shows the cost of cleaning up or otherwise dealing with Contamination to be at the Contractor's cost, the Contractor shall:

(i) at its own cost, clean up or otherwise deal with any such Contamination so that it shall at all times comply with its obligations under this Contract including complying with any applicable Legislation and any Necessary Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Contractor); and

(ii) be the responsible person for the part of the Authority Site affected by Contamination as designated as Contaminated land under Part IIa Environmental Protection Act 1990; and

(iii) indemnify and hold the Authority harmless from all Direct Losses incurred by the Authority resulting from such Contamination.

14.5 Latent Defects

- 14.5.1 The Authority shall be responsible for any Latent Defects and the effect of such Latent Defect shall be dealt with as a Change in accordance with PART 18 (Changes and Change in Law) with the Authority initiating the Change procedure as provided below and in PART 18 (Changes and Change in Law).
- 14.5.2 The Contractor shall, subject to Clause 14.5.1, be responsible for all other defects in respect of the Specified Assets.
- 14.5.3 Without detracting from the requirements of PART 18 (Changes and Change in Law), upon discovery of a possible Latent Defect, the Contractor's Representative shall as soon as practicable notify the Authority's Representative of such discovery, the nature of the Latent Defect, its location and provide such information as is reasonably necessary for the Authority to determine whether the defect or deficiency is a Latent Defect.
- 14.5.4 The Authority's Representative shall promptly and in any event within fifteen Business Days of receipt of the information provided by the Contractor in Clause 14.5.3 notify the Contractor's Representative whether or not the Authority agrees that the defect or deficiency is a Latent Defect.
- 14.5.5 If it is agreed pursuant to Clause 14.5.4 or it is determined pursuant to Clause 144 (Disputes) that the defect or deficiency is a Latent Defect then the Contractor will supply the Authority within a reasonable period of time with such level of detail as is reasonable and appropriate having regard to the nature of the Latent Defect in order for the Authority to initiate the Change procedure in accordance with PART 18 (Changes and Change in Law).
- 14.5.6 If the Parties cannot agree whether a defect is a Latent Defect, the Parties shall resolve the matter in accordance with Clause 144 (Disputes).

15 PROVISIONS COMMON TO THE SITES

15.1 Site meetings

- 15.1.1 The Contractor shall procure that the Authority's Representative and/or any other representative of the Authority is afforded a reasonable opportunity to attend meetings on the Sites relating to Asset Provision and/or Service Provision.
- 15.1.2 The Contractor shall supply to the Authority's Representative and/or any representative or adviser of the Authority visiting any of the Sites pursuant to Clause 13.1 (Authority's Monitoring and Inspection Rights) such information in respect of Asset Provision and/or Service Provision as may reasonably be requested.

15.2 Hazardous Substances

- 15.2.1 The Contractor shall ensure that any hazardous materials or equipment used or intended to be used in the carrying out of Asset Provision and/or Service Provision are kept under control and in safe keeping in accordance with all relevant Legislation and Good Industry Practice, and shall ensure that all such materials are properly and clearly labelled on

their containers, and shall promptly inform the Authority of all such materials being used or stored at any Sites and shall comply with any other reasonable requirement of the Authority in respect of such materials and equipment.

- 15.2.2 The Contractor shall maintain a Control of Substances Hazardous to Health register in relation to each Specified Asset and shall ensure that a copy of each register is held at the Specified Asset, at the Contractor's registered office and that a copy is given to the Authority's Representative. The Authority's Representative shall notify the Contractor of any items which it or any Authority Related Party is using or storing at any Authority Sites and which requires to be included in such register.
- 15.2.3 Prior to any delivery of any hazardous materials or equipment to an Authority Site the Contractor shall provide information to the Authority's Representative on such hazardous materials or equipment in the form of the annex to DEFCON 68 or as otherwise specified in the Contractor's Proposals.

15.3 Environmental Management System

- 15.3.1 The Contractor shall, in accordance with the requirements of [insert requirements], prepare, maintain and update an environmental management plan (the "**Environmental Management Plan**") that shall detail the Contractor's environmental management system (including environmental management processes, procedures, practices, resources, and organisation structure for ensuring compliance with its obligations) (the "**Environmental Management System**"). The Environmental Management System shall comply with ISO 14001:2004 EMAS and [insert other relevant environmental management standard] (or such other environmental management standard as may replace or supersede the same or, in the absence of a replacement or a superseding environmental management standard or equivalent, such other environmental management system as may be acceptable to the Authority's Representative (acting reasonably)) and shall be certified by a United Kingdom Accreditation Society-accredited certification body. The Environmental Management Plan shall specify the circumstances in which it shall be reviewed, revised and updated and when the Authority shall be notified of the review, revision and update to the Environmental Management Plan.
- 15.3.2 The Contractor shall procure that at the date of execution of any sub-contract (at any tier) the relevant sub-contractor delivers to the Contractor an environmental management plan (in accordance with the requirements of [insert requirements]) that details the relevant sub-contractor's environmental management system (including quality processes, procedures, practices, resources, and organisation structure for ensuring compliance with its obligations). The Contractor shall procure that the sub-contractor maintains and updates such environmental management plan in accordance with the requirements of [insert requirements] and promptly after any modifications delivers a revised environmental management plan to the Contractor. The sub-contractor's environmental management system shall comply with ISO 14001:2004 EMAS and [insert other relevant environmental management standard] (or such other environmental management standard as may replace or supersede the same or, in the absence of a replacement or a superseding environmental management standard or

equivalent, such other environmental management system as may be acceptable to the Authority's Representative (acting reasonably)) and any other environmental management requirements that may be applicable and shall be certified by a United Kingdom Accreditation Society-accredited certification body. The Contractor shall procure that such sub-contractor performs its obligations in accordance with its environmental management plan as amended from time to time. At the date of the execution of any sub-contract (and promptly after any updating of such sub-contractor's environmental management plan) the Contractor shall review, revise and update the Environmental Management Plan to reflect the relevant sub-contractor's environmental management plan and shall notify the Authority of the same.

- 15.3.3 On the Commencement Date the Contractor shall deliver to the Authority a soft copy and a hard copy of the Environmental Management Plan. Prior to any amendment of the Environmental Management Plan the Contractor shall deliver to the Authority a soft copy of the draft changes to the Environmental Management Plan (and a hard copy within two Business Days of a written request by the Authority) for review, comment and agreement in accordance with the provisions of Schedule 19 (Project Management). Any comments provided by the Authority shall be deemed to be Disclosed Data. If requested in writing by the Authority the Contractor shall, and shall procure that sub-contractors shall, deliver to the Authority a soft copy of the Environmental Management Plan and/or sub-contractor's environmental management plan(s) (as applicable) within two Business Days of such request (and, if requested in writing, a hard copy within five Business Days of such request by the Authority).

PART 3 – QUALITY AND PERFORMANCE STANDARDS (CORE CLAUSES)

16 CORE OBLIGATIONS

- 16.1 The Contractor shall carry out the Project, and/or shall procure that the Project is carried out, so that:
- 16.1.1 Asset Provision and or Service Provision is carried out and/or performed in accordance with:
- (a) Good Industry Practice; and
 - (b) Guidance; and
 - (c) all Necessary Consents; and
 - (d) the Contractor's approved quality assurance systems as set out in Clause 20.1 (Contractor's Quality Assurance); and
 - (e) all applicable Authority's Policies; and
 - (f) Legislation,
- 16.1.2 the Specified Assets shall comply with the Asset Provision Requirements and Asset Provision shall be performed in accordance with the Asset Provision Proposals; and
- 16.1.3 new materials only shall be used in the construction, manufacture, or maintenance of the Specified Assets (unless the Authority's Representative agrees otherwise in writing or the contrary is set out in the Asset Provision Requirements); and
- 16.1.4 all goods or materials included or used in the Specified Assets (including in the construction, manufacture, installation and maintenance of the Specified Assets) shall be of satisfactory quality and use of timber by the Contractor in complying with any of its obligations in this Contract shall comply with UK Government Timber Procurement Policy and sustainable source requirements as set out in Schedule 23 (Timber Procurement Policy);and
- 16.1.5 from the relevant Planned Services Commencement Date referred to in Column E of the Core Table in Schedule 1 (Authority's Requirements) the Contractor shall perform each Specified Service for the relevant Service Level:
- (a) so that such Specified Service shall be Available; and
 - (b) so as to comply with the parts of the Service Provision Requirements and Service Provision Proposals referred to in Columns C and D of the Core Table in Schedule 1 (Authority's Requirements) for such Service Level; and
 - (c) Asset Provision is carried out and completed in a manner so as to cause minimum disruption to the Services for Service Levels which have already achieved their Services Commencement Dates.

17 **CONDITION OF THE ASSETS AND DELIVERY OF THE SERVICES**

17.1 The Contractor shall ensure that at all times the maintenance and operating procedures set out in the Service Provision Proposals are sufficient to ensure that:

- 17.1.1 the Specified Assets are Available as required by this Contract and the Authority's Requirements; and
- 17.1.2 the Specified Assets are kept in good structural and decorative order (subject to fair wear and tear) in accordance with this Contract; and
- 17.1.3 it can maintain the design intention of the Specified Assets to achieve their full working life as set out in the Asset Provision Requirements/Asset Provision Proposals; and
- 17.1.4 the Contractor can deliver the Services in accordance with this Contract and the Service Provision Requirements; and
- 17.1.5 the Assets comply with Legislation; and
- 17.1.6 the Specified Assets are handed back to the Authority on the Expiry Date in a condition complying with the requirements of Schedule 5 Part 1 (Handback Standard).

18 **CONTRACTOR'S PROPOSALS**

18.1 The obligations in Clause 16 (Core Obligations) are independent obligations. In particular:

- 18.1.1 the fact that the Contractor has complied with the Authority's Requirements but not the Contractor's Proposals shall not be a defence to an allegation that the Contractor has not satisfied the Contractor's Proposals; and
- 18.1.2 the fact that the Contractor has complied with the Contractor's Proposals but not the Authority's Requirements shall not be a defence to an allegation that the Contractor has not satisfied the Authority's Requirements.

18.2 **Rectification of Contractor's Proposals**

18.2.1 If the Contractor's Proposals do not fulfil the Authority's Requirements, then the Contractor shall, at its own expense (and without invoking the change procedure pursuant to PART 18 (Changes and Change in Law)), amend the Contractor's Proposals and rectify the Specified Asset or any part of the Specified Asset affected so as to ensure that:

- (a) the Asset Provision Proposals shall satisfy the Asset Provision Requirements and/or that the Service Provision Proposals shall satisfy the Service Provision Requirements; and
- (b) following such amendment or rectification the performance of the Specified Assets shall be of an equivalent standard of performance to that set out in the Contractor's Proposals prior to their amendment or rectification (for the purpose of comparison disregarding the fault which required the amendment or rectification to be made).

19 NECESSARY CONSENTS

19.1 The Contractor shall:

19.1.1 at its own expense obtain and maintain all Necessary Consents which may be required for the performance of the Project including the entering into of any legal agreements necessary for the grant of the Necessary Consents; and

19.1.2 at its own expense use all reasonable endeavours to assist the Authority to obtain all Necessary Consents that, as a matter of law, only the Authority is eligible to obtain; and

19.1.3 be responsible for implementing each Necessary Consent within the period of its validity in accordance with its terms and relevant Legislation; and

19.1.4 provide free of charge to the Authority's Representative a copy of any application for a Necessary Consent (with a copy of all accompanying drawings and other documents) and a copy of any Necessary Consent obtained and any associated legal agreement; and

19.1.5 comply with the conditions attached to any Necessary Consents and the terms of any associated legal agreement and procure that no such Necessary Consent or associated legal agreement is breached by it or any Contractor Related Party and use all reasonable endeavours to preserve the Necessary Consents and procure that such Necessary Consent is not revoked or quashed and that all Necessary Consents continue in full force and effect for such time as is necessary for the Contractor to carry out Asset Provision and/or Service Provision.

19.2 The Contractor shall not (and shall use all reasonable endeavours to procure that any Contractor Related Parties shall not) without the prior consent of the Authority's Representative (which consent shall not be unreasonably withheld or delayed) apply for or agree to any change, relaxation or waiver of any Necessary Consent (whether obtained before or after the Commencement Date) or of any condition attached to it but, subject to the compliance by the Contractor with its obligations under this Clause 19, references in this Contract to Necessary Consents shall be construed as referring to the Necessary Consents as from time to time varied, relaxed or waived.

19.3 The Contractor shall indemnify and keep indemnified the Authority against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of Clause 19.1.1 (Necessary Consents) by the Contractor and/or any act or omission of any Sub-contractor that results in such breach.

19.4 The Authority shall, subject to the Contractor's compliance with Clause 19.1.2, use all reasonable endeavours to obtain all Necessary Consents that, as a matter of law, only the Authority is eligible to obtain.

20 CONTRACTOR'S QUALITY ASSURANCE AND PERFORMANCE MONITORING

20.1 Contractor's Quality Assurance Requirements

20.1.1 The Contractor shall, in accordance with ISO 10005 – Guidelines for Quality Assurance Plans, prepare, maintain and update a quality plan that shall detail the Contractor's quality management system (including quality processes, procedures, practices, resources, and organisation

structure for ensuring compliance with its obligations in respect of Asset Provision, Service Provision and its compliance with Clause 21.8 (Annual Compliance Testing)) (the "**Quality Plan**"). Such quality assurance system shall comply with the requirements of ISO 9001:2008 and [insert supplementary quality assurance requirements, e.g. for software] (or such other quality standard as may replace or supersede the same or, in the absence of a replacement or a superseding quality standard or equivalent, such other quality assurance system as may be acceptable to the Authority's Representative (acting reasonably)) and shall be certified by a United Kingdom Accreditation Society-accredited certification body. The Quality Plan shall specify the circumstances in which the Quality Plan shall be reviewed, revised and updated and when the Authority shall be notified of the review, revision and update to the Quality Plan.

20.1.2 The Contractor shall procure that at the date of execution of any sub-contract (at any tier) the relevant sub-contractor delivers to the Contractor a quality plan (in accordance with the requirements of ISO 10005 – Guidelines for Quality Assurance Plans) that details the relevant sub-contractor's quality assurance system (including quality processes, procedures, practices, resources, and organisation structure for ensuring compliance with its obligations). The Contractor shall procure that the sub-contractor maintains and updates such quality plan in accordance with the requirements of ISO 10005–Guidelines for Quality Assurance Plans (and promptly after any modifications delivers a revised quality plan to the Contractor). The sub-contractor's quality assurance system shall comply with the requirements of ISO 9001:2008 (or such other quality standard as may replace or supersede the same or, in the absence of a replacement or a superseding quality standard or equivalent, such other quality assurance system as may be acceptable to the Authority's Representative (acting reasonably)) and any other quality assurance requirements that may be applicable and shall be certified by a United Kingdom Accreditation Society-accredited certification body. The Contractor shall procure that such sub-contractor performs its obligations in accordance with its quality plan as amended from time to time. At the date of the execution of any sub-contract (and promptly after any updating of such sub-contractor's quality plan) the Contractor shall review, revise and update the Quality Plan to reflect the relevant sub-contractor's quality plan and shall notify the Authority of the same.

20.1.3 On the Commencement Date the Contractor shall deliver to the Authority a hard copy and a soft copy of the Quality Plan. Prior to any amendment of the Quality Plan the Contractor shall deliver to the Authority one soft copy of the draft changes to the Quality Plan (and one hard copy within two Business Days of a request by the Authority) for review, comment and agreement in accordance with the provisions of Schedule 19 (Project Management). If requested in writing by the Authority the Contractor shall, and shall procure that sub-contractors shall, deliver to the Authority a soft copy of the Contractor's Quality Plan and/or sub-contractor's quality plan(s) (as applicable) within two Business Days of such request (and, if requested in writing, a hard copy within five Business Days of such request).

20.2 Contractor's Performance Monitoring

20.2.1 The Contractor shall monitor its performance in the delivery of the Services in accordance with the provisions of Schedule 13 (Payment

Mechanism)/Schedule 2 (Contractor's Proposals) and maintain records of such monitoring in accordance with Clause 116 (Contractor's Information, Documents and Records).

20.2.2 Depending on the performance of the Services in any month as measured in accordance with Schedule 13 (Payment Mechanism), the Authority may award Service Performance Deductions in accordance with Schedule 13 (Payment Mechanism).

21 AUTHORITY'S PERFORMANCE MONITORING

21.1 Audit of Contractor's Quality Assurance Systems

21.1.1 The Authority may carry out periodic audits, monitoring and spot checks of the Contractor's quality assurance systems and the Contractor shall procure that the Authority shall have a like right in respect of any relevant Sub-contractors. The Contractor shall co-operate and shall procure that any relevant Sub-contractor co-operates with the Authority including providing it with all information and documentation which it reasonably requires in connection with its rights under this Clause 21.1.

21.2 Monitoring and Inspection during Asset Provision

21.2.1 Subject to Clause 21.2.2, at any time prior to the Services Commencement Date for any Service Level:

- (a) the Contractor shall grant the Authority and its authorised representatives access to any part of the Sites, or to the premises of the Contractor or any Sub-contractor where any part of the Project is being performed, for the purposes of audit, verification or monitoring. The Contractor shall also provide the Authority and its authorised representatives with unrestricted opportunity to verify compliance with the Contractor's system procedures and to verify conformity of materials and services with the requirements of the Contract. The Contractor shall make available at no cost to the Authority such accommodation, assistance and equipment as the Authority reasonably requires to undertake these activities; and
- (b) the Authority's Representative shall have the right to request the Contractor to open up and inspect any part or parts of any Specified Asset to be used in performing the Specified Services for such Service Level if the Authority's Representative reasonably believes that such part has a defect or fault (including the presence of asbestos), which means that such Specified Asset does not (or, when constructed, or manufactured would not) comply with the Asset Provision Requirements, the Asset Provision Proposals and/or any other provision of this Contract ("an SA Defect") and the Contractor shall comply with such request.

21.2.2 Prior to exercising his right pursuant to Clause 21.2.1(b), the Authority's Representative shall notify the Contractor's Representative and the Independent Certifier, in writing at least 48 hours prior to such exercise, of his intention to exercise such right, setting out reasons, save that in relation to any inspection or review concerning health and safety and/or security such notice shall not be required.

- 21.2.3 If, following the exercise by the Authority's Representative of his right pursuant to Clause 21.2.1(b), the inspection shows that in respect of the relevant part or parts of the Specified Assets:
- (a) there is no SA Defect, any delay to Service Provision by the exercise of such rights shall, subject to (and in accordance with) the provisions of Clause 30 (Extensions of Time for Asset Provision), be treated as a Compensation Event; or
 - (b) there is an SA Defect, the Contractor shall rectify and make good such defect(s) and any consequence of such rectification and/or making good defect(s) shall be carried out by the Contractor at no cost to the Authority and the Contractor shall not be entitled to any extension of time in relation to such rectification and making good of the Asset; or
 - (c) there is an SA Defect in the Authority's opinion but the Contractor does not agree with such opinion, the matter shall be determined in accordance with Clause 144 (Disputes).
- 21.2.4 Without prejudice to the rights of the Authority's Representative pursuant to this Clause 21.2, the exercise of such rights shall not in any way affect the obligations of the Contractor under this Contract save as expressly set out in this Clause 21.2.

21.3 Monitoring during Service Provision

- 21.3.1 The Authority may elect, at its own cost, to undertake its own performance monitoring at any time for any purpose, including in order to ensure that the Services are being provided in accordance with this Contract. The Contractor shall use its reasonable endeavours to assist the Authority in such an exercise and shall grant the Authority and its authorised representatives access to any part of the Sites, or to the premises of the Contractor or any Sub-contractor where any part of the Project is being performed, for the purposes of audit verification or monitoring. The Contractor shall also provide the Authority and its authorised representatives with unrestricted opportunity to verify compliance with the Contractor's system procedures and to verify conformity of materials and services with the requirements of the Contract. The Contractor shall make available at no cost to the Authority such accommodation, assistance and equipment as the Authority reasonably requires to undertake these activities. The Authority's Representative shall be entitled to notify the Contractor of the outcome of the performance monitoring exercise, and the Contractor shall have due regard to the Authority's comments in relation to future Service Provision.
- 21.3.2 Without prejudice to the Authority's rights under Clause 132.1.2 (Termination by the Authority) and to any other express rights under this Contract, where the Contractor has been found to:
- (a) be fraudulent in the submission of monitoring reports under Schedule 13 (Payment)/Schedule 2 (Contractor's Proposals) or claims for payment ("**monitoring reports**") ; or
 - (b) have submitted at least **two** erroneous monitoring reports, within a **three** month period,

the Authority's Representative may, by notice to the Contractor's Representative, increase the level of the Authority's monitoring of the Contractor, and/or (at the Authority's option), of the Contractor's monitoring of its own performance of its obligations under this Contract in respect of the Specified Services which are the subject of such fraudulent or erroneous reporting until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority's Representative that it shall perform (and is capable of performing) its obligations under this Contract.

21.3.3 For the purposes of this Clause 21.3, if the Contractor has otherwise failed to have demonstrated to the reasonable satisfaction of the Authority as required by this Clause 21.3 but:

- (a) the Contractor has removed the person or persons responsible for the fraudulent reporting; or
- (b) (under Clause 21.2.3(b)), in the following **three** month period following the Authority's notice (if it has not already been established) there have been no further erroneous reports of any kind,

then this shall be regarded as sufficient demonstration that the Contractor shall perform and is capable of performing its obligations.

21.3.4 If the Authority's Representative issues a notice under Clause 21.3.2, the Contractor shall bear its own costs and indemnify and keep the Authority indemnified at all times from and against all reasonable costs and expenses incurred by or on behalf of the Authority in relation to such increased level of monitoring arising due to circumstances under Clause 21.3.3(a).

21.4 **Effect of Authority's Monitoring during Service Provision**

21.4.1 If the Authority's Representative notifies the Contractor pursuant to Clauses 21.3.1 and/or 21.3.2 (Monitoring during Service Provision) of any Unavailability Deductions and/or Service Performance Deductions that should have been included in any monitoring report but which have not been so included, then the Contractor shall give credit for such Unavailability Deductions and/or Service Performance Deductions when submitting any future claims for payment pursuant to Clause 66 (Payment Provisions).

21.5 **Failure to Agree**

21.5.1 If the Parties cannot agree any matter arising under pursuant to Clauses 21.3.1 and/or 21.3.2 (Monitoring during Service Provision), it shall be determined in accordance with the Dispute Resolution Procedure.

21.6 **Authority's Periodic Survey Rights during Service Provision**

21.6.1 If the Authority's Representative reasonably believes that the Contractor is in breach of its obligations under Clause 17 (Condition of the Assets and Delivery of the Services) then the Authority may carry out or procure the carrying out of a survey of the Specified Assets to assess whether the Specified Assets have been and are being maintained by the Contractor in accordance with its obligations under Clause 17 (Condition of the Assets and Delivery of the Services). This right may not be exercised more than once every **two** Years from the time the

Specified Assets are shown to have been maintained by the Contractor in accordance with its obligations under Clause 17 (Condition of the Assets and Delivery of the Services).

- 21.6.2 The Authority's Representative shall notify the Contractor's Representative in writing a minimum of ten Business Days in advance of the date it wishes to carry out the survey. The Authority's Representative shall consider in good faith any reasonable request by the Contractor's Representative for the survey to be carried out on a different date if such request is made at least five Business Days prior to the notified date and the Contractor's Representative (acting reasonably) is able to demonstrate that carrying out the survey on the notified date would materially prejudice the Contractor's ability to provide the Services.
- 21.6.3 When carrying out any survey, the Authority shall use reasonable endeavours to minimise any disruption caused to Service Provision. The cost of the survey, except where Clause 21.7 (Results of Authority's Periodic Survey) applies, shall be borne by the Authority. The Contractor shall give the Authority (free of charge) any reasonable assistance required by the Authority from time to time during the carrying out of any survey.

21.7 Results of Authority's Periodic Survey

- 21.7.1 If a survey shows that the Contractor has not complied or is not complying with its obligations under Clause 17 (Condition of the Assets and Delivery of the Services), then:
- (a) the Authority's Representative shall notify the Contractor's Representative of the standard that the condition of the Specified Assets should be in to comply with its obligations under Clause 17 (Condition of the Assets and Delivery of the Services) and this Contract generally; and
 - (b) the Authority's Representative shall specify a reasonable period within which the Contractor must carry out such rectification and/or maintenance work; and
 - (c) if the survey shows:
 - (i) that the Contractor has not complied with or is not complying with its obligations under Clause 17 (Condition of the Assets and Delivery of the Services) in respect of less than or equal to [insert number] percent of the Specified Assets then the Authority may recover a proportion of the cost of the survey and any administrative costs incurred by the Authority in relation to the survey equivalent to the percentage of the Specified Assets which are shown not to comply with the Contractor's obligations under Clause 17 (Condition of the Assets and Delivery of the Services); or
 - (ii) that the Contractor has not complied with or is not complying with its obligations under Clause 17 (Condition of the Assets and Delivery of the Services) in respect of greater than [insert number] percent of the

Specified Assets then the Authority may recover the full cost of the survey and any administrative costs incurred by the Authority in relation to the survey,

from the Contractor by means of a deduction from the next payment of the Unitary Charge.

21.7.2 The Contractor shall carry out such rectification and/or maintenance work within the period specified by the Authority's Representative and any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense.

21.7.3 If the Contractor fails to comply with Clause 21.7.2 then the Authority may remedy such breach itself or using an alternative contractor and the Contractor shall reimburse the Authority for the costs or expenses incurred in so doing.

21.8 Annual Compliance Testing

21.8.1 The Contractor shall carry out an annual programme of compliance testing (which includes any test, trial, audit or inspection and any analysis of them) at each Site ("**Annual Compliance Testing**") to demonstrate to the Authority that the Services continue to meet the requirements of the Contract. The Authority may (in its discretion) attend and monitor the testing.

21.8.2 The Contractor shall be solely responsible for the planning and execution of the testing. Not less frequently than every three months the Contractor shall notify the Authority of its programme of testing for the next twelve months.

21.8.3 The Contractor shall provide and maintain throughout the Contract Period a Compliance Test Schedule detailing the tests, inspections, reviews, audits (and all results of such) comprising the Annual Compliance Tests, and procedures and the timetable which shall be followed by the Contractor in carrying out the Annual Compliance Tests. The Compliance Test Schedule shall contain matrices to enable appropriate cross-referencing to the requirements of Schedule 1 (Authority's Requirements) and Schedule 2 (Contractors Proposals) and this Contract. The Contractor shall deliver one hard copy and one soft copy of the Compliance Test Schedule to the Authority for review, comment and agreement in accordance with the provisions of Schedule 19 (Project Management). The Contractor shall review and update the Compliance Test Schedule at least annually, delivering a draft copy with changes highlighted to the Authority for review, comment and agreement in accordance with the provisions of Schedule 19 (Project Management). The Compliance Test Schedule shall cover all aspects of Asset Provision and Service Provision and shall include (without limitation):

(a) buildings (comprising the Specified Assets): including tests and inspections of each building comprising a Specified Asset at the relevant Site which shall include an assessment of the condition and state of repair of the buildings against the requirements of Schedule 1 (Authority's Requirements) and Schedule 2 (Contractor's Proposals); and

- (b) synthetic training equipment (comprising the Specified Assets): including both subjective and objective assessments of performance and handling against the relevant aircraft based upon the requirements of [insert project specific requirements e.g. JAR – STD 1A and JAR – STD 1H] as well as the requirements of Schedule 1 (Authority’s Requirements) and Schedule 2 (Contractor’s Proposals); and
- (c) training documentation: A review of the extent to which training documentation has been updated and properly implemented; and
- (d) instructors: A review which shall include but not be limited to an assessment by the Contractor in liaison with the Authority of all instructors on their capability to instruct the required training exercises and/or courses in accordance with the requirements of this Contract; and
- (e) quality assurance:
 - (i) verification that the Contractor has retained its quality assurance accreditation to the appropriate standard in accordance with Clause 20 (Contractor’s Quality Assurance and Performance Monitoring); and
 - (ii) verification that the Contractor is complying with the Quality Plan and the Environmental Management Plan,
- (f) support aspects: A review of support documents and spares etc., including verification that:
 - (i) Support Documents have been fully and accurately updated; and
 - (ii) the requirements of PART 22 (Intellectual Property, Information and Disclosure) of this Contract have been complied with, in particular in relation to Support Documents; and
 - (iii) logistic support activities have been carried out in accordance with the procedures set out in Schedule 2 (Contractor’s Proposals); and
- (g) changes: A review of any Changes made in accordance with PART 18 (Changes and Change in Law) of this Contract; and
- (h) insurance: Insurance in accordance with PART 23 (Insurance) of this Contract.

PART 4 – DESIGN OBLIGATIONS (OPTIONAL CLAUSES)

22 DESIGN REVIEW PROGRAMME

22.1 The Contractor shall, no later than ten Business Days after the Commencement Date, deliver to the Authority's Representative a design review programme for Reviewable Design Data in a form acceptable to the Authority's Representative (acting reasonably), which may be amended as agreed between the Parties (both acting reasonably) from time to time ("**Design Review Programme**").

22.2 The Design Review Programme shall form part of the Asset Provision Programme.

23 DEVELOPMENT OF DESIGN

23.1 The Contractor shall develop and finalise the design and specification of the Specified Assets [excluding the Existing Assets]:

23.1.1 in respect of Reviewable Design Data in accordance with the Design Review Programme²³; and

23.1.2 in accordance with Schedule 6 (Design Review Procedure).

²³ Design Review Programme is agreed between the Parties with DEFSTANs (such as DEFSTAN 05-10/4) being referred to as appropriate. Project Teams should note that it is mandatory to seek verification of all Defence Standards included in MOD contracts from the Defence Standards branch (DStan) of the Defence Procurement Agency.

PART 5 – CONSTRUCTION OBLIGATIONS²⁴ (OPTIONAL CLAUSES)

24 DEFINITIONS

In this PART 5, unless the context otherwise requires:

"**Building Manual**" means the manual for the Asset Provision containing:

Part 1

a copy of the health and safety file pursuant to the CDM Regulations (excluding those aspects of the same as fall within Part 2); and

Part 2

- (a) all As-built Drawings;
- (b) copies of all guarantees, warranties and maintenance agreements relating to the Asset Provision;
- (c) copies of all test certificates relating to the Asset Provision;
- (d) copies of all manufacturers' technical literature relating to the Asset Provision; and
- (e) copies of all operating and maintenance manuals relating to the Asset Provision;

"**CDM Regulations**" means the Construction (Design and Management) Regulations 2007, as amended, revised or replaced in whole or in part;

25 CDM REGULATIONS

25.1 Responsibility for Design

25.1.1 As between the Contractor and the Authority, the Contractor shall be entirely responsible for the safety of any design which forms part of the Asset Provision [or the Service Provision] and for the adequacy, stability and safety of all site operations and methods of construction.

25.2 The Contractor as Client

25.2.1 In accordance with the CDM Regulations, the Authority and the Contractor hereby elect that the Contractor shall be, and shall be treated as the only Client in respect of the Asset Provision [and the Service Provision] pursuant to Regulation 8 of the CDM Regulations. The Contractor shall not, prior to the completion of the Works, seek in any way to withdraw, terminate or derogate from such election.

²⁴ The Contractor and the MOD "elect" under the Contract that the Contractor will act as client. Therefore, it is the Contractor's responsibility and risk to ensure that the CDM co-ordinator, designers, principal contractor and contractors that it appoints are all competent. The one exception to this is the risk that the MOD could be perceived as being a "client" under the PA for the purposes of the CDM Regulations. (The existence of this risk is demonstrated by the need for an election as to client.) The nature of the risk is set out below, namely that: "The Health and Safety Executive may take action and bring prosecutions against clients who have failed to assess or have not properly assessed either the competency of those they appoint or those previously appointed under the 1994 regulations and to which the 2007 regulations now apply." This risk is covered via the evaluation of the bidders' proposals, including specific criteria dealing with compliance with the CDM Regulations. Such criteria must be included in projects. This risk is covered via the evaluation of the bidders' proposals, including specific criteria dealing with compliance with the CDM Regulations. Such criteria must be included in projects.

25.3 Duties under CDM Regulations

25.3.1 The Contractor shall observe, perform and discharge and/or shall procure the observance, performance and discharge of all the obligations, requirements and duties arising under the CDM Regulations in connection with the Asset Provision [and the Service Provision] (other than those that remain with the Authority pursuant to Regulation 8 of the CDM Regulations) and shall, prior to the Services Commencement Date for the relevant Service Level, provide a certified copy of the final draft Health and Safety File (as defined in the CDM Regulations) for those Specified Assets relevant to that Service Level to the Authority and, within thirty Business Days of the issue of the Acceptance Certificate for the Service Level of the relevant parts of the Asset Provision in accordance with Clause 35 (Acceptance Certificate, Notice of Non-Completion and Snagging List), a certified copy of the full and complete Health and Safety File. The Contractor shall ensure that the Health and Safety File is revised as often as may be appropriate to incorporate any relevant new information in relation either to the Asset Provision [or the Service Provision] during the Contract Period.

25.4 Authority to Co-operate and Provide Information

25.4.1 Upon the Contractor's Representative's reasonable request, the Authority's Representative shall provide to the Contractor such information and documents as may be in the Authority's possession or which the Authority may reasonably obtain which may be required by the Contractor to fulfil its duties as client for the purposes of the CDM Regulations. Notwithstanding the election made under Clause 25.2 (The Contractor as Client), the Authority shall observe and continue to observe the duties that are, pursuant to Regulation 8 of the CDM Regulations, to remain with the Authority, notably those duties under Regulations 5(1)(b), 10(1), 15 and 17(1) including to provide such pre-construction and health and safety information which may be in the possession of the Authority.

PART 6 – ASSET & SERVICE PROVISION, TIME AND PROGRAMMES (CORE CLAUSES)

26 CORE OBLIGATIONS

26.1 The Contractor shall carry out, and/or shall procure that the Project is carried out so that the Contractor shall perform each Specified Service at the Service Level described in Column A of the Core Table in Schedule 1 (Authority's Requirements) by the Planned Service Commencement Date referred to in Column E of the Core Table in Schedule 1 (Authority's Requirements) for such Service Level.

26.2 Failure to commence the provision of any Service at the Service Level described in Column A of the Core Table in Schedule 1 (Authority's Requirements) by the Long Stop Date referred to in Column F of the Core Table in Schedule 1 (Authority's Requirements) for such Service Level shall constitute Contractor Default.

26.3 Compliance with Programmes

26.3.1 If and to the extent that Asset Provision affects the provision of operations or activities carried out by the Authority on or at the Authority Sites for the purposes contemplated by this Contract or any other of the Authority's legal duties or other functions:

- (a) the Contractor shall carry out, and/or shall procure that Asset Provision is carried out in accordance with the Asset Provision Programme so as to minimise any disruption to the provision of such operations or activities; and
- (b) subject to Clause 78 (Measures in a Crisis), the Authority shall ensure that such operations or activities are provided by it in such a way and in such locations as shall not prevent the Contractor from carrying out the relevant part of Asset Provision at the Authority Sites at the times shown in the Asset Provision Programme and in the areas shown on the Authority Site Plans.

26.3.2 Subject to Clauses 28.4 (Interruption of Planned Maintenance) and 78 (Measures in a Crisis), the Contractor shall, and/or shall procure that from each Services Commencement Date, planned maintenance of relevant Specified Assets is carried out in accordance with the Planned Maintenance Programme.

27 ASSET PROVISION PROGRAMME

27.1 Information to be shown on Asset Provision Programme

27.1.1 The Asset Provision Programme shall contain details of:

- (a) the Core Table in Schedule 1 (Authority's Requirements) as amended from time to time pursuant to Clause 27.2 (Time for Submission of Asset Provision Programme); and
- (b) the order and timing of works to be carried out for Asset Provision; and
- (c) the Design Review Programme; and

- (d) the dates when the Contractor requires Government Furnished Assets for Asset Provision; and
- (e) the dates, times and procedures for Commissioning Tests and/or Joint Commissioning; and
- (f) details of any anticipated effect of Asset Provision on the provision of operations or activities carried out by the Authority on or at the Authority Sites for the purposes contemplated by this Contract or any other of the Authority's legal duties or other functions.

27.2 Time for Submission of Asset Provision Programme

27.2.1 The Contractor shall submit a revised draft Asset Provision Programme prepared in accordance with Good Industry Practice to the Authority's Representative in accordance with Schedule 19 (Project Management):

- (a) on an early warning of delay, pursuant to Clause 29.1.2(a)(ii) (Early Warning of Delays in Services Commencement); or
- (b) on the occurrence of a Compensation Event and/or Relief Event and/or Event of Force Majeure pursuant to PART 16 (Supervening Events) which causes any delay in the achievement of a Planned Services Commencement Date; or
- (c) if Measures in a Crisis occur during Asset Provision, following the cessation of Measures in a Crisis.

27.2.2 If a Major Change affects Asset Provision, then the Contractor shall submit a revised draft Asset Provision Programme prepared in accordance with Good Industry Practice as part of its obligations pursuant to PART 18 (Changes and Change in Law).

27.3 Agreement of Asset Provision Programme

27.3.1 The Contractor shall not be required to obtain the Authority's approval of the Asset Provision Programme unless and to the extent that Asset Provision affects the provision of operations or activities carried out by the Authority on or at the Authority Sites for the purposes contemplated by this Contract or any other of the Authority's legal duties or other functions.

28 PLANNED MAINTENANCE PROGRAMME

28.1 Information to be shown on Planned Maintenance Programme

28.1.1 The Planned Maintenance Programme shall contain details of:

- (a) the proposed start and end dates for each period of planned maintenance at each Specified Asset; and
- (b) the works to be carried out; and
- (c) as much detail as is reasonably possible having regard to the times at which the Specified Assets are routinely used by the Authority; and

- (d) details of any anticipated effect of the planned maintenance on the delivery of any of the Services and/or the Authority's functions for the purposes contemplated by this Contract or any other of the Authority's legal duties or other functions.

28.2 Time for Submission of Planned Maintenance Programmes

28.2.1 The Contractor shall submit a draft Planned Maintenance Programme prepared in accordance with Good Industry Practice for its planned maintenance of the Specified Assets during the forthcoming Contract Year to the Authority's Representative for acceptance in accordance with Schedule 19 (Project Management):

- (a) not later than two months prior to the Planned Services Commencement Date for a Service Level using such Specified Asset; and
- (b) not later than two months prior to the commencement of each subsequent Contract Year; and
- (c) following the interruption of planned maintenance by the Authority pursuant to Clause 28.4 (Interruption to Planned Maintenance); and
- (d) on the occurrence of a Compensation Event and/or Relief Event and/or Event of Force Majeure pursuant to PART 16 (Supervening Events and Measures in a Crisis) which impacts upon the Contractor's planned maintenance; and
- (e) following damage to the Specified Assets, pursuant to Clause 122.5.3(b)(ii) (Costs of Reinstatement).

28.2.2 The Contractor's Representative shall deliver to the Authority's Representative not less than two months prior to the first Planned Services Commencement Date and two months prior to the commencement of each subsequent Contract Year the latest version of the Five Year Maintenance Plan.

28.3 Agreement of Planned Maintenance Programme

28.3.1 If the Authority's Representative considers that the carrying out of planned maintenance in accordance with the draft Planned Maintenance Programme will interfere with the operations of the Authority it shall notify the Contractor's Representative to this effect within [insert number] Business Days of the Contractor's submission of the draft Planned Maintenance Programme and shall indicate whether, and if so when, the Planned Maintenance can be re-scheduled taking into account the operations of the Authority. If the Authority's Representative does not notify the Contractor's Representative within [insert number] Business Days pursuant to this Clause 28.3.1, the draft Planned Maintenance Programme shall be deemed to be the Planned Maintenance Programme.

28.3.2 The Parties shall meet within [insert number] Business Days of the Authority's notice pursuant to Clause 28.3 (Agreement of Planned Maintenance Programme) to discuss and agree the Planned Maintenance Programme pursuant to Schedule 19 (Project Management).

28.4 **Interruption of Planned Maintenance**

28.4.1 The Authority's Representative may instruct the Contractor's Representative to accelerate or defer Planned Maintenance:

- (a) to allow the Authority to perform its legal duties or other functions in circumstances other than Measures in a Crisis; or
- (b) when the Authority invokes Measures in a Crisis

in which case the Authority's Representative shall notify the Contractor's Representative to this effect, setting out the time and/or periods at or during which the Authority requires Planned Maintenance to be performed. The Contractor shall promptly and diligently comply with any instruction issued by the Authority's Representative referred to in this Clause 28.4.1.

28.4.2 If the Authority's Representative's notice referred to in Clause 28.4 (Interruption of Planned Maintenance) is:

- (a) to allow the Authority to perform its legal duties or other functions in circumstances other than Measures in a Crisis and compliance with such notice prevents the Contractor from completing the maintenance of the Specified Assets or any part of them during the maintenance interval for the relevant Specified Asset or Assets shown on the Planned Maintenance Programme, such acceleration or deferral shall be deemed to be a Compensation Event; or
- (b) in response to Measures in a Crisis,
Clause 78 (Measures in a Crisis) shall apply.

28.5 **Unplanned Maintenance**

28.5.1 Unplanned maintenance may only be carried out if the Authority's Representative has (acting reasonably and having regard to the potential for unplanned maintenance to interfere with the operations of the Authority) approved the proposed commencement date, the proposed hours of work and estimated duration of the requisite unprogrammed maintenance works pursuant to Schedule 19 (Project Management).

28.5.2 Nothing in this Clause 28.5 (including any approval of the Authority's Representative pursuant to Schedule 19 (Project Management)) shall prevent the Authority from awarding Unavailability Deductions and/or Service Performance Deductions in accordance with Schedule 13 (Payment Mechanism).

29 **EARLY WARNING OF DELAYS IN SERVICES COMMENCEMENT**

29.1 Without prejudice to the Contractor's obligation to notify pursuant to PART 16 (Supervening Events and Measures in a Crisis) if either:

29.1.1 the Contractor becomes aware, or is notified by the Authority's Representative, that the actual progress of Asset Provision may become or has been significantly delayed or has fallen behind the Asset Provision Programme; or

29.1.2 the Contractor becomes aware that there will be or is likely to be a delay in Asset Provision, such that a Planned Services Commencement Date may not be achieved,

then the Contractor's Representative shall as soon as reasonably practicable and in any event within **twenty** Business Days of becoming aware of the likely delay, submit to the Authority's Representative:

- (a) a notice to that effect specifying the reason for the delay or likely delay and:
 - (i) an estimate of the likely effect of the delay on Asset Provision including any Planned Services Commencement Date (taking into account any measures that the Contractor proposes to adopt to mitigate the consequences of the delay in accordance with Clause 29.2 (Early Warning of Delays in Services Commencement)); and
 - (ii) a revised Asset Provision Programme showing the manner and the periods in which Asset Provision shall be carried out to achieve the relevant Planned Services Commencement Date; and
- (b) following service of the notice pursuant to Clause 29.1.2(a), promptly supply to the Authority's Representative any further information relating to the delay which is received by the Contractor, and/or is reasonably requested by the Authority's Representative.

29.2 The Contractor shall take all reasonable steps to mitigate the delay and consequences of any delay which is the subject of a notice pursuant to Clause 29.1.2(a).

30 EXTENSIONS OF TIME FOR ASSET PROVISION

30.1 If any delay or anticipated failure to meet a Planned Services Commencement Date for a given Service Level (or, if the delay occurs after a Planned Services Commencement Date for such Service Level, a delay or anticipated failure to meet a Planned Services Commencement Date for subsequent Service Levels) is notified to the Authority's Representative by the Contractor's Representative as being in the Contractor's reasonable opinion attributable to:

30.1.1 a Compensation Event, then the provisions of Clause 75 (Compensation Events) shall apply; or

30.1.2 a Relief Event, then the provisions of Clause 76 (Relief Events) shall apply; or

30.1.3 a Force Majeure Event, then the provisions of Clause 77 (Force Majeure Events) shall apply; or

30.1.4 the Authority invoking Measures in a Crisis, then the provisions of Clause 78 (Measures in a Crisis) shall apply; or

30.1.5 a Change, then the provisions of PART 18 (Changes and Change in Law) shall apply.

31 COMPENSATION TO THE AUTHORITY FOR DELAY IN SERVICE PROVISION²⁵

- 31.1 If for any reason an Acceptance Certificate has not been issued in relation to a Service Level by the relevant Planned Services Commencement Date, then from such Planned Services Commencement Date until the relevant Services Commencement Date or, if earlier, the Termination Date (or if a Compensation Event subsequently occurs and this delays the Planned Services Commencement Date, the date on which such Services Commencement Date would otherwise have occurred), then the Contractor shall pay to the Authority by way of liquidated and ascertained damages the Liquidated Damages for that Service Level set out in Schedule 7 Part 4 (Liquidated Damages for Delay in Service Commencement) for each complete week or pro rata for part of a week.

²⁵ Acquisition teams should not include provisions for liquidated damages unless there is a Project specific reason for their inclusion and it represents value for money to do so

PART 7 - TESTING, COMMISSIONING AND SERVICE AVAILABILITY (CORE CLAUSES)

32 INDEPENDENT CERTIFIER

32.1 The Independent Certifier's Deed of Appointment specifies the duties of the Independent Certifier owed to the Authority and the Contractor. The Parties agree that they shall procure the Independent Certifier fulfils its duties under the Independent Certifier's Deed of Appointment.

33 INSPECTION

33.1 The Contractor's Representative shall give the Authority's Representative and the Independent Certifier not less than five Business Days' notice of the date when it proposes to:

33.1.1 carry out Commissioning Tests in respect of a Specified Asset pursuant to Clause 34 (Commissioning Tests and Joint Commissioning); and/or

33.1.2 allow inspection of a Specified Asset to be used in Service Provision for a given Service Level with a view to achieving Services Commencement for that Service Level,

and on such date the Parties shall procure that the Independent Certifier/the Authority shall procure that the Certifier shall inspect such Specified Asset and witness such Commissioning Tests and the Authority's Representative and the Contractor's Representative shall be entitled to make a joint inspection with the Independent Certifier.

34 COMMISSIONING TESTS AND JOINT COMMISSIONING

34.1 The Contractor shall be solely responsible for the planning and execution of Commissioning Tests except Joint Commissioning which shall be planned and executed jointly between the Contractor and the Authority. The Contractor shall provide to the Authority within [ten] Business Days following the Commencement Date and maintain throughout the Contract Period a Commissioning Test Schedule detailing the tests, inspections, reviews, audits (and all results of such) comprising the Commissioning Tests, and procedures and the timetable which shall be followed by the Contractor in carrying out the Commissioning Tests. The Commissioning Test Schedule shall contain matrices to enable appropriate cross-referencing to the requirements of Schedule 1 (Authority's Requirements) and Schedule 2 (Contractors Proposals) and the Contract. The Contractor shall deliver one hard copy and one soft copy of the Commissioning Test Schedule to the Authority for review, comment and agreement in accordance with the provisions of Schedule 19 (Project Management). The Contractor shall review and update the Commissioning Test Schedule at least [monthly], delivering a draft copy with changes highlighted to the Authority for review, comment and agreement in accordance with the provisions of Schedule 19 (Project Management). The Commissioning Test Schedule shall cover all aspects of Asset Provision and shall include (without limitation):

34.1.1 buildings (comprising the Specified Assets): including the tests and inspections detailed in Schedule 8 (Independent Certifier's Deed of Appointment) and tests and inspections of each building comprising a Specified Asset at the relevant Site which shall include an assessment of the condition and state of repair of the buildings against the requirements of Schedule 1 (Authority's Requirements) and Schedule 2 (Contractor's Proposals); and

34.1.2 synthetic training equipment (comprising the Specified Assets): including both subjective and objective assessments of performance and handling against the relevant aircraft based upon the requirements of [insert project specific requirements e.g. JAR – STD 1A and JAR – STD 1H] as well as the requirements of Schedule 1 (Authority's Requirements) and Schedule 2 (Contractor's Proposals).

34.2 The Contractor shall carry out the Commissioning Tests in respect of each Specified Asset to be used in Service Provision for a given Service Level as required by the Asset Provision Programme within the time for such tests shown in the Asset Provision Programme or such later time for repeated Commissioning Tests as is submitted by the Contractor pursuant to this Clause 34.

34.3 The Authority shall co-operate with the Contractor to ensure that any Joint Commissioning is so far as reasonably practicable completed within the time for it shown in the Asset Provision Programme.

34.4 If the Specified Asset fails any Commissioning Test for such Asset, the Contractor shall at its own cost and expense carry out all rectification work to rectify the failure and repeat the Commissioning Tests for such Specified Asset in accordance with Clause 33 (Inspection).

35 ACCEPTANCE CERTIFICATE, NOTICE OF NON COMPLETION AND SNAGGING LIST

35.1 Within five Business Days of the inspection referred to in Clause 33 (Inspection), the Parties shall procure that the Independent Certifier/the Authority shall procure that the Certifier shall either:

35.1.1 issue an Acceptance Certificate for the relevant Service Level confirming that he is satisfied that the Service Availability Requirements have been met for a given Service Level; or

35.1.2 issue a notice stating that the Acceptance Certificate has not been issued and specifying any outstanding matters that must be attended to before an Acceptance Certificate can be issued for the relevant Service Level,

provided that if the Service Availability Requirements have been met, the Parties shall procure that the Independent Certifier/the Authority shall procure that the Certifier shall issue an Acceptance Certificate in respect of a Service Level notwithstanding that there are Snagging Items for any Specified Asset intended to be utilised in Service Provision for such Service Level.

35.2 Snagging Items

35.2.1 If an Acceptance Certificate for any given Service Level is expressed to be subject to Snagging Items:

(a) the Parties shall procure that the Independent Certifier/the Authority shall procure that the Certifier shall at the same time as issuing the relevant Acceptance Certificate issue to the Contractor's Representative and the Authority's Representative a list of the relevant Snagging Items for any Specified Asset ("Snagging List"); and

(b) the Contractor shall, within five Business Days of receipt from the Independent Certifier of the Snagging List, provide to the Authority's Representative and the Independent Certifier a

reasonable programme for making good each item set out in the Snagging List provided that such programme shall require that each Snagging Item shall be made good as soon as reasonably practicable but in any event within **twenty** Business Days of the date of the agreement or determination of that programme or such later period as the **Independent** Certifier may specify. The Parties shall seek to agree such programme pursuant to Schedule 19 (Project Management) and in default of agreement shall refer the matter for determination under Clause 144 (Disputes). The programme agreed or determined in accordance with this Clause 35.2.1(b) shall be known as the "**Snagging Programme**"; and

- (c) the Contractor shall procure that each Snagging Item is made good in accordance with the Snagging Programme to the satisfaction of the **Independent** Certifier. If any Snagging Item has not been rectified by the date set out in the Snagging Programme then the Authority shall be entitled to effect such repairs as may be necessary and recover the costs of doing so from the Contractor as a debt.

35.3 **The Independent Certifier's decision pursuant to Clause 35.1 shall be binding upon the Parties save for manifest error, fraud or bias.**

36 DATES ON WHICH SERVICES COMMENCEMENT MAY OCCUR AND EFFECT OF ISSUE OF ACCEPTANCE CERTIFICATE

36.1 The Service Commencement Date for any given Service Level shall be the date on which an Acceptance Certificate is issued for that Service Level, provided that no Acceptance Certificate may be issued prior to the Planned Services Commencement Date for the Service Level.

36.2 The issue of an Acceptance Certificate shall indicate only that the Independent Certifier is of the opinion that any given Service Level appears to be in compliance with the Service Availability Requirements and shall in no way lessen or affect the obligations of the Contractor under this Contract in relation to that Service Level or any other part of Asset Provision and/or Service Provision or signify the Authority's approval of the means of delivery of the Services. The Contractor shall, pursuant to Clause 35.2.1(b) (Snagging Items) following the issue of the Acceptance Certificate carry out and complete such (if any) of the items on the Snagging List as have not been so completed by the date of issue of the Acceptance Certificate.

**PART 8 – CONTRACTOR'S EQUIPMENT, GOVERNMENT FURNISHED ASSETS,
EXISTING ASSETS, EXISTING CONTRACTS AND MESS PROPERTY
(OPTIONAL CLAUSES)**

37 DEFINITIONS

37.1 In this PART 8, unless the context otherwise requires:

"Contractor's Equipment" means all plant and equipment used exclusively for Asset Provision and provided by each Asset Provider under the terms of, and in connection with the performance of obligations under, its respective Asset Provision Contract, being items to which the Contractor or Contractor Related Party shall retain title following the Termination Date or Expiry Date, but which, for the avoidance of doubt, shall not include plant or equipment which is or will become, or is or will be incorporated into or otherwise form part of, any Specified Asset or (unless or until a period of sixty days have elapsed from the Termination Date or, as the case may be, Expiry Date) any temporary security fencing installed by or on behalf of the Contractor on any Authority Site;

"Defects" means any defect in any of the Government Furnished Assets, or any part of them, or anything installed in the Government Furnished Assets attributable to:

- (a) defective design;
- (b) defective workmanship or defective materials (which, for the avoidance of doubt, shall exclude asbestos), plant or machinery used in such construction or manufacture having regard to Good Industry Practice and to appropriate British standards and codes of practice current at the date of construction or manufacture of the Government Furnished Asset;
- (c) the use of materials in the construction or manufacture of any Government Furnished Assets which (whether or not defective in themselves) prove to be defective in the use to which they are put in the construction of any such Government Furnished Assets;
- (d) defective installation of anything in or on the Government Furnished Assets;
- (e) defective preparation of the site on which the Government Furnished Assets are constructed or installed; or
- (f) defects brought about by adverse ground conditions or by reason of subsidence, water table change or any other change to ground conditions;

"Existing Assets" means those items detailed in Schedule 9 Part 2 (Existing Assets), being items to which the Authority shall transfer title to the Contractor for the purposes of Asset Provision and/or Service Provision in accordance with Clause 40 (Existing Assets);

"Existing Contracts" means contracts between the Authority and a third party in existence prior to the Commencement Date as set out in Schedule 9 Part 3 (Existing Contracts) which make provision for Asset Provision or Service Provision;

"Government Furnished Assets" means the government furnished equipment, government furnished facilities and/or government furnished information detailed in Schedule 9 Part 1 (Government Furnished Assets), being items to which the Authority shall retain title throughout the Contract Period, but which

shall be made available to the Contractor for the purposes of Asset Provision and/or Service Provision, and for no other purpose without the prior approval of the Authority, in accordance with the terms set out in Schedule 9 Part 1 (Government Furnished Assets);²⁶

"Mess Property" means those items detailed in Schedule 9 Part 4 (Mess Property) as amended from time to time;

"Novating Contract" means a contract identified as such in Schedule 9 Part 3 (Existing Contracts);

"Non-Novating Contracts" is as defined in Clause 41.3.1 (Failure to Novate Novating Contracts and Non-Novating Contracts)

"Unidentified Contracts" is as defined in Clause 41.6 (Unidentified Contracts)

38 CONTRACTOR'S EQUIPMENT

38.1 The Contractor shall at its own cost:

38.1.1 provide the Contractor's Equipment;

38.1.2 install and repair, maintain and replace the Contractor's Equipment relevant to the Services.

39 GOVERNMENT FURNISHED ASSETS

39.1 The Authority shall:

39.1.1 make available to the Contractor on loan and free of charge the Government Furnished Assets on the dates, at the locations and for the periods specified in Schedule 9 Part 1 (Government Furnished Assets) and on the conditions set out in Schedule 9 Part 1 (Government Furnished Assets); and

39.1.2 ensure that the Government Furnished Assets, when made available:

(a) comply with the specifications set out in Schedule 9 Part 1 (Government Furnished Assets); and

(b) are in a serviceable condition; and

(c) have been maintained in accordance with the relevant maintenance schedules; and

(d) are accompanied by such information and instructions as are necessary for their installation, testing and operation.

39.2 Neither the Contractor, nor any Sub-contractor, nor any other person, shall have a lien on any Government Furnished Assets, 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

²⁶ Government Furnished Assets are items that the Authority undertakes to provide to a given standard at a given time. Failure to do so is a potential Compensation Event. Where the team intends to provide items the condition of which is not guaranteed (e.g. "as is / where is" items) then, where they fall outside the scope of Existing Assets, consideration should be given to the exact status of such items and consultation with PFU required to determine appropriate drafting.

any such lien, are brought to the notice of all Sub-contractors and other persons dealing with any Government Furnished Assets.

39.3 The Contractor shall:

39.3.1 observe the terms and conditions set out in Schedule 9 Part 1 (Government Furnished Assets) regarding any of the Government Furnished Assets issued, loaned or used for the purposes of Asset Provision and/or Service Provision; and

39.3.2 be responsible for the safe custody and due return of the Government Furnished Assets and shall be responsible for all loss or damage thereto until re-delivered to the Authority or disposed of in accordance with the Authority's instructions; and

39.3.3 open and maintain a Public Store Account in accordance with DEFSTAN 05-99 (and otherwise comply with DEFSTAN 05-99) and ensure that all of the Government Furnished Assets are available for inspection by the Authority at any time;

39.3.4 on being given two months notice permit and co-operate with the Authority to conduct audits of the Government Furnished Assets recorded in the Public Store Account in a manner to be determined by the Authority's Representative provided that if the Authority has reasonable grounds to believe that the Government Furnished Assets have not been used in accordance with Schedule 9 Part 1 (Government Furnished Assets) these audits may be conducted without notice; and

39.3.5 carry out any modification to the Government Furnished Assets that may be necessary so that the Government Furnished Assets may be used in compliance with Legislation and Good Industry Practice.

39.4 The Contractor shall not be liable for:

39.4.1 subject to Clause 39.5 (Defects), Defects in any Government Furnished Assets; or

39.4.2 fair wear and tear in any Government Furnished Assets resulting from its normal and proper use (except insofar as the deterioration is contributed to by any misuse, lack of care, failure to act in accordance with Good Industry Practice or want of maintenance prior to the date on which such Government Furnished Assets are made available to the Contractor pursuant to Schedule 9 Part 1 (Government Furnished Assets)); or

39.4.3 Government Furnished Assets rendered unserviceable as a result of the Contractor's ordinary performance of Asset Provision and/or Service Provision in accordance with this Contract; or

39.4.4 any loss or damage to Government Furnished Assets resulting from a Force Majeure Event.

39.5 Defects

39.5.1 The Contractor shall be entitled, within a period of twenty Business Days from receipt of the Government Furnished Assets to give written notice to the Authority's Representative that such Government Furnished Assets have not been provided by the Authority in accordance with Clause 39.1.

39.5.2 If on receipt of the Contractor's notice given pursuant to Clause 39.5.1 in the Authority's Representative's reasonable opinion the Government Furnished Assets have not been provided by the Authority in accordance with Clause 39.1.2, then this shall not be a Compensation Event but the Authority shall rectify any Defects in the Government Furnished Assets and any delay caused to any relevant Services Commencement Date during such rectification works shall be treated as a Relief Event and the Contractor shall be relieved from Service Performance Deductions in accordance with Schedule 13 (Payment Mechanism).

39.5.3 If:

(a) on receipt of the Contractor's notice given pursuant to Clause 39.5.1, in the Authority's Representative's reasonable opinion the Government Furnished Assets have been provided by the Authority in accordance with Clause 39.1.2, or

(b) the Contractor does not serve its notice pursuant to Clause 39.5.1 within a period of twenty Business Days from receipt of the Government Furnished Assets,

then the Contractor shall rectify or repair such Government Furnished Assets so that such Government Furnished Assets comply with Clause 39.1.2. Such rectification and/or repair by the Contractor shall be at no cost to the Authority and the Contractor shall not be entitled to any extension of time in relation to such rectification and making good of the Government Furnished Assets.

40 EXISTING ASSETS

40.1 The Authority shall be deemed to have transferred to the Contractor all the Authority's interest and risk (including unencumbered title, possession and risk of loss) in, and shall deliver to the Contractor, on the Vesting Date, the Existing Assets. In consideration for the transfer of all of the Authority's interest and risk in the Existing Assets, the Contractor shall pay to the Authority the sum of £1 (one pound sterling) payable on the Effective Date.

40.2 Subject to Clause 40.3, prior to the disposal of any items within Existing Assets the Contractor shall give the Authority a right of first refusal to buy the said items back from the Contractor for a total consideration not to exceed £1 (one pound sterling) for all Existing Assets. If the Authority does not wish to purchase the Existing Assets, the proceeds of any such disposal shall be shared between the Parties on a 50%-50% basis.

40.3 The Contractor:

40.3.1 is not required to give the Authority a right of first refusal to buy the said items where and to the extent that the Contractor transfers any such items on or about the Vesting Date to any Service Provider in connection with such Service Provider's performance and discharge of its obligations under the relevant Service Provision Contract; and

40.3.2 shall procure that:

(a) if such Service Provider seeks to dispose of any such items, such Service Provider shall give the Authority a right of first refusal to buy such items back for a total consideration not to exceed £1 (one pound sterling) for all such Existing Assets; and

(b) if the Authority does not wish to purchase any such items, the proceeds of any such disposal shall be shared between the Authority and the Contractor (or, as the case may be, the relevant Service Provider) on a 50%-50% basis.

40.4 The Authority warrants and undertakes that all the Existing Assets are, and immediately prior to the Vesting Date shall be, the absolute property of the Authority and that the Existing Assets are not immediately prior to the Vesting Date the subject of any security interest, lien, option, right of pre-emption, royalty, factoring arrangement, leasing or hiring arrangement, hire purchase agreement, guarantee, conditional sale or credit sale agreement or any similar agreement or arrangement.

40.5 The Authority shall continue to upkeep and maintain the Existing Assets (and the corresponding log books and/or maintenance records) in accordance with the Authority's asset maintenance, provision, repair and recording practices that apply from and including the Effective Date and up to the Vesting Date provided that the Authority shall not amend or vary its asset maintenance, provision repair and/or recording practices from those undertaken prior to the Effective Date as a direct result of entering into this Contract.

40.6 To the extent that it is entitled to do so, the Authority shall make available for inspection during normal working hours any log books or other maintenance records maintained by the Authority in relation to the Existing Assets on reasonable notice by the Contractor until the Vesting Date.

40.7 The Parties shall perform all acts and execute and procure the prompt execution of all documentation necessary to carry out the transfer referred to in Clause 40.1.

40.8 Subject to Clauses 40.4 and 40.5, the Contractor acknowledges that the Existing Assets will be transferred by the Authority to the Contractor on an "as is/where is" basis and that the Authority shall not be liable to the Contractor and/or any of its Sub-Contractors and/or any of its or their agents, officers, employees, invitees and sub-contractors whether under contract, tort or otherwise for any Losses arising out of or in connection with:

40.8.1 any defect (including any latent defect), loss, damage and/or deficiency in or to any of the Existing Assets;

40.8.2 any loss of or damage to any of the Existing Assets (other than to the extent that such loss and/or damage gives rise to a Compensation Event in accordance with and subject to the terms provided in Clauses 40.10 and 40.11; and/or

40.8.3 any loss and/or damage caused by such Existing Assets following and including the date on which risk passes to the Contractor in respect of such Existing Assets in accordance with Clause 40.1.

40.9 To the extent permitted by law and subject to Clause 40.4, all conditions, warranties, stipulations and other statements whatsoever concerning the Existing Assets, whether express or implied (by statute or at common law or otherwise), are excluded, unless any such condition, warranty, stipulation or other statement was made or given negligently or fraudulently. In particular (but without limitation of the foregoing) the Authority grants no warranties or representations regarding merchantability, condition, quality, suitability, fitness for purpose, performance, use, ongoing support, nature or quality of the Existing Assets, express or implied (by statute or at common law or otherwise). The

Contractor acknowledges that it has satisfied itself as to the suitability of any Existing Asset for the delivery of the Services and that it has made no reliance upon any representation or otherwise made by the Authority.

40.10 Subject to Clause 40.11, to the extent that the Contractor can demonstrate within thirty Business Days of the Vesting Date that:

40.10.1 the Authority has failed to transfer one or more of the Existing Assets on the Vesting Date or as otherwise agreed in writing between the Parties; or

40.10.2 one or more of the Existing Assets has been altered materially from the nature and/or specification of such Existing Asset as at the Effective Date; or

40.10.3 the condition of one or more of the Existing Assets as at the Vesting Date has deteriorated from the condition of such Existing Asset(s) as at the Effective Date as a result of the Authority failing to upkeep and maintain such Existing Asset(s) in accordance with Clause 40.5; and

40.10.4 as a direct consequence of that failure, alteration or deterioration (as the case may be):

(a) the Contractor is unable to deliver the Services (or any part or parts thereof) to the Authority, or to fulfil any of its obligations under this Contract, which the Contractor would otherwise have been able to deliver and/or to fulfil (as the case may be) had that failure, alteration or deterioration not occurred; and

(b) the Contractor is not able otherwise to provide that or those Services (or part or parts thereof) or to fulfil such obligation without incurring delay to a Service Level, loss of revenue and/or additional expense,

then this shall not be a Compensation Event but the Authority shall relieve the Contractor of its obligation to provide that or those Service(s) (or part or parts thereof), which is/are affected by that failure, alteration and/or deterioration (as the case may be) to the extent reasonable for such failure, alteration or deterioration (the Contractor having acted in accordance with Good Industry Practice to mitigate the effects of such failure, alteration or deterioration) and shall elect either to:

(i) enter into good faith negotiations with the Contractor to agree any appropriate variation to this Contract pursuant to PART 18 (Changes and Change in Law) as a consequence of such failure, alteration and/or deterioration (as the case may be); or

(ii) replace, at the Authority's own cost and expense, the relevant Existing Asset(s) which the Authority has failed to deliver to the Contractor in accordance with this Contract or as otherwise agreed between the Parties and/or which has been altered and/or has deteriorated (as the case may be).

40.11 The Contractor shall not be entitled to make any claim against the Authority in accordance with Clause 40.10 to the extent that, prior to the Vesting Date, the Existing Asset(s) which are the subject of such claim:

40.11.1 has/have been replaced and such replacement(s) are of the same or a substantially similar or superior specification to such Existing Asset(s); or

40.11.2 has/have been materially altered by the Authority but remain of the same or a substantially similar or superior specification to such Existing Asset(s); or

40.11.3 in relation to Clause 40.10.1 or 40.10.3, would not have been replaced or repaired by the Authority acting in accordance with the provisions of Clause 40.5.

40.12 Upon receipt of the Existing Assets, the Contractor shall create and update on a quarterly basis throughout the Contract Period a register of all Existing Assets held by the Contractor.

40.13 At the request of the Contractor, the Authority shall assign to the Contractor the benefit of any third party report, warranty or survey in relation to the Existing Assets provided that:

40.13.1 the Contractor clearly identifies the relevant third party report, warranty or survey it requires; and

40.13.2 the Authority is able to assign the benefit of such third party report, warranty or survey the Contractor requires; and

40.13.3 the Contractor shall pay any and all costs and expenses reasonably and properly incurred by or on behalf of the Authority in connection with such assignment.

41 EXISTING CONTRACTS

41.1 On or as soon as practicable after the Vesting Date the Authority shall, at the Authority's cost:

41.1.1 terminate the Terminating Contracts; and/or (as the cases may be); and

41.1.2 enter into a deed of novation pursuant to Clause 41.2.1 for the Novating Contracts in Schedule 9 Part 3 (Existing Contracts);

insofar as the same are capable of termination, novation or variation without payment of compensation by the Authority or the imposition of any other material liability on the Authority, and if the Authority is unable to terminate, novate or vary an Existing Contract in accordance with this Clause 41.1 then the Authority's Representative shall notify the Contractor's Representative in writing and the Parties shall meet to agree further to Schedule 19 (Project Management) the method by which to manage any continuation of any such Existing Contract.

41.2 Novation of Novating Contracts and Terminating Contracts

41.2.1 For any Novating Contracts and, if agreed pursuant to Clause 41.1, any Terminating Contract which is not capable of being terminated by the Authority, the Authority shall, subject to the Contractor agreeing to accept such novation, enter into a deed of novation with the Contractor and the counterparty to the Existing Contract upon terms that:

(a) the Authority is released from all liability not arising due to the Authority's action in relation to such contract on and after the date of novation; and

(b) the Contractor becomes entitled to exercise all rights and obliged to discharge all obligations of the Authority arising under the relevant contract on and after the date of novation.

41.2.2 Each Party shall use all reasonable endeavours to procure that such novation takes place as soon as practicable after the Commencement Date to be effective in accordance with the dates of novation detailed in Schedule 9 Part 3 (Existing Contracts).

41.2.3 Until such time as those Novating Contracts are novated to the Contractor, the Contractor shall:

(a) receive the goods or services the subject of the Novating Contracts on behalf of the Authority;

(b) discharge all the obligations of the Authority under the Novating Contract; and

(c) indemnify the Authority for any Direct Losses incurred by the Authority as a result of the Contractor's performance or non-performance by the Contractor of the Authority's obligations under such contracts.

41.2.4 The Contractor shall supply to the Authority all such information and assistance as may be required in order to procure that any novation referred to in Clause 41.2.1 is completed as soon as practicable.

41.3 Failure to Novate Novating Contracts and Non-Novating Contracts

41.3.1 If, having used all reasonable endeavours to procure the novation referred to in Clause 41.2.1 the novation has not been completed within thirty Business Days of the planned date of novation in Schedule 9 Part 3 (Existing Contracts), or if at any time it becomes clear that the counterparty to any such contract will not agree to such novation or will only do so on terms which the Authority in its absolute discretion considers unreasonable ("**Non-Novating Contracts**"), the Authority may (having consulted with the Contractor) by notice to the Contractor elect either:

(a) to terminate the relevant Non-Novating Contract; or

(b) to continue as the counterparty to the relevant Non-Novating Contract on terms that:

(i) the Contractor shall receive the goods or services the subject of such contracts on behalf of the Authority;

(ii) the Contractor shall discharge all the obligations of the Authority under such contracts; and

(iii) the Contractor shall indemnify the Authority for any Direct Losses incurred by the Authority as a result of the Contractor's performance or non-performance by the Contractor of the Authority's obligations under such contracts.

41.3.2 If the Authority has not given a notice of election pursuant to Clause 41.3.1 within the said thirty Business Days, it shall be deemed to have given a notice making the election in Clause 41.3.1(b). Upon the Authority making (or being deemed to have made) the election referred to in Clause 41.3.1(b), the provisions of Clause 41.4 (Administrative provisions relating to Existing Contracts) shall apply.

41.4 Administrative provisions relating to Existing Contracts

41.4.1 Each Party shall keep the other promptly and fully informed of and supply copies of any notice, communication, proceeding or other matter arising pursuant to each Existing Contract.

41.4.2 In relation to any Existing Contract which has not been novated to the Contractor, the Authority shall, to the extent reasonably required by the Contractor, take all such actions (including the defending of any proceedings) as the Authority may be reasonably satisfied are reasonable in all the circumstances.

41.5 Costs and Revenues Relating to Existing Contracts

41.5.1 With effect on and from (but not so as to be liable for any period prior to) the date of novation of each Novating Contract:

(a) the Contractor shall be responsible for each and every cost or expense in relation to the performance of the Authority's obligations under or otherwise arising in relation to the Novating Contracts; and

(b) subject to compliance with Clause 41.2 (Novation of Novating Contracts and Terminating Contracts), the Contractor shall be entitled to receive all revenues or payments due (if any) pursuant to each Novating Contract in respect of any period commencing on or after the date of novation of each Novating Contract; and

(c) the Authority shall be entitled to receive all revenues or payments due (if any) pursuant to each Novating Contract in respect of any period before the date of novation of each Novating Contract.

41.5.2 If, at the date of novation of any Novating Contract, any amount is due and unpaid to the Authority by a counterparty to any Novating Contract pursuant to that Novating Contract, the following provisions shall apply:

(a) the amount due but unpaid shall remain a debt due to the Authority and shall not be assigned to the Contractor; and

(b) the Authority shall be entitled at the cost of the Authority to seek to recover from the counterparty to each relevant Novating Contract the amount due to the Authority, and the Contractor shall at the cost of the Authority provide such reasonable assistance to the Authority as may be reasonably required in order to recover the amounts due; and

(c) the Contractor shall promptly account to the Authority in respect of all and any amounts received by the Contractor from a counterparty to a Novating Contract pursuant to which any

amount remains due and unpaid to the Authority in respect of that debt to the Authority; and

- (d) the Contractor shall keep proper books and records in relation to the matters described in Clause 41.5.2(c) and the Authority's Representative shall on reasonable notice to the Contractor be entitled to inspect and take copies of the same in order to satisfy itself that the provisions of this Clause 41.5.2 have been complied with.

41.6 Unidentified Contracts

41.6.1 Either Party shall forthwith notify the other if it becomes aware of an Existing Contract which is not listed in Schedule 9 Part 3 (Existing Contracts) ("**Unidentified Contracts**") and provide all relevant information relating thereto to the other.

41.6.2 Upon a notification being given in accordance with Clause 41.6.1, the Contractor shall elect whether the Existing Contract should be terminated under the provisions of Clause 41.1.1 or novated in accordance with the provisions of Clause 41.1.2.

41.6.3 The Authority and Contractor shall co-operate with each other in identifying all Unidentified Contracts and the counterparties to them.

42 MESS PROPERTY

42.1 Ownership of items of Mess Property shall remain with the messes themselves.

42.2 The Authority shall use reasonable endeavours to procure that the messes make available to the Contractor the Mess Property on the Vesting Date and at the locations specified in the Schedule 9 Part 4 (Mess Property). The Authority may from time to time on giving not less than ten Business Days notice to the Contractor's Representative deliver to the Contractor other items designated as Mess Property and/or return items handed over to the Authority further to Clause 42.3. The Authority shall provide written details of such items to the Contractor.

42.3 The Authority may from time to time require, by three Business Days written notice, the Contractor to hand over, on either a temporary or permanent basis (as must be specified in the notice), any item of Mess Property to the mess or its duly authorised agent who shall provide a receipt therefore.

42.4 The Contractor shall be responsible for the safe custody and due return of the Mess Property and shall be responsible for all loss or damage thereto, subject to Clause 42.5, until re-delivered to the mess or its duly authorised agent on the Termination Date or Expiry Date.

42.5 The Contractor shall not be responsible for:

42.5.1 loss or damage (nor the costs of any repair work required as a result of such damage) to items of Mess Property whilst under mess control under Clause 42.3; or

42.5.2 the costs of transporting or storing Mess Property which is removed from the Sites at the request of the Authority but, for the avoidance of doubt, the Contractor shall be responsible for the cost of transporting Mess Property within each Site and between the Sites unless the Mess

Property is in the possession of the mess or its duly authorised agent under Clause 42.3; or

42.5.3 fair wear and tear of any Mess Property resulting from its normal and proper use (except insofar as the deterioration is contributed to by any misuse, lack of care or failure of the Contractor to act in accordance with Good Industry Practice) or want of maintenance prior to the date on which such Mess Property is made available to the Contractor pursuant to Schedule 9 Part 4 (Mess Property); or

42.5.4 any loss or damage to Mess Property resulting from a Force Majeure Event.

42.6 The Contractor's obligations under this Clause 42 in respect of a particular item of Mess Property come to an end when the relevant item is handed over to the owning mess or its duly authorised agent on a permanent basis either under Clause 42.3 or on termination of this Contract, whichever is the sooner.

42.7 On termination of this Contract the Contractor shall, as soon as is reasonably practical, safely and securely deliver all Mess Property that remains in its custody back to the mess or its duly authorised agent.

PART 9 – TRANSFER OF TITLE (CORE CLAUSES)

43 TITLE IN EXISTING ASSETS

43.1 The Authority shall transfer title in the Existing Assets at such time(s) and in such a manner as is specified in Clause 40 (Existing Assets).²⁷

44 TITLE TO THE ASSETS ON TERMINATION OR EXPIRY OF THIS CONTRACT

44.1 On or before a date falling no later than eighteen months before the Expiry Date or during the period of any Termination Notice the Authority shall have the right to require the Contractor to transfer its rights, title and interest in and to the Assets to the Authority, or as directed by the Authority, at no cost to the Authority.

OR

On or before a date falling no later than eighteen months before the Expiry Date or during the period of any Termination Notice, the Authority shall notify the Contractor in writing that it wishes the Contractor to transfer its rights, title and interest in and to the Assets to the Authority or as directed by the Authority. Within thirty days of effective transfer of ownership of the Assets to the Authority, the Authority shall pay to the Contractor the amount determined in accordance with the provisions of Schedule 10 (Transfer of Residual Value Provisions).

²⁷ If the Existing Assets include land and buildings, project teams should insert project-specific clauses and references to agreed form leases and contracting out of security of tenure under the Landlord and Tenant Act at this point.

**PART 10 – TRANSFER OF TITLE IN NON-CORE UNITS FOR DEFENCE HOUSING
PROJECTS (OPTIONAL CLAUSES)**

45 DEFINITIONS

45.1 In this PART 10 unless the context otherwise requires:

"Core Units" means with respect to each Unit Year, the Units identified by reference to quantity only in Column 2 of Table 1 in Schedule 11 Part 1(Units);

"Lease" means a lease of the Site in the agreed form contained in Schedule 11 Part 2 (Lease);

"Maximum Release Number" means in any Unit Year the lesser of two²⁸ and the number of Non-Core Units for that Unit Year;

"Non-core Authority Unit" means any Non-core Unit which is not a Non-core Contractor Unit;

"Non-core Contractor Unit" means any Non-core Unit which has been released to the Contractor from time to time pursuant to Clauses 48 (Release of Non-core Units) and 49 (Requirements For Released Non-core Units as at the Release Date);

"Non-core Units" means with respect to each Unit Year, the Units identified by reference to quantity only in Column 2 of Table 1 in Schedule 11 Part 1 (Units);

"Permitted Occupier" means:

- (a) those personnel and their families (and others with whom they are permitted by the Authority to share the Units) who are entitled to be allocated service family accommodation under the Defence Estates Housing Management Manual version 2.1; and
- (b) such other persons as shall be authorised by the Authority from time to time to occupy the Units with the prior consent of the Contractor (such consent not to be unreasonably withheld or delayed);

"Release Amendment" means any amendment to an Underlease to include additional Non-core Units in the agreed form contained in Schedule 11 Part 3 (Release Amendment);

"Release Date" means the date on which a Non-core Authority Unit becomes a Non-Core Contractor Unit and identified as such in a Release Notice;

"Release Notice" means a notice complying with Clause 48 (Release of Non-core Units);

"Resumption Amendment" means an amendment to an Underlease made pursuant to Clause 54 (Requirements as at the Resumption Date) either to remove a Non-core Unit from it or to reincorporate a Non-core Unit into it;

²⁸ This number should be set such that if the maximum number of Non-Core Units are released each Unit Year then the total released throughout the contract will equal the desired total number of Non-Core Units in the last year of the contract. Thus, if in any Unit Year the maximum number of Non-Core Units is not released, then it will not be possible to release them in subsequent Unit Years with the result that in the final year of the contract (assuming no reincorporation) the total number of Non-Core Units will exceed the number released.

"Resumption Date" is as defined in Clause 51 (Reincorporation of Non-core Contractor Units);

"Resumption Notice" means the notice set out in Clause 51 (Reincorporation of Non-core Contractor Units);

"Resumption Unit" means either a Non-core Contractor Unit or a unit of Suitable Alternative Accommodation;

"Suitable Alternative Accommodation" means residential accommodation which satisfies the SAA Criteria;

"SAA Criteria" mean:

- (a) is designed and built to a standard at least equivalent to [insert details];
- (b) is situated within a [insert number] km radius of [insert details];
- (c) is situated or will be situated within a group of residential units of not more than [insert number] Core Units and/or Non-Core Authority Units;

"SAA Lease" means a lease of Suitable Alternative Accommodation in the agreed form contained in Schedule 11 Part 4 (SAA Lease);

"Site" means all that piece or parcel of land described in Schedule 11 Part 5 (Sites);

"Step Down Date" means the last day of the ninth Unit Year;

"Underlease" means an underlease in the form of the draft underlease contained in Schedule 6 of the Lease;

"Unit" means [insert description of accommodation type] as part of the Specified Assets;

"Unit Year" means a year ending on the anniversary of the Service Commencement Date.

46 **RELEASE/RESUMPTION OF NON-CORE UNITS**

46.1 The Authority shall be entitled acting in its sole and absolute discretion to release Non-core Units from the Lease and thereafter reincorporate Non-core Units into the Lease and/or acquire Suitable Alternative Accommodation on SAA Leases in accordance with the following provisions of this PART 10.

47 **CORE UNITS/NON-CORE UNITS**

47.1 On the first occurring Release Date the Authority shall grant and deliver the Underlease for the Non-core Contractor Units on the Site and the Contractor shall execute and deliver a counterpart or duplicate of the same.

47.2 The Underlease shall be granted subject to the matters referred to in Part 2 of Schedule 3 of the Lease.

47.3 The Underlease shall be granted subject to those matters referred to in [DIO contract clauses 4.7.1 to 4.7.4 (Matters to Which the Lease is Subject)] including all matters registered between the Commencement Date and the date of the relevant Underlease.

47.4 The Contractor shall not be entitled to raise any requisition or make any objection in relation to any of those matters referred to in clauses [3.1, 3.2 and 3.4].

48 **RELEASE OF NON-CORE UNITS**

48.1 The Authority's Representative shall be entitled to serve a Release Notice on the Contractor.

48.2 The Release Notice shall:

48.2.1 relate to Non-core Authority Units only; and

48.2.2 identify a number equal to or less than the Maximum Release Number;

48.2.3 not include Non-core Authority Units referred to in any Resumption Notice served on the Contractor by the Authority during a period of twelve months prior to the date of service of the Release Notice;

48.2.4 identify a Release Date not less than three months from the date of the Release Notice; and

48.2.5 detail the number of Non-core Authority Units to be released; and

48.2.6 detail the postal address(es) of the Non-core Authority Unit(s) to be released; and

48.2.7 specify the proposed Release Date in respect of each Non-core Authority Unit.

49 **REQUIREMENTS FOR RELEASED NON-CORE UNITS AS AT THE RELEASE DATE**

49.1 On the Release Date the Authority's Representative shall deliver to the Contractor:

49.1.1 an executed Release Amendment in respect of each Non-core Authority Unit referred to in the Release Notice and the Contractor will execute a counterpart or duplicate of the same; and/or

49.1.2 in the case of a Non-core Authority Unit which is a unit of Suitable Alternative Accommodation, an executed surrender of the SAA Lease and the Contractor shall execute a counterpart or duplicate of the same; and

49.1.3 the Non-core Authority Units with vacant possession.

49.2 If the Authority is unable to satisfy the provisions set out in Clause 49.1 as at the Release Date, the Authority's Representative shall serve a further Release Notice in accordance with Clause 48 (Release of Non-Core Units).

50 **CONSEQUENCES OF RELEASE**

50.1 As at the Release Date, a Non-core Authority Unit which is the subject of a Release Notice shall become a Non-core Contractor Unit.

51 **REINCORPORATION OF NON-CORE CONTRACTOR UNITS**

51.1 At any time following the Step Down Date and first occurring Release Date the Authority's Representative shall be entitled to submit a Resumption Notice to the Contractor.

51.2 The Resumption Notice shall:

51.2.1 identify not more than the total number of Non-core Contractor Units as at the date of the Resumption Notice, excluding those Non-core Contractor Units referred to in Resumption Notices served prior to the date of the relevant Resumption Notice for which a Resumption date has not occurred; and

51.2.2 identify a date (the "**Resumption Date**") not less than nine months from the date of the Resumption Notice; and

51.2.3 detail the number of Type III Houses to be reincorporated; and

51.2.4 detail the number of Type IV Houses to be reincorporated; and

51.2.5 detail the number of Type D Houses to be reincorporated; and

51.2.6 detail the proposed Resumption Date for each Unit referred to in the Resumption Notice.

52 **CONTRACTOR'S RESPONSE TO A RESUMPTION NOTICE**

52.1 Within twenty Business Days of service of the Resumption Notice, the Contractor shall provide the Authority's Representative with details of:

52.1.1 the postal address identifying each Resumption Unit to be leased by the Authority at the Resumption Date; and

52.1.2 the date on which any property which is intended to be Suitable Alternative Accommodation (if any) is available to be inspected by the Authority to assess compliance with the SAA Criteria.

52.2 The Contractor may vary the identity of a Resumption Unit which is a Non-core Contractor Unit by submitting a notice of a new postal address to the Authority's Representative not less than ten Business Days prior to the Resumption Date.

53 **SUITABLE ALTERNATIVE ACCOMMODATION**

53.1 Within ten Business Days of the date on which any property that is intended to be Suitable Alternative Accommodation is inspected by the Authority to assess compliance with the SAA Criteria, the Authority's Representative shall provide the Contractor with a notice stating whether or not such property satisfies the SAA Criteria.

53.2 If any property that is intended to be Suitable Alternative Accommodation does satisfy the SAA Criteria then the Authority shall accept such property as Suitable Alternative Accommodation.

53.3 If any property that is intended to be Suitable Alternative Accommodation does not satisfy the SAA Criteria then the Contractor shall within ten Business Days of notification in terms of this Clause 53 confirm in writing the postal address of a Non-core Contractor Unit to be made available at the Resumption Date instead.

54 REQUIREMENTS AS AT THE RESUMPTION DATE

54.1 On the Resumption Date the Contractor shall deliver to the Authority's Representative:

54.1.1 for the first Release Date, an executed Underlease for the first Non-core Contractor Unit to be reincorporated; and

54.1.2 for the second and subsequent Release Dates, an executed Resumption Amendment for each Non-core Contractor Unit to be reincorporated into an Underlease; and/or

54.1.3 an executed SAA Lease for each unit of Suitable Alternative Accommodation to be leased by the Authority; and

54.1.4 all the Resumption Units with vacant possession.

54.2 On the Resumption Date the Authority shall execute and deliver a counterpart or duplicate of all Resumption Amendments and/or SAA Leases referred to in Clause 54.1.

54.3 If any Unit of Suitable Alternative Accommodation is located on the Site then the SAA Lease relating to it shall be granted subject to those matters referred to in [DIO Contract clauses 4.7.1 to 4.7.4 (Matters to which the Lease is subject) inclusive].

55 CONSEQUENCE OF RESUMPTION

55.1 As at the Resumption Date each Resumption Unit shall cease to be a Non-core Contractor Unit and instead shall become a Non-core Authority Unit.

56 CO-OPERATION BETWEEN THE PARTIES

56.1 Annual Review

56.1.1 From the Step Down Date the Parties will carry out an annual review of the Authority's requirements for Non-core Authority Units.

56.2 Early Resumption

56.2.1 If the Authority's Representative has issued a Resumption Notice and the Contractor has agreed that it is in a position to make a Resumption Unit available prior to the relevant Resumption Date the Authority's Representative may in its sole discretion agree to amend the Resumption Date identified in the relevant Resumption Notice.

PART 11 – THIRD PARTY USE OF ASSETS (CORE CLAUSES)

57 PRIORITY

57.1 The Contractor shall make each Specified Asset available for use in the following order of priority:

57.1.1 Service Provision; and

57.1.2 Third Party Use (if any).

58 THE TP OUTLINE PROPOSAL

58.1 The Contractor may submit to the Authority a proposal ("**TP Outline Proposal**") in accordance with the requirements set out in Clause 58.2.

58.2 The TP Outline Proposal shall contain the following:

58.2.1 full details including the name and address of the proposed Third Party (including registered address and company registration number of the proposed Third Party if it is a company); and

58.2.2 details of the proposed Third Party Contract to include:

- (a) details of the proposed Third Party Use; and
- (b) outline proposals of any planned works and/or changes in the Authority Sites; and
- (c) outline details of the contractual arrangements with the proposed Third Party; and
- (d) the impact on security in the Authority Sites; and
- (e) details of the likely impact on Authority activities; and
- (f) the likely hours of operation; and
- (g) whether planning permission or any other consents will be required for the proposed Third Party Use; and
- (h) any other details the Contractor reasonably considers relevant and necessary to enable the Authority to decide whether or not to approve the TP Outline Proposal.

58.3 The Authority's Representative shall give written confirmation of receipt ("**Confirmation of Outline Receipt**") to the Contractor within ten Business Days of the Authority's Representative's receipt of a TP Outline Proposal or of any response made by the Contractor to an Outline Written Request made under Clause 58.5.3.

58.4 Where the Authority does not provide the Confirmation of Outline Receipt in accordance with Clause 58.3, the Contractor may give the Authority written notice that the Contractor has not received the Confirmation of Outline Receipt from the Authority as required by Clause 58.3 and the Authority shall provide such Confirmation of Outline Receipt within five Business Days of receipt of such notice from the Contractor. If the Authority does not provide the Confirmation of Outline Receipt within five Business Days of receipt of the Contractor's notice the

Confirmation of Outline Receipt will be deemed to have been given at the expiry of such five Business Day period.

- 58.5 Unless the Authority's Representative has received a TP Use Proposal in respect of the same subject matter as the TP Outline Proposal the Authority's Representative shall provide a written response to any TP Outline Proposal to the Contractor within twenty Business Days from the date of the relevant Confirmation of Outline Receipt stating whether the Authority, acting reasonably in the circumstances, is:
- 58.5.1 approving the TP Outline Proposal; or
 - 58.5.2 rejecting the TP Outline Proposal; or
 - 58.5.3 unable to either approve or reject the TP Outline Proposal and is submitting a written request to the Contractor for further relevant information from the Contractor's Representative ("**Outline Written Request**").
- 58.6 Where the Authority has received a TP Use Proposal in respect of the same subject matter as the TP Outline Proposal then the Authority shall not be obliged to respond to such TP Outline Proposal but shall instead give Confirmation of Receipt and shall respond to the TP Use Proposal in accordance with Clause 59 (The TP Use Proposal).
- 58.7 Subject to Clause 58.6, where the Authority does not provide a response in accordance with Clause 58.5, the Contractor will give the Authority written notice that no response has been provided by the Authority to the Contractor as required by Clause 58.5 and the Authority will provide within ten Business Days of receipt of such notice from the Contractor a written response to the Contractor in respect of such TP Outline Proposal as required by Clause 58.5. If the Authority does not provide a response to the Contractor within ten Business Days of receipt of the Contractor's notice the TP Outline Proposal will be deemed approved by the Authority.

59 THE TP USE PROPOSAL

- 59.1 The Contractor shall provide the Authority's Representative with a proposal in accordance with the requirements set out in Clause 59.2 (the "**TP Use Proposal**") at least thirty Business Days (or such alternative period as the Parties agree) prior to the proposed commencement of any Third Party Contract.
- 59.2 In addition to the details required in Clause 58.2 (The TP Outline Proposal), the TP Use Proposal shall also contain updates to any of the information provided in the TP Outline Proposal (if one has previously been submitted) and the following:
- 59.2.1 the Third Party Contract (including all related contractual documentation) the Contractor proposes to enter into in connection with the proposed Third Party Use; and
 - 59.2.2 sufficient detail of any planned works and/or changes in the Authority Sites; and
 - 59.2.3 details of the licence and/or lease agreement and contractual arrangements with the proposed Third Party, including boundaries, the tenure and all other terms of the licence and/or lease agreement and contractual arrangements for termination, Measures in a Crisis and Authority Step-In; and

- 59.2.4 the impact on the environment and ecology such Third Party Use may have and is likely to have on the Authority Sites, including the impact on animal or plant life; and
 - 59.2.5 details of any likely (or confirmation that there will be no) impact of the proposed Third Party Use on the structural and environmental stability of the Authority Sites; and
 - 59.2.6 details of any likely (or confirmation that there will be no) impact on security in the Authority Sites; and
 - 59.2.7 details of additional plant and utilities required and the impact (if any) that these may have on the existing plant and utilities; and
 - 59.2.8 whether planning permission or any other consents will be required for the proposed Third Party Use including details of any approvals or consents obtained (and where they are required the Contractor shall be responsible for securing the relevant planning or other Necessary Consents and shall indemnify the Authority from and against all liability for actions, claims, demands, costs, charges and expenses which may arise out of, or in consequence of the Contractor's failure to secure any required planning or Necessary Consents in relation to any Third Party Use(s)); and
 - 59.2.9 details of any (or confirmation that there will be no) impact on the Management Plans, Environmental Management Plan and Quality Plan; and
 - 59.2.10 details of any (or confirmation that there will be no) impact of the activity of the Contractor, Contractor Related Party, proposed Third Party Use or Third Party Contract on compliance with Legislation; and
 - 59.2.11 confirmation that the Third Party Use will not prevent or adversely affect or otherwise prejudice the Contractor's performance of its obligations in the Contract; and
 - 59.2.12 details of any (or confirmation that there will be no) impact on the provision of the Services such Third Party Use may have and is likely to have; and
 - 59.2.13 details of the anticipated Third Party Contract Gross Revenue and Third Party Contract Profit that will be generated by the Contractor or Contractor Related Party as a result of the proposed Third Party Contract; and
 - 59.2.14 details of the Assets to be used by the Contractor or Contractor Related Party or the proposed Third Party for the proposed Third Party Use; and
 - 59.2.15 details of insurance and indemnity proposed to be taken out or granted by the Contractor or Contractor Related Party or proposed Third Party in respect of the proposed Third Party Use; and
 - 59.2.16 any other details the Contractor reasonably considers relevant to assist the Authority in deciding whether or not to agree to the proposed Third Party Use or the proposed Third Party Contract.
- 59.3 If any of the TP Use Proposal requirements detailed in Clause 59.2 are not relevant to the proposed Third Party Use or the proposed Third Party Contract

the Contractor shall indicate this in the TP Use Proposal accompanied by a brief explanation.

59.4 The Authority's Representative shall give written confirmation of receipt ("**Confirmation of Receipt**") to the Contractor within two Business Days of receipt of a TP Use Proposal or of any response made by the Contractor to a Written Request made under Clause 59.6.

59.5 Where the Authority does not provide the Confirmation of Receipt in accordance with Clause 59.4, the Contractor may give the Authority written notice that the Contractor has not received the Confirmation of Receipt from the Authority as required by Clause 59.4 and the Authority shall provide such Confirmation of Receipt within two Business Days of receipt of such notice from the Contractor. If the Authority does not provide the Confirmation of Receipt within two Business Days of receipt of the Contractor's notice the Confirmation of Receipt will be deemed to have been given at the expiry of such two Business Day period.

59.6 The Authority's Representative shall provide a written response to any TP Use Proposal to the Contractor within twenty Business Days from the date of the relevant Confirmation of Receipt stating whether the Authority, acting reasonably in the circumstances:

59.6.1 approves the relevant TP Use Proposal; or

59.6.2 rejects the TP Use Proposal, providing reasons for the Authority's rejection save that if a Senior Civil Servant personally notifies the Contractor that the TP Use Proposal has been rejected on grounds of national security then the Authority shall be under no obligation to give further details of its reasons and its rejection shall be deemed to be reasonable for the purposes of this Clause 59.6; or

59.6.3 is unable to either approve or reject the TP Use Proposal and is submitting a written request to the Contractor for further relevant information from the Contractor's Representative ("**Written Request**").

59.7 Where the Authority's Representative does not provide a response in accordance with Clause 59.6, the Contractor may give the Authority written notice that no response has been provided by the Authority to the Contractor as required by Clause 59.6 and the Authority will provide within ten Business Days of receipt of such notice from the Contractor a written response to the Contractor in respect of such TP Use Proposal as required by Clause 59.6. If the Authority does not provide a response to the Contractor within ten Business Days of receipt of the Contractor's notice the TP Use Proposal will be deemed approved by the Authority.

59.8 Each TP Outline Proposal and TP Use Proposal is evaluated on its own merits and the approval or rejection of any TP Outline Proposal and/or TP Use Proposal shall not impact on the evaluation of future TP Outline Proposals and TP Use Proposals.

60 **THIRD PARTY INCOME SHARE**

60.1 The Contractor or Contractor Related Party shall be entitled to charge for, and be paid by, each person undertaking Third Party Use, a fee determined by the Contractor or Contractor Related Party. The share of income from Third Party Use accruing to the Authority ("**Third Party Income Share**") shall be calculated in accordance with Clause 60.2 and within thirty calendar days of receipt by the Contractor of such income.

- 60.2 Subject to Clause 60.3, the Third Party Income Share is calculated as the greater of:
- 60.2.1 [insert details]% of the Third Party Contract Gross Revenue, provided the Third Party Contract Profit is greater than zero. Where the Third Party Contract Profit is greater than zero but less than [insert details]% of the Third Party Contract Gross Revenue, all of the Third Party Contract Profit will be paid to the Authority; and
 - 60.2.2 [insert details]% of the Third Party Contract Profit,
- or such other amount as is agreed between the Contractor and the Authority.
- 60.3 For the purpose of calculating the Third Party Income Share the Third Party Contract Gross Revenue will exclude income received in respect of the Services at any of the Authority Sites.
- 60.4 The Contractor shall and shall procure that each Contractor Related Party shall:
- 60.4.1 not do anything the intention of which is to reduce or distort the amount of Third Party Contract Profit;
 - 60.4.2 not divert business which would ordinarily have gone through a Third Party Contract; and
 - 60.4.3 use all reasonable endeavours to maximise the Third Party Contract Profit,
- save that nothing in this Clause 60.4 shall prevent any Contractor Related Party receiving from the Contractor a fair and reasonable payment by way of consideration for works and/or services performed in any part of the Authority Sites made available for Third Party Use in order to improve the overall efficiency of or otherwise benefit the Third Party Business.
- 60.5 The Contractor undertakes to the Authority that, unless the prior written consent of the Authority has been obtained by the Contractor (such consent not to be unreasonably withheld or delayed):
- 60.5.1 no Contractor Related Party shall enter into a Third Party Contract;
 - 60.5.2 the Contractor or, where a Sub-Contractor enters into a Third Party Contract such Sub-Contractor, shall not make any acquisition or disposal (including group relief) of any material asset(s), including any sum of tax losses or asset transfer, which affects or otherwise prejudices or is likely to affect or otherwise prejudice the amount of the Authority's Third Party Income Share or any other right and/or benefit for the Authority arising from this PART 11 save to the extent expressly envisaged by the terms of this PART 11 and/or the terms of any Third Party Contract approved for execution by the Authority pursuant to and under the terms of this Clause 60.5 or otherwise expressly permitted by the terms of any Project Document to which the Authority is a party; and/or
 - 60.5.3 the Contractor or, where a Sub-Contractor enters into a Third Party Contract such Sub-Contractor, shall not make any payment or grant any financial benefit in connection with, whether by set-off or otherwise to any person, any Third Party Contract other than to the extent provided under any Third Party Contract approved for execution by the Authority pursuant to and under the terms of this Clause 60.5.

61 **APPROVED THIRD PARTY USE AND THIRD PARTY USE**

61.1 Provided that the Authority has granted approval of a TP Use Proposal in accordance with Clause 59.6 (The TP Use Proposal) (and set out in Schedule 12 (Permitted Use referred to in PART 11)) or approval has been deemed to have been given further to Clause 59.7 (The TP Use Proposal), the Contractor may enter into the related Third Party Contract but shall not otherwise enter into any Third Party Contract.

61.2 Provided that the Authority has granted approval of a TP Use Proposal in accordance with Clause 59.6 (The TP Use Proposal) or approval has been deemed to have been given further to Clause 59.7 (The TP Use Proposal):

61.2.1 the Authority and the Contractor shall enter into a TP Contract Lease; and

61.2.2 the Authority and the Contractor shall, and the Contractor shall procure that the Third Party shall, enter into a TP Contract Licence to Sublet.

61.3 The Contractor shall at all times and shall procure that each Third Party and Sub-contractor who is a party to a Third Party Contract shall at all times meet the following conditions in relation to such Third Party Contract:

61.3.1 each Specified Asset is used in the following order of priority:

- (a) Service Provision;
- (b) Third Party Use; and

61.3.2 the Third Party Use and the terms of the Third Party Contract are materially in accordance with the relevant TP Use Proposal; and

61.3.3 the relevant Third Party Use and Third Party Contract and the activities of the Contractor in connection therewith is in accordance with all applicable law (including Legislation); and

61.3.4 any amount in excess of £5,000 (five thousand pounds sterling) payable by the Contractor or Contractor Related Party directly or indirectly in connection with the entire arrangement (whether governed by one or more than one contractual document or instrument) shall be put out to public tender (such tender to be carried out in accordance with Good Industry Practice and all applicable law (including Legislation)) to at least two persons, at least one of whom must be a non-Contractor Related Party, unless otherwise agreed in writing by the Authority, such agreement not to be unreasonably withheld; and

61.3.5 the relevant Third Party Use or Third Party Contract will not impair the ability of the Contractor to provide the Services nor impede any of the Authority's statutory duties or other functions or its operational requirements; and

61.3.6 all relevant Regulatory Authorities have been consulted as necessary; and

61.3.7 no Government Furnished Assets are required for the relevant Third Party Use; and

61.3.8 the Approved Third Party adheres to the provisions of the Third Party Contract and TP Contract Lease which will include:

- (a) an obligation on the Contractor to comply with the following Clauses in the Contract so far as they relate to the premises which are the subject of the TP Contract Lease; and
- (b) an obligation on the Approved Third Party to comply with equivalent provisions so far as they relate to any sublet premises derived from the TP Contract Lease which are of identical effect to the following Clauses in the Contract,

the Clauses referred to above being Clause 78 (Measures in a Crisis), the Clauses comprising PART 20 (Security) and Clause 132 (Termination by the Authority); and

61.3.9 the relevant Third Party Contract is terminable in accordance with the terms of the TP Contract Lease; and

61.3.10 the relevant Third Party Contract is not changed, nor its terms altered in any way, without in each case the prior written consent of the Authority, where and to the extent that such change and/or alteration is likely to:

- (a) affect or otherwise prejudice the rights, remedies and/or interests of the Authority under the Contract and/or Project Documents; and/or
- (b) give rise to any risk for the Authority and/or any Authority Related Party,

any such change and/or alteration being a "**Risk Change**". The Parties agree that the Contractor may at any time make or agree to make any change or alteration to the terms of any Third Party Contract which is not a Risk Change; and

61.3.11 any term of any licence, lease or agreement in relation to the relevant Third Party Contract is operable at no cost to the Authority; and

61.3.12 the relevant Third Party Use or Third Party Contract does not have an adverse impact on any existing plant and utilities or payments to be made by the Authority; and

61.3.13 the relevant Third Party Use is compatible with the use of the Specified Assets or Authority Sites or Contractor Sites as required by the Authority pursuant to Schedule 1 (Authority's Requirements); and

61.3.14 satisfactory insurance and indemnities have been implemented and maintained; and

61.3.15 all tax and accounting losses (and any other potentially transferable assets) arising from or being used as part of Third Party Contracts are separately identifiable and shall be utilised to maximise the Third Party Income Share over the life of the Contract, unless specifically discussed and agreed with the Authority in advance; and

61.3.16 comply with the obligations and provisions of Clause 116 (Contractor's Information, Documents and Records) of the Contract in relation to each Third Party Contract as if it were the Contractor. Compliance with this obligation shall include:

- (a) the Contractor keeping wholly separable accounting records for the Third Party Contracts and being able to produce specific

management accounts / reports to fully evidence the revenue and costs contained in the Pro Forma. In particular the Contractor shall reference and fully reconcile the Third Party Contract Gross Revenue, Total Third Party Operating Costs (as broken down in accordance with the Pro Forma) and Third Party Contract Profit from the Pro Forma back to the Contractor's management accounts and / or underlying financial records (including separate ledger codes and individual receipts with a description of work performed and the company performing it) for the relevant Contract Year; and

- (b) the Contractor providing in respect of each Contract Year an annual report to the Authority in the format set out in the Pro Forma, such report to be submitted within thirty Business Days of the end of each Contract Year;
- (c) the Contractor splitting out and providing access for review to all relevant details in relation to all costs incurred or to be incurred by each Contractor Related Party, Associated Party and any other undertaking in connection with the Third Party Business for the relevant Contract Year for review by the Authority.

61.4 The Contractor shall in relation to any Third Party Contract approved by or on behalf of the Authority in connection with this PART 11 and entered into in connection with this PART 11:

61.4.1 require each Approved Third Party to notify the Contractor promptly if:

- (a) such Approved Third Party becomes an Unsuitable Third Party; or
- (b) such Approved Third Party's Approved Third Party Use involves any Prohibited Activity; and

61.4.2 promptly notify the Authority if the Contractor becomes aware of any matter identified in Clause 61.4.1, whereupon the Parties shall meet promptly to seek to agree what step(s) to take to remedy such issue(s), including whether the Contractor (or, as the case may be, Sub-contractor) should give notice under the terms of the relevant Third Party Contract to terminate such contract in accordance with its terms.

61.5 The Contractor undertakes to deliver to the Authority upon execution a true copy of each Third Party Contract and each and any such contract as amended by the parties thereto.

62 **AUTHORITY'S RIGHT TO TERMINATE**

62.1 Notwithstanding that the relevant Third Party Use is an Approved Third Party Use and the Third Party is an Approved Third Party, the Authority may by notice to the Contractor or Contractor Related Party (as applicable) terminate the relevant Third Party Use and Third Party Contract in accordance with the terms of the TP Contract Lease.

63 **PAYMENT OF THIRD PARTY INCOME SHARE**

63.1 The Contractor undertakes to or will procure that the Contractor Related Party shall provide a written notice to the Authority's Authorised Representative (the "**Third Party Income Notice**") within three months of the Review Date, the

Expiry Date and the Termination Date. The Third Party Income Notice shall contain for the preceding Contract Year:

- 63.1.1 the information identified in the Pro Forma, in the format set out in the Pro Forma; and
 - 63.1.2 supporting evidence for the calculations in accordance with the principles in Clause 116 (Contractor's Information, Documents and Records) and Clause 61.3.16; and
 - 63.1.3 where any Third Party Contracts and Third Party Contract Gross Revenues have been calculated on a basis other than rent per area leased the Contractor is to provide sufficient information (which as a minimum shall be the relevant information highlighted in the Pro Forma) to the Authority to enable the Authority to understand how the revenue generated from that Third Party Contract has been calculated; and
 - 63.1.4 the "**Total Third Party Income Share**", being the aggregate of the Third Party Income Share accruing to the Authority in respect of all Third Party Contracts; and
 - 63.1.5 where the Third Party Contract Gross Revenue exceeds £1,000,000 (one million pounds sterling), it is agreed that upon request from the Authority the Contractor will provide a cash flow statement for the Third Party Contracts setting out all revenues and costs incurred in undertaking the Third Party Contracts, the net cash position for the Third Party Contracts for the relevant Contract Year and a breakdown of the cumulative cash position on the Third Party Contracts to the date of request.
- 63.2 The Authority shall be entitled to dispute the amount of the Third Party Income Share by written notice to the Contractor within thirty Business Days ("**Income Share Dispute Notice**") of receipt of the Third Party Income Notice. If the Authority does not serve an Income Share Dispute Notice, the Third Party Income Notice shall be conclusive evidence of the Third Party Income Share. If the Authority does serve an Income Share Dispute Notice, the matter shall, in default of agreement, be resolved by reference to Clause 144 (Disputes).
- 63.3 The Third Party Income Share shall be paid to the Authority by way of reduction to the Monthly Unitary Payment in accordance with the provisions contained in Schedule 13 (Payment Mechanism).
- 63.4 If the payment or deduction of any amount referred to in Clause 63.3 is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with Clause 144 (Disputes).
- 64 **NO PARTNERSHIP OR AGENCY**
- 64.1 Nothing in this PART 11 is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties (including any Third Party), constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

PART 12 – PAYMENT AND BASE CASE (CORE CLAUSES)

65 BASE CASE

65.1 Information to be Shown on or Derivable from the Base Case

65.1.1 The Base Case shall be in computer spreadsheet form and shall show or permit to be derived the Contractor's:

- (a) cashflows including all expenditure, revenues, financing and taxation of the Project; and
- (b) profit and loss and balance sheets throughout the Contract Period.

65.1.2 The Base Case shall include details of all assumptions, calculations and methodology used together with any other documentation necessary fully to operate the model.

65.2 Submission of Revised Base Case

65.2.1 The Contractor shall submit a revised draft Base Case to the Authority's Representative in accordance with Schedule 19 (Project Management):

- (a) on adjustment of the Unitary Charge pursuant to PART 14 (Value for Money) or PART 18 (Changes and Change in Law); or
- (b) on the occurrence of a Compensation Event pursuant to Clause 75.3 (Effect of a Compensation Event); or
- (c) if there is a fundamental change to the Index and the Parties agree, pursuant to Schedule 19 (Project Management), to change the Index to another index or make adjustments to the Index; or
- (d) on any other change to the Base Case agreed between the Parties.

65.2.2 Whenever the Base Case is to be adjusted by reference to one of the events listed in Clause 65.2.1 this shall be carried out by the Contractor in consultation with the Authority's Representative to reflect the cumulative impact of any prior event listed in Clause 65.2.1 on the version of the Base Case applicable immediately prior to the relevant adjustment and to reflect the impact of the event in respect of which the adjustment is being undertaken. In calculating the Estimated Change in Project Costs and in assessing other adjustments to be made to the Base Case arising from the event in question the Contractor shall be entitled to take into account:

- (a) reasonable economic assumptions prevailing at the time; and
- (b) changes in the prospective technical performance of the Project arising as a result of the event in question,

provided that the Authority shall not be required (and the Contractor shall not be entitled) to take into account the financial impact of those risks which the Contractor bears under the terms of this Contract, including (to the extent so borne by the Contractor) changes in VAT

rates, taxation rates, RPI and the impact of Unavailability Deductions and Service Performance Deductions.

65.2.3 If it is necessary to amend the logic or formulae incorporated in the Base Case to permit adjustments to be made:

- (a) this shall be done to the extent necessary and in accordance with UK Generally Accepted Accounting Principles; and
- (b) this Base Case shall first be run as at the date immediately prior to amendment to ensure that the **key ratios (to include loan life cover and debt service ratios)** from the Base Case are maintained at no lower or no higher levels than the **key ratios (to include loan life cover and debt service ratios)** immediately after the amendment, and the difference in the **internal rate of return** after and immediately prior to amendment does not differ by more than five basis points (being zero point zero five percent) as shown in the resulting figure).

65.3 **Application to the Base Case**

65.3.1 Where, pursuant to this Contract, either Party is entitled to payment of any sum the assessment of which properly requires reference to the Base Case (with the exception of payment of the Authority's Share of any Refinancing Gain to which Clause 74 (Refinancing) shall apply), the adjustment to the Unitary Charge due shall be that required to ensure that, by reference to the Base Case adjusted under this Clause 65, the Contractor is left in no better and no worse position than under the version of the Base Case applicable immediately prior to the relevant adjustment, and shall be ascertained by determining the adjustment to the Unitary Charge required to maintain the financial position of the Contractor with that in which it would have been under the version of the Base Case applicable immediately prior to the relevant adjustment.

65.4 **Agreement of Base Case**

65.4.1 The Contractor shall submit the revised draft Base Case to the Authority's Representative for approval pursuant to Schedule 19 (Project Management). Such draft Base Case shall, when it is approved by the Authority (such approval not to be unreasonably withheld), become the Base Case for the purposes of this Contract until its further amendment in accordance with this Contract.

65.5 **Copies of the Revised Base Case**

65.5.1 Following any change to the Base Case under the provisions of this Clause 65, the Contractor shall promptly deliver a copy of the revised Base Case to the Authority's Representative in the same form as is established at the Commencement Date or in such other form as may be agreed between the Parties.

66 **PAYMENT PROVISIONS**

66.1 The Authority shall pay the Contractor the Unitary Charge in respect of each Payment Period, calculated in accordance with Schedule 13 (Payment Mechanism).

66.2 Report and Invoice

- 66.2.1 On the **first** Business Day of each Payment Period the Contractor shall submit to the Authority's Representative the **Relevant Form/delivery label²⁹** accompanied by a report (and all relevant evidence in accordance with Clause 116 (Contractor's Information, Documents and Records)) certified by the Contractor's Representative showing for the previous Payment Period the Monthly Unitary Payment and a breakdown of each item taken into account in calculating the Monthly Unitary Payment including Unavailability Deductions and/or Service Performance Deductions pursuant to Schedule 13 (Payment Mechanism).
- 66.2.2 If, under this Contract, the Authority is required to make payments other than the Monthly Unitary Payment to the Contractor, including:
- (a) any amounts payable and falling due in the previous Payment Period for a Compensation Event, other than by way of an adjustment to the Unitary Charge pursuant to Clause 75.3 (Effect of a Compensation Event); and
 - (b) if the Contractor has incurred Direct Losses and/or Indirect Losses in the previous Payment Period as a result of MIAC Required Action, any amounts payable to the Contractor pursuant to Clause 78.6 (Authority's Indemnity on Measures in a Crisis); and
 - (c) if the Authority is the Change Proposer of a Major Change which the Authority has withdrawn, any reasonable additional third party costs payable to the Contractor pursuant to Clause 86 (Step 4 – Confirmation or Withdrawal of the Notice of Change); and
 - (d) any amounts payable and falling due in the previous Payment Period, other than by way of an adjustment to the Unitary Charge pursuant to Clause 87 (Step 5 – Implementation of Changes) if the Authority has confirmed a Notice of Change pursuant to Clause 87.2 (Authority's Obligations); and
 - (e) any amounts payable to the Contractor pursuant to Clause 88 (Implementation of Urgent Changes) for the Contractor's costs incurred during the previous Payment Period as a result of implementing an urgent Change pursuant to Clause 88 (Implementation of Urgent Changes); and
 - (f) any amounts payable to the Contractor further to the Authority's indemnity under Schedule 15 Part 1 (TUPE, CONDO and Sponsored Reserves)); and
 - (g) any amounts payable to the Contractor under Clause 118.5 (Sharing of Exceptional Cost and Exceptional Saving) for an Insurance Review Procedure completed during the previous Payment Period; and
 - (h) any costs incurred by the Contractor in the previous Payment Period in reinstating, replacing or making good Authority

²⁹ The latter option is appropriate where the P2P system will be used.

Damage pursuant to Clause 122.5 (Costs of Reinstatement) during the previous Payment Period; and

- (i) any amounts payable to the Contractor in the previous Payment Period as a result of the Authority's indemnities pursuant to Clause 125.2 (Authority's Indemnity),

the **Relevant Form/delivery label**³⁰ shall be accompanied by a report (and all relevant evidence in accordance with Clause 116 (Contractor's Information, Documents and Records)) certified by the Contractor's Representative showing that such payments are due to the Contractor pursuant to this Contract.

66.3 Payment Approval/Receipting

66.3.1 Upon receipt of a valid **Relevant Form/delivery label**³¹, report and relevant evidence pursuant to Clauses 66.2.1 and/or 66.2.2, the Authority's Representative shall as soon as reasonably practicable either:

- (a) **complete and return the Relevant Form, showing Payment Approval, to the Contractor's Representative; or**³²
- (b) **enter the relevant details into the Authority's ordering Receipting and payment system (DECS P2P), indicating confirmation of performance of the Services ("Receipting")**³³; and/or
- (c) notify the Contractor's Representative that:
 - (i) the Authority is withholding **Payment Approval/Receipting** of all or any part of the amount claimed by the Contractor pursuant to Clause 67 (Disputed Amounts) giving reasons for withholding such Disputed Amounts; and
 - (ii) any undisputed amounts shall constitute a valid, properly completed claim for payment.

66.3.2 Following **Payment Approval/Receipting**, the Contractor shall submit all claims for payment to:

- (a) **the Authority's Bill Paying Branch, the address for which is set out in Clause 145.5 (Communications) using a properly completed DAB Form 10 and enclosing all Relevant Forms showing Payment Approval.**³⁴

OR

³⁰ The latter option is appropriate where the P2P system will be used.

³¹ The latter option is appropriate where the P2P system will be used.

³² This option is appropriate where the P2P system will not be used.

³³ This option is appropriate where the P2P system will be used.

³⁴ This option is appropriate where the P2P system is not used.

(b) the Authority, using a properly prepared message structure and format for an invoice in accordance with the arrangements set out or referenced in the electronic transaction agreement reference number [insert details]. The Contractor shall provide this reference number as soon as practicable after the Commencement Date.³⁵

66.4 Payment

66.4.1 Subject to Clause 67 (Disputed Amounts), the Authority shall, on or before the Relevant Day, pay the amount stated in any valid, properly completed claim for payment (which shall include any undisputed amounts notified to the Contractor's Representative pursuant to Clause 66.3.1(c)) submitted to the Authority's Bill Paying Branch/Authority³⁶ in accordance with Clause 66.2 (Report and Invoice).

66.4.2 Notwithstanding any statement to the contrary on the Relevant Form/delivery label, Payment Approval/Receipting 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 either under this Contract or otherwise.

66.4.3 If the Authority's Representative's notice or Relevant Form/delivery label submitted in accordance with Clause 66.3 (Payment Approval/Receipting) shows a net amount owed by the Contractor to the Authority, the Contractor shall pay that amount to the Authority within fifteen Business Days of the invoice or, at the option of the Authority's Representative, carry forward that amount to its next report as a reduction of amounts that would otherwise have been owed by the Authority to the Contractor.

66.4.4 The Authority's Bill Paying Branch shall make payment to the Contractor of all valid claims submitted for payment in accordance with the terms and conditions of the Contract by means of the Bankers Automated Clearing Service (BACS) directly into the Contractor's nominated bank account. To facilitate payment by means of the BACS system, the Contractor shall provide to the Authority's Bill Paying Branch in advance of the submission of valid claims, if it has not done so by the Effective Date, details of the name and address of its bank, the sort code and account number.

67 DISPUTED AMOUNTS

67.1 The Authority may withhold payment of any amount it believes the Contractor is not entitled to pursuant to this Contract ("**Disputed Amount**") pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount but shall pay any undisputed amounts on or before the Relevant Day.

67.2 Within five Business Days following receipt by the Contractor's Representative of any notice served by the Authority's Representative pursuant to Clause 66.3 (Payment Approval/Receipting), the Contractor's Representative shall respond by notifying the Authority's Representative as to whether or not it agrees with the statements made in that notice and the grounds for such agreement or

³⁵ This option is appropriate where the P2P system will be used.

³⁶ The latter option is appropriate where the P2P system will be used.

disagreement. If the Contractor indicates that it does agree, or if the Contractor's Representative fails to make such a response within that time limit, the Authority shall be entitled:

- 67.2.1 to retain on a permanent basis any amounts withheld pursuant to Clause 67.1; and
 - 67.2.2 to reclaim from the Contractor the amount of any over-payment which may have been made to the Contractor together with interest on any such amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which the over-payment was made until that amount has been paid in full and whether before or after judgement.
- 67.3 If the Contractor's Representative responds pursuant to Clause 67.2 that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to Clause 66.3 (Payment Approval/Receipting), the matter or matters in question shall be determined under Clause 144 (Disputes).
- 67.4 If the determination of any Dispute conducted pursuant to Clause 144 (Disputes) shows that:
- 67.4.1 the Authority has withheld any amount which the Contractor was entitled to be paid; or
 - 67.4.2 the Contractor has claimed under Clause 66.3 (Report and Invoice) any amount which it was not entitled to be paid,

the Authority shall, where Clause 67.4.1 applies, pay such amount to the Contractor or the Contractor shall, where Clause 67.4.2 applies, repay to the Authority any such amount paid, with interest in each case on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made (in the case of failure to pay by the Authority) or from the date on which over payment was made (in the case of excessive claims by the Contractor) until all relevant monies have been paid in full and whether before or after judgement.

68 **VAT ON PAYMENTS**

- 68.1 The amounts due under this Contract exclude any UK VAT and any similar EU (or non-EU) taxes chargeable on the supplies of the Assets and/or the Services by the Contractor to the Authority.
- 68.2 If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of his business activities at the time of any supply, and the circumstances of any supply are such that the Contractor is liable to pay the tax due to HM Revenue and Customs ("**HMRC**"), the Authority shall pay to the Contractor in addition to the Unitary Charge (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supplies of the Assets and/or the Services, and all other payments under this Contract according to the law at the relevant tax point. If there is any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain and pass to the Authority's Representative a formal ruling from HMRC.
- 68.3 Where supplies of the Assets and/or the Services come within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for

assessing and paying over directly to HMRC any UK output VAT due in respect of the articles and/or services.

68.4 Where the Assets and/or the Services are deemed to be supplied to the Authority outside the UK, the Contractor may be required by the laws of the country where the supply takes place to register there for EU (or non-EU) turnover or similar tax. In that event, the Authority shall pay to the Contractor in addition to the Unitary Charge (and any other sum due to the Contractor under this Contract) a sum equal to the output, turnover or similar tax chargeable on the tax value of the relevant turnover which is payable by the Contractor to the tax authorities of the country in question.

68.5 For the avoidance of doubt, the Authority shall not be required to pay any sum in respect of the Contractor's input VAT (and/or similar EU and non-EU input taxes) in relation to the Assets and/or the Services supplied under this Contract.

69 RIGHTS OF SET-OFF

69.1 The Contractor shall not be entitled to retain or set-off any amount due to the Authority by it, but the Authority may (subject to Clause 142.2 (Set-off on Termination)) retain or set-off any amount owed to it by the Contractor under this Contract which has fallen due and payable against any amount due to the Contractor under this Contract.

69.2 If the payment or deduction of any amount referred to in Clause 69.1 is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with Clause 144 (Disputes).

70 INTEREST ON LATE PAYMENT

70.1 Except if otherwise specifically provided, where any payment or sum of money due from the Contractor to the Authority or from the Authority to the Contractor under any provision of this Contract is not paid within thirty Business Days of the due date, it shall bear interest thereon at the Prescribed Rate from the due date (whether before or after any judgement) until actual payment and it is agreed between the Parties that the Prescribed Rate and the provisions of this Contract relating to the payment of compensation on termination of this Contract following the occurrence of an Authority Default provide the Contractor with a substantial remedy pursuant to Sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

71 INDEXATION

71.1 On the first and each subsequent anniversary of the Indexation Review Date, the Unitary Charge shall be adjusted for the forthcoming Contract Year in accordance with Schedule 13 (Payment Mechanism).

PART 13 – PAYMENT WHERE ASSET PROVISION INVOLVES CONSTRUCTION OPERATIONS (OPTIONAL CLAUSES)

72 CONSTRUCTION INDUSTRY TAX DEDUCTION SCHEME

72.1 Definitions

72.1.1 This PART 13 relates to the construction industry tax deduction scheme and in this PART 13 (but not otherwise):

"the **Act**" means the Finance Act 2004;

"the **CIS**" means the construction industry scheme as provided for in the Act and Regulations;

"**contractor**" means a person who is a contractor for the purposes of the Act and the Regulations;

"**deduction**" means any amount required to be withheld under the CIS, at either the standard rate or the higher rate as determined by HMRC from time to time, by the Authority as a "contractor" from payments to the Contractor as "sub-contractor" under the CIS;

"**evidence**" means such evidence as is required by the Regulations to be produced to a contractor in order to verify a sub-contractor's registration status;

"**the Regulations**" means the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045);

"**sub-contractor**" means a person who is a sub-contractor for the purposes of the Act and the Regulations; and

"the **verification process**" or "to **verify**" means the verification process as referred to in Section 69 of the Act and Regulation 6 of the Regulations.

72.2 Not later than fifteen Business Days before the first payment under this Contract is due to be made to the Contractor or at such other time as the Authority is required to carry out a verification process in accordance with Regulation 6 of the Regulations the Contractor shall provide the Authority with the information specified in Regulation 6(2) of the Regulations to enable the Authority to verify the status of the Contractor under the CIS.

72.3 If the Contractor fails to provide the information specified in Regulation 6(2) of the Regulations in accordance with Clause 72.2 above, the Authority shall within ten Business Days of the Contractor submitting such evidence notify the Contractor in writing that it intends to make the statutory deduction from payments due under this Contract to the Contractor and give its reasons for that decision, and thereupon Clause 72.6 shall apply.

72.4 The Authority shall, as soon as practicable, commence the verification process in relation to the Contractor as a "sub-contractor" under the CIS.

72.5 Following the completion of the verification process by HMRC, the Authority shall promptly notify the Contractor in writing of the result of the verification process and the amount, if any, of the required deduction.

- 72.6 The Authority shall be entitled to make a deduction at the rate specified by order made under Section 61(2) of the Act or at such other rate as may be in force from time to time from the payment to the Contractor as, in accordance with Section 61(1) of the Act, is not shown to represent the direct cost to the Contractor or to any other person of materials used or to be used in carrying out the construction operations to which the contract under which the payment is to be made relates unless prior to making such payment the Authority shall have received written confirmation from HMRC (obtained by and at the expense of the Contractor) in a form which is reasonably satisfactory to the Authority directing the Authority to make the deduction against only a specified amount or proportion of any such payment to the Contractor.
- 72.7 The Contractor shall promptly inform the Authority in writing if its circumstances change in relation to its CIS registration.
- 72.8 The Authority will make any change to the level of deduction, if any, required on written request from HMRC and shall promptly notify the Contractor in writing of any change to the level of deduction.
- 72.9 The Authority shall, as a "contractor" in accordance with the Regulations, send promptly to HMRC a monthly return which it is required to file by virtue of Regulation 4 of the Regulations.
- 72.10 Irrespective of whether the Authority is entitled to make gross payments to the Contractor, the Authority will provide the Contractor with a statement of payments and deductions no later than fourteen days following the end of each tax month in accordance with Regulation 4 of the Regulations.
- 72.11 Where any error or omission has occurred in calculating or making any deduction then:
- 72.11.1 in the case of an over deduction, the Authority shall correct that error by repayment of the sum over deducted to the Contractor; and
 - 72.11.2 in the case of an under deduction, the Contractor shall correct that error or omission by repayment of the sum over deducted to the Authority.
 - 72.11.3 if compliance with this PART 13 involves the Authority or the Contractor in not complying with any other of the terms of this Contract, then the provisions of this PART 13 shall prevail.

PART 14 – VALUE FOR MONEY (CORE CLAUSES)

73 VALUE FOR MONEY REVIEW

73.1 The Contractor recognises that the Authority needs to be satisfied that the Unitary Charge represents good value for money for the provision of the Services throughout the Contract Period and understands that the Authority will conduct a review of value for money (including the appropriateness of the relevant index or indices specified for the purposes of Clause 71 (Indexation)) on each VFM Review Date.

73.2 Prior to the first VFM Review Date, the Contractor shall set up the VFM Bank Account. Interest on any deposits in the VFM Bank Account shall be deemed to be part of the balance of the VFM Bank Account for the purposes of this PART 14.

73.3 The Authority will conduct such review in consultation with and with the participation of the Contractor. To this end, the Contractor agrees:

73.3.1 to lend reasonable assistance to the Authority in conducting such review; and

73.3.2 to provide such information as may be reasonably requested by the Authority for the purposes of such review; and

73.3.3 to discuss with the Authority's Representative the actual or likely conclusions of any such review; and

73.3.4 to consider and negotiate in good faith any proposals for variations to the Contract which the Authority reasonably believes will materially improve the value for money which accrues to the public sector under the Contract, while preserving a fair and reasonable return of profit for the Contractor and its Shareholders.

73.4 Contractor's Provision of Details of Actual Equity IRR

73.4.1 As soon as practicable following each VFM Review Date the Contractor shall, at its cost, provide the Authority's Representative with the calculation of the Actual Equity IRR using a financial model which is identical to the Base Case except that it contains figures only up to the VFM Review Date. The figures shall be adjusted to reflect the actual cashflows properly and necessarily incurred for the purposes of the Project excluding:

(a) any revenues and costs (whether direct costs or apportioned overheads) in respect of Third Party Use; and

(b) any part of any cost that should properly be allocated to activities other than the Project; and

(c) any cost which was not incurred, properly, on an arm's length basis and in the normal course of business; and

(d) any gains made by the Contractor as a direct result of any changes in exchange rates; and

(e) any Refinancing Gain,

together with details of its assumptions to allow the Authority to review and agree the calculation in accordance with Clause 73.5 (Authority's Review of Actual Equity IRR).

73.4.2 The Contractor's provision of details of its Actual Equity IRR pursuant to Clause 73.4.1 shall be accompanied by a statement from the Contractor's auditors certifying that:

- (a) the calculation is an accurate reflection of the amounts in the Contractor's accounting books and records in relation to the Contract and consistent with relevant information in the Contractor's audited accounts for the periods included (or, in respect of any period for which audited accounts are not available, the draft financial statements); and
- (b) that the principles and methodology for compiling the actual out-term cashflow are consistent with those used in the Base Case.

73.5 Authority's Review of Actual Equity IRR

73.5.1 The Authority's Representative shall, within thirty Business Days of receipt of the Contractor's details of its Actual Equity IRR pursuant to Clause 73.4.1 (Contractor's Provision of Details of Actual Equity IRR), notify the Contractor's Representative that it either:

- (a) accepts the Contractor's calculation of the Actual Equity IRR provided under Clause 73.4.1 (Contractor's Provision of Details of Actual Equity IRR); or
- (b) appoints an independent auditor (the identity of whom shall be agreed by the Parties or, in default of agreement, nominated by the President of the Institute of Chartered Accountants on the application of either Party) to determine the Actual Equity IRR for each VFM Review Date. The costs of the independent auditor shall be borne equally by the Parties.

73.5.2 If, within thirty Business Days of receipt of the Contractor's details of its Actual Equity IRR pursuant to Clause 73.4.1 (Contractor's Provision of Details of Actual Equity IRR):

- (a) the Authority does not notify the Contractor that it rejects the Contractor's calculation of the Actual Equity IRR; or
- (b) the Authority has not appointed an auditor pursuant to Clause 73.5.1(b),

then the Authority will be deemed to accept the Contractor's calculation of its Actual Equity IRR.

73.6 Excess IRR

73.6.1 If and to the extent that the Contractor achieves an Actual Equity IRR, as determined in accordance with Clause 73.5 (Authority's Review of Actual Equity IRR), in excess of the Threshold Equity IRR (such excess being the "**Equity IRR Excess**"), the Contractor shall, within thirty Business Days of the later of the VFM Review Date and the date on which such amount is agreed or determined, pay into the VFM Bank

Account a proportion of the Equity IRR Excess (the "**Authority's VFM Payment**") calculated in accordance with the formula below:

Actual Equity IRR–Threshold Equity IRR = Equity IRR Excess *
Authority's VFM Share (in bands as per Table below) = Authority's VFM
Payment

Equity IRR Excess (expressed as a Authority's VFM Share
percentage above the Threshold
Equity IRR)

0 to **x** percent [insert details] percent

x percent to **y** percent [insert details] percent

y percent to **z** percent [insert details] percent

More than **z** percent [insert details] percent

73.7 Adjustment of VFM Bank Account after the VFM Review Date

73.7.1 If, on the second or subsequent VFM Review Dates, the Actual Equity IRR is less than the Threshold Equity IRR, then the balance of the VFM Bank Account shall be adjusted by a payment to the Contractor which has the effect that, following such payment, the Actual Equity IRR equals the Threshold Equity IRR provided that such payment shall not reduce the balance in the VFM Bank Account below zero.

73.8 Adjustment of VFM Bank Account on Termination or Expiry

73.8.1 Not later than **thirty** Business Days after the earlier of the Termination Date and the Expiry Date, the Contractor shall carry out a final value for money review in accordance with Clauses 73.4.1 (Contractor's Provision of Details of Actual Equity IRR) and 73.5 (Authority's Review of Actual Equity IRR) for the purposes of adjustment of the cumulative Authority's VFM Payment.

73.8.2 The balance in the VFM Bank Account shall be adjusted such that:

- (a) if the Actual Equity IRR is less than the Threshold Equity IRR, then a payment shall be made to the Contractor which has the effect that, following such payment, the Actual Equity IRR equals the Threshold Equity IRR provided that such payment shall not reduce the balance in the VFM Bank Account below zero; or
- (b) the Contractor shall pay the Authority's VFM Payment into the VFM Bank Account in accordance with Clause 73.6.1 if the Actual Equity IRR is greater than the Threshold Equity IRR; or
- (c) if following the payment to the Contractor pursuant to Clause 73.8.2(a), or a payment by the Contractor into the VFM Bank Account pursuant to Clause 73.8.2(b) there is a credit balance in the VFM Bank Account, then the Authority shall be paid the balance of monies in the VFM Bank Account.

73.8.3 All payments to the Contractor or the Authority pursuant to this PART 14 may only be made by withdrawals from the VFM Bank Account provided that no such payments shall reduce the balance in the VFM Bank Account below zero. If the balance in the VFM Bank Account is insufficient at any given time to make a payment pursuant to this PART 14, the right to receive such payment by either Party shall be reduced to a right to receive payment only of the credit balance in the VFM Bank Account.

73.9 Failure to Agree

73.9.1 Except as provided in Clause 73.5.1(b) (where the decision of the independent auditor shall be final and binding on the Parties), if the Parties cannot agree any matter arising under this PART 14, it shall be determined in accordance with Clause 144 (Disputes).

PART 15 – REFINANCING (CORE CLAUSES)

74 REFINANCING OBLIGATIONS

74.1 Notifiable Financing

- 74.1.1 The Contractor's Representative shall promptly provide the Authority's Representative with full details of any proposed Qualifying Refinancing including a copy of the proposed financial model relating to it (if any) and the basis for the assumptions used in the proposed financial model. The Authority shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over any financial model and documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with that Refinancing whether the Refinancing is a Qualifying Refinancing or not.
- 74.1.2 The Contractor shall obtain the Authority's Representative's prior written consent to any Qualifying Refinancing and both the Authority and the Contractor shall at all times act in good faith with regard to any (a) Refinancing or (b) any potential or proposed refinancing under Clause 74.5 (Authority Right to Request Refinancing).
- 74.1.3 Without prejudice to the other provisions of this Clause 74, the Contractor shall:
- (a) notify the Authority of all Notifiable Financings on becoming aware of the same and again when they are entered into and provide full details of the same; and
 - (b) include a provision in the Financing Agreements (other than Subordinated Financing Agreements) whereby the Contractor is entitled to be informed of any proposals which the Senior Lenders may have to refinance the Financing Agreements (other than Subordinated Financing Agreements).

74.2 Share of Gain

- 74.2.1 The Authority and the Contractor shall negotiate in good faith to agree, pursuant to Schedule 19 (Project Management), the basis and method of calculation of the Refinancing Gain and payment of the Authority's share of the Refinancing Gain (taking into account how the Authority has elected to receive its share of the Refinancing Gain under Clause 74.4 (Receipt of Gain)). If the Contractor and the Authority fail to agree the basis and method of calculation of the Refinancing Gain or the payment of the Authority's share, the dispute shall be determined in accordance with Clause 144 (Disputes).
- 74.2.2 The Authority shall be entitled to receive:
- (a) a fifty percent share of any Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of £1,000,000 (one million pounds sterling); and
 - (b) a sixty per cent share of any further Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous

Qualifying Refinancings) a Refinancing Gain of £3,000,000 (three million sterling), and

- (c) a seventy per cent share of any other Refinancing Gain arising from a Qualifying Refinancing.

74.2.3 The Authority shall not withhold or delay its consent to a Qualifying Refinancing to obtain a greater share of the Refinancing Gain than that specified in Clause 74.2.2.

74.3 **Costs**

74.3.1 The Refinancing Gain shall be calculated after taking into account the reasonable and proper professional costs that each Party directly incurs in relation to the Qualifying Refinancing and on the basis that all reasonable and proper professional costs incurred by the Authority shall be paid to the Authority by the Contractor within twenty Business Days of any Qualifying Refinancing.

74.4 **Receipt of Gain**

74.4.1 The Authority shall have the right to elect to receive its share of any Refinancing Gain as either:

- (a) a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing; or
- (b) a reduction in the Unitary Charge over the remainder of the Contract Period; or
- (c) any combination of the choices in Clauses 74.4.1(a) and 74.4.1(b).

74.5 **Authority right to request Refinancing**

74.5.1 If the Authority (acting reasonably) considers the funding terms generally available in the market to be more favourable than those reflected in the Financing Agreements (other than Subordinated Financing Agreements), the Authority may, by notice in writing to the Contractor, require the Contractor to request potential funders to provide terms for a potential Refinancing (a "**Refinancing Notice**").

74.5.2 The Refinancing Notice shall set out in reasonable detail the grounds upon which the Authority believes such funding terms to be available. The Contractor and Authority shall meet to discuss the Refinancing Notice within twenty eight days. Such a meeting will consider the evidence available to both Parties about the availability of funding terms for a potential Refinancing. The Authority shall be entitled to withdraw the Refinancing Notice at or before such a meeting, or within ten days following the meeting.

74.5.3 If the Authority serves a Refinancing Notice which is not withdrawn pursuant to Clause 74.5.2, then the Contractor shall:

- (a) act promptly, diligently and in good faith with respect to the potential Refinancing;
- (b) use all reasonable endeavours to obtain the most favourable available terms from existing and/or new lenders for any

potential Refinancing (provided that the Contractor shall not be required to propose refinancing in a manner which a prudent board of directors of a company operating the same business in the United Kingdom to that operated by the Contractor, in similar circumstances, would not approve), for the avoidance of doubt also being terms which are likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of Clause 74.3 (Costs); and

- (c) either:
 - (i) as soon as reasonably practicable after receipt of the Refinancing Notice, provide to the Authority (i) full details of the proposed Refinancing, including a financial model and the basis for the assumptions used in the financial model and evidence to the reasonable satisfaction of the Authority that these assumptions represent the most favourable available terms for the potential Refinancing on the basis set out in Clause 74.5.3(b) and (ii) initial drafts of any changes to this Contract including in relation to potential compensation on termination which might be required to give effect to the proposed Refinancing; or
 - (ii) if the Contractor (acting reasonably) believes that it is not possible to obtain funding terms which are more favourable than those reflected in the Financing Agreements (other than Subordinated Financing Agreements) in accordance with the requirements of Clause 74.5.3(a) provide evidence to the reasonable satisfaction of the Authority for such belief and evidence to the reasonable satisfaction of the Authority that the Contractor has complied with its obligations in Clauses 74.5.3(a) and Clause 74.5.3(b).

74.5.4 Following receipt of the information referred to in Clause 74.5.3(c)(i), the Authority shall (in its absolute discretion) either:

- (a) instruct the Contractor to implement the proposed Refinancing; or
- (b) instruct the Contractor to discontinue the proposed Refinancing,

provided that if the Authority reasonably considers that the requirements of Clause 74.5.3(c)(i) have not been satisfied, the Authority may require the Contractor to satisfy its obligations under Clause 74.5.3(c)(i) whereupon the provisions of Clauses 74.5.3 and 74.5.4 shall apply as if the Authority had served a Refinancing Notice.

74.5.5 If the Authority instructs the Contractor to implement the proposed Refinancing:

- (a) the Contractor shall, as soon as reasonably practicable, use all reasonable endeavours to procure that such proposed Refinancing is implemented;
- (b) such proposed Refinancing shall be deemed to be a Qualifying Refinancing; and

- (c) the provisions of Clauses 74.1 (Notifiable Refinancing) to 74.4 (Receipt of Gain) shall apply.

74.5.6 If:

- (a) the Authority instructs the Contractor to discontinue the potential Refinancing pursuant to Clause 74.5.4(b); or
- (b) the requirements of Clause 74.5.3(c)(ii) are satisfied,

then, the Authority shall reimburse the Contractor for the reasonable and proper professional costs incurred by the Contractor in relation to the potential Refinancing, such costs to be paid to the Contractor by the Authority within twenty days after receipt of a valid invoice in respect of such amount. Such costs shall not include any internal management costs incurred by the Contractor except insofar as (i) it can be demonstrated to the reasonable satisfaction of the Authority that such costs have been incurred in place of professional costs which would in the normal course of such business have been paid to third parties and (ii) the Authority has, by prior written agreement, approved the use of such internal management resource.

- 74.5.7 The Authority shall be entitled to issue a Refinancing Notice under Clause 74.5.1 at any time but not more than once in any two-year period. For the avoidance of doubt, a Refinancing Notice that has been withdrawn under Clause 74.5.2 has been issued for the purpose of this Clause 74.5.7.

PART 16 – SUPERVENING EVENTS AND MEASURES IN A CRISIS (CORE CLAUSES)

75 COMPENSATION EVENTS

75.1 If, as a direct result of the occurrence of a Compensation Event:

75.1.1 the Contractor is unable to achieve Service Commencement on or before the Planned Services Commencement Date for a Service Level or, following the Planned Services Commencement Date for a Service Level, the Long Stop Date for that Service Level; or

75.1.2 the Contractor is unable to comply with its obligations under this Contract; or

75.1.3 the Contractor incurs costs or loses revenue,

then the Contractor is entitled to apply for an extension of time to the Planned Services Commencement Date or, following the Planned Services Commencement Date for a Service Level, the Long Stop Date for that Service Level and/or relief from its obligations and/or to claim compensation under this Contract.

75.2 Procedure for Compensation Event Claims

75.2.1 Subject to Clause 75.4 (Late Provision of Notice or Information), to obtain an extension of time and/or relief and/or claim compensation the Contractor must:

(a) as soon as practicable, and in any event within twenty Business Days after it became aware that the Compensation Event has caused or is likely to cause delay, breach of an obligation under this Contract and/or the Contractor to incur costs and/or lose revenue, notify the Authority's Representative of its claim for an extension of time to the Planned Services Commencement Date for the relevant Service Level and/or payment of compensation and/or relief from its obligations under this Contract; and

(b) as soon as practicable, and in any event within ten Business Days of service on the Authority's Representative of the notice referred to in Clause 75.2.1(a), notify the Authority's Representative of full details of the Compensation Event and the extension of time and/or relief from its obligations and/or any Estimated Change in Project Costs and/or loss of revenue claimed; and

(c) demonstrate to the reasonable satisfaction of the Authority's Representative that:

(i) the Compensation Event was the direct cause of the Estimated Change in Project Costs and/or loss of revenue and/or delay in the achievement of the Planned Services Commencement Date for a Service Level or, following the Planned Services Commencement Date for a Service Level, the Long Stop Date for that Service Level, and/or breach of the Contractor's obligations under this Contract; and

(ii) the Estimated Change in Project Costs and/or loss of revenue, time lost, and/or relief from the obligations

under this Contract claimed, could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice.

75.3 Effect of a Compensation Event

75.3.1 If the Contractor has complied with its obligations under Clause 75.2 (Procedure for Compensation Event Claims), then:

- (a) in the case of a delay, the Planned Services Commencement Date for the Service Level, or, following the Planned Service Commencement Date for the Service Level, the Long Stop Date for that Service Level, shall be postponed by such time as shall be reasonable for such a Compensation Event, taking into account the likely effect of the delay; and
- (b) in the case of an additional cost being incurred or revenue being lost by the Contractor:
 - (i) on or before the Services Commencement Date for the Service Level; or
 - (ii) as a result of Capital Expenditure being incurred by the Contractor at any time,

the Authority shall compensate the Contractor for the actual Estimated Change in Project Costs as adjusted to reflect the actual costs reasonably incurred and, without double counting, for revenue actually lost (to the extent it could not reasonably have been mitigated) pursuant to Clause 66.2 (Report and Invoice); and

- (c) in the case of a payment of compensation for the actual Estimated Change in Project Costs and/or without double counting, loss of revenue as a result of Capital Expenditure being incurred by the Contractor referred to in Clause 75.3.1(b)(ii) but which reflects a change in the Operating Expenditure and, without double counting, loss of revenue being incurred by the Contractor after the relevant Services Commencement Date, the Authority shall compensate the Contractor in accordance with Clause 75.3.2 by an adjustment to the Unitary Charge; and
- (d) the Authority shall give the Contractor such relief from its obligations (including relief from Unavailability Deductions and/or Service Performance Deductions) under this Contract as is reasonable for such a Compensation Event.

75.3.2 Any payment of compensation referred to in Clause 75.3.1(c) shall be calculated using the Base Case.

75.4 Late Provision of Notice or Information

75.4.1 If the information required by Clause 75.2 (Procedure for Compensation Event Claims) is provided after the dates referred to in that Clause, then the Contractor shall not be entitled to any extension of time, compensation or relief from its obligations under this Contract during the period for which the relevant information is delayed.

75.5 Failure to Agree

75.5.1 If the Parties cannot agree pursuant to Schedule 19 (Project Management) the extent of any compensation, delay incurred, relief from the Contractor's obligations under this Contract, or the Authority disagrees that a Compensation Event has occurred (or as to its consequences), or that the Contractor is entitled to relief under this Clause 75, the Parties shall resolve the matter in accordance with Clause 144 (Disputes).

76 RELIEF EVENTS

76.1 If, and to the extent that, a Relief Event:

76.1.1 is the direct cause of a failure by the Contractor to achieve Service Commencement on or before the Planned Services Commencement Date for a Service Level or, following the Planned Service Commencement Date for a Service Level, the Long Stop Date for that Service Level; or

76.1.2 adversely affects the ability of the Contractor to perform any of its obligations under this Contract,

then the Contractor shall be entitled to apply for relief from any rights of the Authority arising under Clause 132.1.2 and/or 132.1.3 (Termination by the Authority) and its obligations under this Contract, provided that the provisions of this Clause 76 shall be subject to the provisions of PART 17 (Authority Step-In).

76.2 Procedure for Relief Event Claims

76.2.1 To obtain relief the Contractor must:

- (a) as soon as practicable, and in any event within **ten** Business Days after it becomes aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Contractor to perform its other obligations notify the Authority's Representative of its claim for relief from its obligations under this Contract, including full details of the nature of the Relief Event, the date of occurrence and its likely duration; and
- (b) within five Business Days of service on the Authority's Representative of the notice referred to in Clause 76.2.1(a), notify the Authority's Representative of full details of the relief claimed; and
- (c) demonstrate to the reasonable satisfaction of the Authority that:
 - (i) the Contractor and its sub-contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure; and

- (ii) the Relief Event directly caused the delay in achieving the Planned Services Commencement Date for a Service Level or, following the Planned Services Commencement Date for a Service Level, delay in achieving Services Commencement by the Long Stop Date for that Service Level and/or the need for relief from obligations under this Contract; and
 - (iii) the time lost and/or relief from the obligations under this Contract claimed could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice, without incurring material expenditure; and
 - (iv) the Contractor is using reasonable endeavours to perform its obligations under this Contract; and
- (d) notify the Authority's Representative if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

76.3 Effect of a Relief Event

76.3.1 Following a Relief Event, the Authority may step-in to this Contract, pursuant to the provisions of Clause PART 17 (Authority Step-In) to continue the provision of any Specified Service affected by the Relief Event or to provide a service which is as close as is reasonably possible to the affected Specified Service and/or to reinstate or replace any Specified Asset which has been damaged or destroyed by the Relief Event.

76.3.2 If the Contractor has complied with its obligations under Clause 76.2 (Procedure for Relief Event Claims), then:

- (a) the Planned Services Commencement Date for a Service Level or, following the Planned Service Commencement Date for a Service Level, the Long Stop Date for that Service Level, shall be postponed by such time as shall be reasonable for such Relief Event, taking into account the likely effect of delay; and/or
- (b) subject to Clause 80.4 (Effect of Step-In on a Relief Event), the Authority shall not be entitled to exercise its right to terminate this Contract for Contractor Default under Clause 132.1.2 (Termination by the Authority); and/or
- (c) subject to Clause 76.4 (No Relief from Deductions), the Authority shall give such other relief as has been requested by the Contractor.

76.4 No Relief from Deductions

76.4.1 Nothing in Clause 76.3 (Effect of a Relief Event) shall affect any entitlement to make Unavailability Deductions and/or Service Performance Deductions pursuant to Schedule 13 (Payment Mechanism) during the period in which the Relief Event is subsisting provided that

any such deductions shall be disregarded for the purposes of the Authority's right to terminate this Contract for a Contractor Default.

76.5 Late Provision of Notice or Information

76.5.1 If the information required by Clause 76.2 (Procedure for Relief Event Claims) is provided after the dates referred to in that Clause, then the Contractor shall not be entitled to any relief during the period for which the information is delayed.

76.6 Failure to Agree

76.6.1 If the Parties cannot agree pursuant to Schedule 19 (Project Management) the extent of the relief required, or the Authority disagrees that a Relief Event has occurred or that the Contractor is entitled to any extension to any Planned Services Commencement Date or Long Stop Date and/or relief from other obligations under this Contract, the Parties shall resolve the matter in accordance with Clause 144 (Disputes).

77 FORCE MAJEURE EVENTS

77.1 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

77.2 As soon as practicable following such notification, the Parties shall, pursuant to Schedule 19 (Project Management), consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.

77.3 Effect of a Force Majeure Event

77.3.1 The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Contractor shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

77.3.2 No Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and the Affected Party is prevented from carrying out obligations by that Force Majeure Event. Without prejudice to Clauses 77.3.3 or 77.3.4, the Authority shall not be entitled to terminate this Contract for Contractor Default to the extent that such Contractor Default arises from a Force Majeure Event.

77.3.3 Nothing in Clause 77.3.2 shall affect the Authority's entitlement to make Unavailability Deductions or Service Performance Deductions in the period during which the Force Majeure Event is subsisting.

77.3.4 Either Party may terminate this Contract pursuant to the provisions of Clause 133 (Termination on a Force Majeure Event or on Uninsurability).

77.4 Cessation of Force Majeure Event

77.4.1 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification this Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

78 MEASURES IN A CRISIS

78.1 If, at any time, the Authority believes, in its sole opinion, that there exist any of the circumstances identified in Clause 78.2, the Authority's Representative may issue a written notice to the Contractor's Representative of such belief.

78.2 The circumstances referred to in Clause 78.1 are where, in view of:

78.2.1 the national interest, the requirements of national security, or the occurrence of a state of transition to war, war or other emergency (whether or not involving hostilities); and/or

78.2.2 a request to the Authority by a local authority, public body, or statutory corporation for assistance in relation to the occurrence or possible occurrence of a major accident, crisis or natural disaster; and/or

78.2.3 a request by NATO, the United Nations, the European Union or any other country for support and assistance in relation to international obligations,

it is necessary, appropriate, or desirable for the Authority to take all or any of the measures described in Clause 78.4 (Effect of Implementation of Measures in a Crisis) and/or 78.5 (Authority's Overriding Rights).

78.3 Measures in a Crisis shall cease to apply when the Authority's Representative issues a written notice to that effect to the Contractor's Representative and thereafter the Contractor shall continue to be bound by the provisions of this Contract.

78.4 Effect of Implementation of Measures in a Crisis

78.4.1 If the Authority's Representative has issued the notice contemplated in Clause 78.1:

(a) the Authority's Representative may require the Contractor, within such period as the Authority's Representative in its sole discretion specifies (but provided that such period is reasonable taking into account all relevant circumstances), to provide such information in the possession, knowledge or control of the Contractor as the Authority's Representative may, in its sole discretion, require including information relating to all or any of the following matters:

(i) Asset Provision and/or Service Provision and/or any Third Party Use currently being carried out by the Contractor; and/or

(ii) Asset Provision and/or Service Provision and/or any Third Party Use to be carried out by the Contractor (and

due to commence within a period specified by the Authority); and/or

- (iii) the Contractor's current deployment of its employees whether inside or outside the Authority Sites; and/or
- (iv) all supporting equipment and documentation currently held by the Contractor and the location of such equipment and documentation,

and the Contractor shall promptly and diligently comply fully with the requirement to provide such information.

78.4.2 Upon providing the Authority's Representative with the information requested pursuant to Clause 78.4 (Effect of Implementation of Measures in a Crisis), or upon expiry of the period specified by the Authority for the supply of such information, the Contractor shall, upon being so requested by the Authority's Representative, discuss in good faith with the Authority's Representative any matters which the Authority, in its sole opinion, may consider relevant or appropriate to any proposals the Authority may have for the reallocation of priorities for, or for the reorganisation of, Asset Provision and/or Service Provision carried out, or to be carried out, by the Contractor. These shall be in order to deal with the circumstances which gave rise to the issuing of a notice pursuant to Clause 78.1, including the following matters:

- (a) the revision (including the early completion, suspension or cancellation) of any Asset Provision and/or Service Provision for the Authority; and
- (b) the early completion, suspension, or permanent cessation of any Third Party Use; and
- (c) the immediate implementation of new services,

and the Parties shall endeavour, as far as reasonably possible, to reach agreement as a matter of urgency on such matters.

78.5 Authority's Overriding Rights

78.5.1 Notwithstanding any provision to the contrary in this Contract, and notwithstanding that any of the measures described in Clause 78.4 (Effect of Implementation of Measures in a Crisis) may not have been taken, required to be taken, or have been completed, the Authority may, at any time and in its sole discretion step-in to this Contract, pursuant to Clause 80 (Authority Step-In) and/or the Authority's Representative may instruct the Contractor:

- (a) to accelerate to early completion, to suspend, or to cease permanently, any part of the Services carried out by the Contractor for third parties, to remove (permanently or temporarily) the property of third parties from any Authority Site and to procure that any such action is carried out on terms with such parties which result in the least possible Loss to the Contractor; and
- (b) to accelerate to early completion or to suspend Asset Provision and/or Service Provision; and

- (c) to carry out any changes whatsoever to this Contract required by the Authority without reference to PART 18 (Changes and Change in Law) of this Contract; and
- (d) to deploy its employees and all Specified Assets or rights used in connection with the Specified Assets or to use, or make available for use by the Authority or as directed by the Authority, all such Specified Assets or rights in accordance with the Authority's directions,

and the Contractor shall promptly and diligently comply with any instruction issued by the Authority's Representative referred to in this Clause 78.5.

78.6 Authority's Indemnity on Measures in a Crisis

78.6.1 If the Authority has stepped-in to this Contract pursuant to Clause 80.1.3 (Authority Step-In – Measures in a Crisis), and/or the Authority's Representative has instructed the Contractor in accordance with Clause 78.5 (Authority's Overriding Rights), the provisions of Clause 80.3 (Effect of Step-In Without Contractor Breach) shall apply and then:

- (a) for so long as and to the extent that the provisions of Clause 78.4 (Effect of Implementation of Measures in a Crisis) or any instruction issued by the Authority's Representative pursuant to Clause 78.5 (Authority's Overriding Rights) ("**MIAC Required Action**") prevents the Contractor from providing all or any part of Asset Provision and/or Service Provision, the Contractor shall be relieved from its obligations to provide such part of Asset Provision and/or Service Provision; and
- (b) in respect of the period in which the Authority is taking the MIAC Required Action and provided that the Contractor complies with its obligations under Clause 78.4 (Effect of Implementation of Measures in a Crisis) or Clause 78.5 (Authority's Overriding Rights), then:
 - (i) in respect of the period in which the Authority is taking the MIAC Required Action and provided that the Contractor provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent incremental costs are incurred), the Unitary Charge due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Services affected by the MIAC Required Action in full over that period; and
 - (ii) subject to Clause 126 (Conduct of Indemnity Claims);
 - (1) the Authority shall indemnify the Contractor against any Direct Losses from any claim or action for damages by a third party against the Contractor arising out of the MIAC Required Action; and/or
 - (2) the Authority shall further indemnify the Contractor against any reasonable Indirect Losses which it proves it has suffered in

relation to contracts with third parties by reason of the MIAC Required Action or the provision of services to the Authority by reason of the MIAC Required Action.

PART 17 – AUTHORITY STEP-IN (CORE CLAUSES)

79 INTERPRETATION

79.1 In this PART 17 references to the Authority taking action shall be deemed to include references to the Authority procuring the taking of action by others on behalf of the Authority.

80 AUTHORITY STEP-IN

80.1 If the Authority reasonably believes that it needs to take action in connection with the Services:

80.1.1 because a serious risk exists to the health or safety of persons or property or to the environment; and/or

80.1.2 to discharge a statutory duty; and/or

80.1.3 because the Authority invokes Measures in a Crisis; and/or

80.1.4 following a Relief Event, to continue the provision of any Specified Service affected by the Relief Event or to provide a service which is as close as is reasonably possible to the affected Specified Service and/or to reinstate or replace any Specified Asset which has been damaged or destroyed by the Relief Event,

then the Authority shall be entitled to take action in accordance with this PART 17.

80.2 Procedure for Authority Step-In

80.2.1 If Clause 80.1 applies and the Authority wishes to take action, the Authority's Representative shall notify the Contractor's Representative of the following:

- (a) the action it wishes to take; and
- (b) the reason for such action; and
- (c) the date it wishes to commence such action; and
- (d) the time period which it believes shall be necessary for such action; and
- (e) to the extent practicable, the effect on the Contractor and its obligation to carry out Asset Provision and/or Service Provision during the period such action is being taken.

80.2.2 Following service of such notice, the Authority shall take such action as notified under Clause 80.2.1 and any consequential additional action as it reasonably believes is necessary (together, the "**Required Action**") and the Contractor shall give all reasonable assistance to the Authority while it is taking the Required Action.

80.3 Effect of Step-In Without Contractor Breach

80.3.1 If the Contractor is not in breach of its obligations under this Contract and the Authority exercises its right to take action in connection with the Service pursuant to Clauses 80.1.1, 80.1.2 and/or 80.1.3:

- (a) then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing all or any part of Asset Provision and/or Service Provision, the Contractor shall be relieved from its obligations to provide such part of Asset Provision and/or Service Provision; and
- (b) in respect of the period in which the Authority is taking the Required Action and provided that the Contractor provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent incremental costs are incurred), the Unitary Charge due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period; and
- (c) if the Authority's Representative has issued the notice contemplated in Clause 78.1 (Measures in a Crisis), the Authority's indemnity as set out in Clause 78.6 shall continue to apply.

80.4 Effect of Step-In on a Relief Event

80.4.1 If the Authority exercises its right to take action in connection with the Services pursuant to Clause 80.1.4 and in order properly to take the Required Action, it would be necessary for the Authority to incur Capital Expenditure greater than £[insert amount] then the Authority shall have thirty Business Days from the service of its written notice under Clause 80.2 (Procedure for Authority Step-In) to elect to terminate this Contract in accordance with Clause 132.1.6 (Termination by the Authority) and Clause 76.3 (Effect of a Relief Event) shall not apply during such period.

80.4.2 If, pursuant to Clause 80.4.1:

- (a) the Authority has no right to terminate this Contract; and/or
- (b) the Authority has not elected to terminate this Contract; and/or
- (c) the thirty Business Day period has not elapsed,

then for so long and to the extent that the Required Action is taken and this prevents the Contractor from providing all or any part of Asset Provision and/or Service Provision, the Contractor shall be relieved from its obligations to provide such part of Asset Provision and/or Service Provision and in respect of the period in which the Authority is taking Required Action, the Unitary Charge due from the Authority to the Contractor in any Payment Period shall equal:

$UC - (OpEx + CapEx)$

where:

UC = the Unitary Charge that would have been payable in such Payment Period if the Contractor had been satisfying all its obligations and providing the Service affected by the Required Action in full for that Payment Period;

OpEx = the Authority's Operating Expenditure incurred during that Payment Period in taking the Required Action (and, if the Authority has procured the Required Action from a contractor other than the Contractor, OpEx shall be limited to the OpEx that would have been incurred by such other contractor acting in accordance with Good Industry Practice);

CapEx = the Authority's Capital Expenditure incurred during that Payment Period in taking the Required Action less any such Capital Expenditure deducted from the Unitary Charge in any previous Payment Period (and, if the Authority has procured the Required Action from a contractor other than the Contractor, CapEx shall be limited to the CapEx that would have been incurred by such other contractor acting in accordance with Good Industry Practice),

and provided that the Unitary Charge payable to the Contractor in any Payment Period shall never be less than the amount necessary to enable to Contractor to meet its debt service obligations pursuant to the Senior Financing Agreements.

80.5 Other Consequences of Step-In Following a Relief Event

80.5.1 If the Authority has stepped-in to this Contract on a Relief Event and, as part of the Required Action has reinstated all or part of the Specified Assets then:

- (a) the Contractor's Representative shall notify the Authority's Representative within twenty Business Days of receipt of the amount of any insurance proceeds received under any Physical Damage Policy pursuant to Clause 121.2 (Joint Insurance Account) whether or not paid into the Joint Insurance Account pursuant to Clause 121.2 (Joint Insurance Account); and
- (b) if, by reason of such reinstatement effected as part of the Required Action, the amount notified under Clause 80.5.1(a) is less than the Authority's deduction for its Capital Expenditure incurred in such reinstatement from the Unitary Charge pursuant to Clause 80.4 (Effect of Step-In on a Relief Event), then the Authority shall pay into the Joint Insurance Account an amount equal to any shortfall between the amount the Authority has deducted from the Unitary Charge for its Capital Expenditure incurred in such reinstatement pursuant to Clause 80.4 (Effect of Step-In on a Relief Event) and the amount notified under Clause 80.5.1(a). Such payment shall be made within twenty Business Days of receipt of notification under Clause 80.5.1(a).

80.6 Effects of Step-In Following Contractor Breach

80.6.1 If the Contractor is in breach of its obligations under this Contract and in consequence the Authority exercises its right to take action in connection with the Services pursuant to this Clause 80:

- (a) then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing Asset Provision and/or Service Provision, the Contractor shall be relieved from its obligations to provide such part of Asset Provision and/or Service Provision; and
- (b) in respect of the period in which the Authority is taking Required Action, the Unitary Charge due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Service affected by the Required Action in full over that period, less an amount equal to all the Authority's Operating Expenditure in taking the Required Action.

81 AUTHORITY STEP-OUT

81.1.1 The Authority's Representative may at any time during the period of the Required Action notify the Contractor's Representative that the Authority wishes to cease the Required Action and the date on which it intends to cease the Required Action.

81.1.2 On receipt of the Authority's Representative's notification pursuant to Clause 80.1.1, the Parties shall consult with each other as to the method by which the Authority shall cease the Required Action pursuant to Schedule 19 (Project Management).

81.1.3 On the date on which the Required Action ceases:

- (a) the Authority will be released from all of its obligations and liabilities in relation to the Required Action arising prior to the cessation of the Required Action other than its obligations to pay the Contractor pursuant to this PART 17; and
- (b) the Contractor shall resume all or any part of Asset Provision and/or Service Provision which was the subject of the Required Action.

PART 18 – CHANGES AND CHANGE IN LAW (CORE CLAUSES)

82 STEP 0–INITIAL ENGAGEMENT OF THE PARTIES

82.1 Consideration of a Change

- 82.1.1 Following the Commencement Date, the Parties will co-operate and collaborate at least annually to undertake an assessment of all factors that could affect the Authority's Requirements to assess their impact and the potential for Change.
- 82.1.2 The Authority (subject to any national security constraints on the Authority) and the Contractor will also co-operate and collaborate to ensure that each Party has early notification of the possibility of a Change.
- 82.1.3 If the Authority is considering proposing any Change to this Contract it will notify the Contractor of its proposals (a "**Notice of Possible Future Change**") as soon as reasonably practicable. The Authority will involve the Contractor as early as is practicable in the development of the specification of the Change to solicit input from the Contractor and/or the relevant Contractor Related Parties for the detail specification and to provide sufficient detail to enable the Contractor to respond to the notice further to Clause 82.2 (Rough Order of Magnitude Estimate).
- 82.1.4 Any Notice of Possible Future Change served by the Authority pursuant to Clause 82.1.3 shall be serially numbered in the date order of being raised and recorded. A Notice of Possible Future Change number shall not be re-used even if a Notice of Possible Future Change is cancelled or withdrawn. The Contractor shall register the Notice of Possible Future Change on an Index and maintain configuration control of the Index of Possible Future Notices of Change.
- 82.1.5 Subject to Clause 84.14 (Change Refusals), the Contractor may also make a proposal to the Authority for any Change which would improve the effectiveness, availability, efficiency, economy and/or quality of the Services.

82.2 Rough Order of Magnitude Estimate

- 82.2.1 The Contractor shall consider the Notice of Possible Future Change served by the Authority pursuant to Clause 82.1.3, or develop the proposal envisaged at Clause 82.1.5, and provide a non-binding rough order of magnitude estimate of the potential impact of the Change on, where relevant in each case:
- (a) the cost of the Project to the Authority;
 - (b) the programme for provision of the Assets or timing for provision of the Services;
 - (c) the ability of the Contractor to perform its obligations under the Project Documents;
 - (d) the risk profile of the Project, and
 - (e) an outline statement of work,

within twenty Business Days of the Authority issuing its notice pursuant to 82.1.1.

- 82.2.2 As soon as practicable after the Authority's Representative receives the non-binding rough order of magnitude estimate from the Contractor pursuant to Clause 82.2.1, the Parties shall discuss such estimate for the purpose of assisting the preparation of a Notice of Change in accordance with Clause 83 (STEP 1 – Preparing the Notice of Change).
- 82.2.3 If, following the Parties' discussion pursuant to Clause 82.2.2, either Party wishes to proceed with a Change it shall follow the process in Clauses 83 (STEP 1 – Preparing the Notice of Change) to 87 (STEP 5 – Implementation of Changes).
- 82.2.4 If during, or on completion of, Step 0 – Initial Engagement of the Parties the Authority chooses not to proceed with a Change no compensation shall be payable by the Authority to the Contractor for any work carried out in relation to Step 0 – Initial Engagement of the Parties.

83 STEP 1–PREPARING THE NOTICE OF CHANGE

83.1 Change Initiation

- 83.1.1 If either Party wishes to propose a Change (including in relation to a Change in Law that is shortly to occur), regardless of whether or not the Step 0 – Initial Engagement of the Parties set out in Clause 82 (STEP 0 – Initial Engagement of the Parties) has occurred, such Party (the "**Change Proposer**") shall initiate the procedure detailed in this PART 18 by sending a notice to the other Party (the "**Change Recipient**") in the form set out in Schedule 14 Part 1 (Documents and Data referred to in PART 18) ("**Notice of Change**").
- 83.1.2 The Notice of Change shall be serially numbered in the date order of being raised and recorded. A Notice of Change number shall not be re-used even if a Notice of Change is cancelled or withdrawn. The Contractor shall register the Notice of Change on an Index and maintain configuration control of the Index of Notices of Change.
- 83.1.3 Any deletion of or amendment, alteration or addition to an obligation of the Contractor which is initiated by the Contractor and which:
 - (a) is the result of any obsolescence, error, fault or failure in any part of the Services and has no effect on the Services and does not diminish, reduce, or adversely affect any of the Contractor's obligations under this Contract, or increase the costs, risks or liabilities of the Authority; and
 - (b) is not an Administrative Change, a Minor Change, Medium Value Change, a Major Change, an Urgent Change or a Change in Law,

shall not require the Authority's consent but the Contractor shall notify the Authority of the occurrence of such deletion, amendment, alteration or addition at the same time as it submits the Monthly Performance Report in respect of any month in which such deletion, amendment, alteration or addition occurs. The Contractor shall be liable for all costs arising from the implementation of such deletion, amendment, alteration or addition. The Contractor shall keep up to date records of such

deletion, amendment, alteration or addition and shall make such records available on reasonable request for the Authority's inspection.

83.2 Classification of the Change

83.2.1 The Change Proposer shall identify by ticking the appropriate box(es) in Section 1 (REQUEST FOR CHANGE) of the Notice of Change that it considers that the Change is:

- (a) necessary to comply with a Change in Law; and/or
- (b) an Administrative Change, a Minor Change, a Medium Value Change or a Major Change,

as applicable.

83.2.2 A Change which is necessary to comply with a Change in Law shall also be designated in accordance with Clause 83.2.1 as either an Administrative Change, a Minor Change or a Higher Value Change as appropriate.

83.3 Details of the Change

83.3.1 Subject to Clause 83.3.2, the Change Proposer shall include in Section 1 (REQUEST FOR CHANGE) of the Notice of Change sufficient detail to:

- (a) enable the Change Recipient to determine whether the Change is necessary to comply with a Change in Law and/or is an Administrative Change, a Minor Change, a Medium Value Change or a Major Change; and
- (b) enable the Contractor to provide the Estimate pursuant to Clause 84.4 (Matters to be Covered in the Administrative Change Estimate), 84.6 (Matters to be Covered in the Minor Change Estimate) or 84.9.4 (Matters to be Covered in the Higher Value Change Estimate), as the case may be.

83.3.2 If the Authority is the Change Proposer of a Higher Value Change, it shall set out in Section 1 (REQUEST FOR CHANGE) of the Notice of Change ("**Authority Stage 1 Notice**") (where reasonably practicable):

- (a) if applicable whether it intends to pay the Contractor through milestone payments the Capital Expenditure involved in implementing the Higher Value Change or whether it requires the Contractor to use its reasonable endeavours to obtain funding in accordance with Clause 84.12 (Funding for Higher Value Changes);
- (b) if applicable, affordability thresholds for the proposed asset provision or services comprising the relevant Higher Value Change;
- (c) if applicable, an output specification of the proposed variation to the Asset Provision Requirements, in the same format and with similar detail as that provided in the Asset Provision Requirements wherever possible, and where not possible, in sufficient detail to allow the outline design and indicative pricing of a solution to the Higher Value Change;

- (d) if applicable, a specification of the proposed variation to the Service Provision Requirements, in the same format with similar detail as that provided in the Service Provision Requirements wherever possible and, where not possible, in sufficient detail to allow the indicative pricing of the required variation to the Service Provision Requirements);
- (e) the location for the asset provision and/or services required, no longer required or to be modified (as applicable);
- (f) the timing of the asset provision and/or services required, no longer required or to be modified (as applicable);
- (g) whether the Contractor is expected to provide maintenance and/or lifecycle services in respect of any additional assets.

83.3.3 If the Authority is the Change Proposer of a Major Change, it shall also indicate in the Authority Stage 1 Notice (where reasonably practicable):

- (a) an outline risk allocation matrix setting out the Authority's preferred risk profile in respect of the Major Change; and
- (b) the time period for submission of the Contractor's report (a "**Contractor Stage 1 Response**") which shall be reasonable, taking into account the complexity of the Major Change and, in any event, shall not be less than thirty Business Days.

84 STEP 2 – PREPARING THE ESTIMATE

84.1 Failure to Agree the Classification of the Change

84.1.1 If, further to Clause 83.2.1 (Classification of the Change), the Party that is not the Change Proposer does not agree with the classification of the Change, it shall advise the Change Proposer within five Business Days of receipt of the Notice of Change outlining its reasons for disagreement.

84.1.2 If the Parties cannot agree whether a Change is necessary to comply with a Change in Law, and/or is an Administrative Change, a Minor Change, a Medium Value Change or a Major Change, the Parties shall resolve the matter in accordance with Clause 144 (Disputes).

84.2 Overriding Principle of the Estimate

84.2.1 If the Contractor **is not** the Change Proposer, the Estimate shall be prepared with the objective that (save for the benefits of the Change) the Parties are in no better and no worse position in relation to the Project than they would have been in if such Change had not been implemented.

84.2.2 If the Contractor **is** the Change Proposer, the Estimate shall be prepared with the objective that, having first deducted the costs incurred by the Contractor in implementing the Change (which shall be met by the Contractor), if there is any decrease in the Contractor's costs or those of a Sub-contractor, this shall be shared **equally** between the Parties, and the Authority's share of such decrease shall be reflected in a decrease in the Unitary Charge so that (save for the benefits of the Change) the Parties are in no better and no worse position in relation to the Project

than they would have been in if such Change had not been implemented.³⁷

84.3 Administrative Changes

84.3.1 If the Contractor is the Change Proposer of an Administrative Change, it shall also complete Section 2 (CONTRACTOR'S ESTIMATE) of the Notice of Change and submit the Notice of Change to the Authority.

84.3.2 If the Authority is the Change Proposer of an Administrative Change, then, subject to Clause 84.14 (Change Refusals), the Contractor shall complete Section 2 (CONTRACTOR'S ESTIMATE) of the Notice of Change and return the Notice of Change to the Authority within **ten** Business Days of the Contractor's receipt of the Notice of Change in respect of such Administrative Change.

84.3.3 In each case, the completed Section 2 of the Notice of Change shall be the "**Administrative Change Estimate**".

84.4 Matters to be Covered in the Administrative Change Estimate

84.4.1 The Administrative Change Estimate shall set out the steps which the Contractor proposes to take to implement the Administrative Change and the consequences of the Administrative Change, giving such level of detail as is reasonable and appropriate having regard to the nature of the Administrative Change.

84.4.2 The Contractor shall not request and shall not receive an increase to the Unitary Charge for an Administrative Change as the costs of implementing such Changes are included in the Unitary Charge.

84.5 Minor Changes

84.5.1 If the Contractor is the Change Proposer of a Minor Change, it shall also complete Section 2 (CONTRACTOR'S ESTIMATE) of the Notice of Change and submit the Notice of Change to the Authority.

84.5.2 If the Authority is the Change Proposer for a Minor Change, then, subject to Clause 84.14 (Change Refusals), the Contractor shall complete Section 2 (CONTRACTOR'S ESTIMATE) of the Notice of Change and return the Notice of Change to the Authority within **ten** Business Days of the Contractor's receipt of the Notice of Change in respect of such Minor Change.

84.5.3 In each case, the completed Section 2 (CONTRACTOR'S ESTIMATE) of the Notice of Change shall be the "**Minor Change Estimate**".

84.6 Matters to be Covered in the Minor Change Estimate

84.6.1 The Minor Change Estimate shall set out the steps which the Contractor proposes to take to implement the Minor Change and the consequences of the Minor Change, giving such level of detail as is reasonable and appropriate having regard to the nature of the Minor Change including,

³⁷ Clause 84.2 uses a varied concept of "no better and no worse" to that set out in Clause 2.3 (No Better and No Worse) as it reflects the fact that the Parties may want the Change to, for example, affect the Contractor's ability to comply with the Contract. In such a case the more limited "no better and no worse" concept under Clause 2.3 (No Better and No Worse), intended for use in preparing revised Base Cases, would not be appropriate as it may ignore intended benefits of the Change.

where relevant, the Contractor's opinion on any of the matters set out below:

- (a) whether relief from compliance with the Contractor's obligations is required, including its obligations to achieve a Planned Services Commencement Date and/or meet the Service Provision Requirements and/or the Service Availability Requirements during or as a result of the implementation of the Minor Change; and
- (b) any Necessary Consent which must be obtained or amended for the Minor Change to be implemented; and
- (c) if the Minor Change is necessary to comply with a Change in Law, any necessary Change in the Services; and
- (d) any impact on Asset Provision and/or Service Provision not covered elsewhere in the Minor Value Change Estimate; and
- (e) any amendment required to this Contract and/or any amendment to a Project Document, Ancillary Document or Financing Agreement as a result of the Minor Change and not covered elsewhere in the Minor Change Estimate; and
- (f) any other effects of the Minor Change including interference in the relationship of the Authority with third parties, **reduction or increase in the residual value of the Specified Assets** or material effects on the risks or costs to which either Party is exposed; and
- (g) any loss of or increase in revenue (whether for Third Party Use or otherwise) that will result from the Minor Change; and
- (h) the proposed timing of the Minor Change, so as to minimise any inconvenience to the Authority; and
- (i) the Contractor's opinion on the proposed method of certification of the Minor Change (if not covered by the procedures specified in PART 7 (Testing, Commissioning and Service Availability)); and
- (j) the Estimated Change in Project Costs resulting from the Minor Change, applying the Minor Rates and principles of Clause 84.11 (Value for Money of the Estimate); and
- (k) any approval required from insurers,

provided that, subject to Clause 84.14 (Change Refusals), the Estimate shall show such Estimated Change in Project Costs and/or Capital Expenditure for the account of the Authority and/or the Contractor in accordance with the table set out in Clause 84.11 (Value for Money of the Estimate).

84.7 Major Changes – Preliminary Work

84.7.1 Where the Authority is the Change Proposer the provisions of this Clause 84.7 shall apply. Subject to Clause 84.14 (Change Refusals) the Contractor shall liaise with the Authority in developing a Contractor Stage 1 Response. The Authority will provide to the Contractor such

information as to its requirements as the Contractor may reasonably require and shall assist the Contractor in the review of any draft designs in relation to the Contractor Stage 1 Response. Any and all information and other input or feedback provided by the Authority to the Contractor shall, unless expressly stated otherwise by the Authority, be provided without warranty and shall be without prejudice to the Authority's rights under this PART 18.

84.7.2 The Contractor shall submit the Contractor Stage 1 Response within the period specified in the Authority Stage 1 Notice (or if no time is specified within thirty Business Days).

84.7.3 The Contractor Stage 1 Response shall include (where applicable), but not be limited to, the following information which shall contain sufficient detail to enable the Authority to make an informed decision pursuant to Clause 84.7.5 and shall take account of the Authority's affordability thresholds, if any, set out in the Authority Stage 1 Notice:

- (a) an outline programme for implementation of the Major Change including time periods for design, development, Authority review of the design, anticipated dates of any applications for Necessary Consents (including planning applications) and time periods for the provision and training of staff; and
- (b) a broad indication of the impact of carrying out and implementing the Major Change on the provision of the Services and in particular whether relief from compliance with any obligations set out in this Contract is likely to be required, including the obligations of the Contractor to meet the performance regime during the implementation of the Major Change; and
- (c) an outline of the Estimated Change in Project Costs that will result from implementing the Major Change, taking into account any Capital Expenditure that is required or no longer required as a result of the Change; and
- (d) an indication of any Capital Expenditure that is required or no longer required as a result of the Major Change and where the Authority has specified pursuant to Clause 83.3 (Details of the Change) in the relevant Authority Stage 1 Notice that the Contractor shall raise financing for the Major Change, the steps the Contractor has or will take to secure such financing; and
- (e) an estimate of any loss of, or increase in, Third Party Contract Gross Revenue, Third Party Contract Profit and Third Party Income Share that may result from the Major Change³⁸;
- (f) the proposed Project Management Fee which shall be a capped fee calculated in accordance with Clause 84.8 (Project Management Fee);
- (g) a budget (or budgets) together with a capped fee³⁹ for third party costs and details of the third party activity likely to be

³⁸ This may not be relevant for all projects

³⁹ See Clause 86.4.3. A process for agreeing or signing off these costs must be agreed.

incurred by the Contractor such as third party advice, the carrying out of surveys, obtaining Necessary Consents, independent certification and the Senior Lenders carrying out due diligence that may be required to be completed prior to agreement of the Major Change, together with a proposed process for approval of such costs by the Authority before they are incurred;

- (h) a summary of any amendments required to this Contract or any Project Document or the Financing Agreements as a result of the Major Change; and
- (i) a value for money assessment explaining why the Contractor's proposals represent value for money taking into account both the proposed Capital Expenditure and Whole Life Cost.

84.7.4 The Authority shall consider in good faith the Contractor Stage 1 Response. If the Authority finds any material aspects of the Contractor Stage 1 Response to be unsatisfactory, it shall notify the Contractor of the same and offer reasonable assistance to the Contractor to enable it to address such deficiencies and resubmit the Contractor Stage 1 Response as soon as reasonably practicable.

84.7.5 The Authority shall, within thirty Business Days of receipt of the Contractor Stage 1 Response (or, where this has been amended pursuant to Clause 84.7.4, the amended Contractor Stage 1 Response), confirm in writing to the Contractor that either:

- (a) the Contractor should proceed with developing an Estimate pursuant to Clause 84.9 (Major Changes) (an "**Authority Stage 1 Confirmation**"), and the agreed Project Management Fee; or
- (b) the Authority withdraws the relevant Notice of Change. No compensation (including payment of any part of the Project Management Fee) shall be paid to the Contractor by the Authority if the relevant Notice of Change is withdrawn at this stage.

84.7.6 If the Authority serves an Authority Stage 1 Confirmation, the Authority shall pay to the Contractor the Project Management Fee due further to Clause 84.8 (Project Management Fee) within twenty Business Days of receipt of a valid invoice for the agreed sum submitted by the Contractor.

84.7.7 Where Clause 84.14 (Change Refusals) applies and the Contractor refuses to implement the Change, then no compensation (including payment of any part of the Project Management Fee) shall be paid to the Contractor by the Authority.

84.8 **Project Management Fee**

84.8.1 The Contractor may charge a Project Management Fee for the time incurred by its employees in project managing the development, procurement and implementation of a Major Change. The Project Management Fee shall:

- (a) be based on actual time spent (validated by timesheet records); and

- (b) be calculated at the daily rates as set out in Section 5 (Project Management Fee) of Schedule 14 Part 3 (Documents and Data referred to in PART 18) but capped at the sum set out in the Contractor Stage 1 Response; and
- (c) not include the time of any person who is not an employee of the Contractor; and
- (d) not include any mark-up or profit cost or additional overheads; and
- (e) be paid in two stages as follows:
 - (i) on the Authority issuing an Authority Stage 1 Confirmation; and
 - (ii) on the Authority signing Sections 4 and 5 of the Notice of Change (as modified if appropriate) pursuant to Clause 86.2.1, withdrawing the Notice of Change pursuant to Clause 86.2.2 or on the Notice of Change being deemed to have been withdrawn pursuant to Clause 86.3,

and at each stage, the Contractor shall charge (subject to the applicable cap) only for the time incurred by its staff up to completion of that stage.

84.9 Higher Value Changes – Providing the Estimate

84.9.1 If the Contractor is the Change Proposer of a Higher Value Change, it shall also complete Section 2 (CONTRACTOR'S ESTIMATE) of the Notice of Change and submit the Notice of Change to the Authority.

84.9.2 If the Authority is the Change Proposer of a Higher Value Change then, subject to Clause 84.14 (Change Refusals) and, in the case of Major Changes, issue of an Authority Stage 1 Confirmation, the Contractor shall complete Section 2 (CONTRACTOR'S ESTIMATE) of the Notice of Change and, for a Major Change return the Notice of Change to the Authority within the time period specified in the Authority Stage 1 Confirmation (or if no time is specified, within **sixty** Business Days of receipt of the Authority Stage 1 Confirmation), or, for a Medium Value Change, within **ten** Business Days of receiving a Notice of Change.

84.9.3 In each case, the completed Section 2 of the Notice of Change shall be the "**Higher Value Change Estimate**".

84.9.4 Matters to be Covered in the Higher Value Change Estimate

- (a) The Higher Value Change Estimate shall set out the steps which the Contractor proposes to take to implement the Higher Value Change and the consequences of the Higher Value Change, giving such level of detail as is reasonable and appropriate having regard to the nature of the Higher Value Change including the Contractor's opinion on any of the matters set out below which are relevant:
 - (i) whether relief from compliance with the Contractor's obligations is required, including its obligations to achieve a Planned Services Commencement Date

and/or meet the Service Provision Requirements and/or the Service Availability Requirements during or as a result of the implementation of the Higher Value Change; and

- (ii) if the Higher Value Change affects Asset Provision, including the Contractor's obligation to achieve a Planned Services Commencement Date, the proposed revision to the Asset Provision Programme pursuant to Clause 27.2.2 (Time for Submission of Asset Provision Programme) or, if the Higher Value Change does not affect Asset Provision, a detailed timetable for implementation of the Higher Value Change, so as to minimise any inconvenience to the Authority; and
- (iii) any Necessary Consent which must be obtained or amended for the Higher Value Change to be implemented; and
- (iv) if the Higher Value Change is necessary to comply with a Change in Law, any necessary Change to a Service; and
- (v) any impact on Asset Provision and/or Service Provision not covered elsewhere in the Higher Value Change Estimate; and
- (vi) any Authority furnished assets that the Contractor would like to request to use in connection with the Change (together with supporting documentation to demonstrate how, in the Contractor's opinion, it represents value for money to the Authority); and
- (vii) any amendment required to this Contract and/or any amendment to a Project Document, Ancillary Document or Financing Agreement as a result of the Higher Value Change and not covered elsewhere in the Higher Value Change Estimate; and
- (viii) any other effects of the Higher Value Change including interference in the relationship of the Authority with third parties, reduction or increase in the residual value of the Specified Assets or material effects on the risks or costs to which either Party is exposed; and
- (ix) any loss of or increase in Third Party Contract Gross Revenue, Third Party Contract Profit and Third Party Income Share that will result from the Higher Value Change; and
- (x) the Contractor's opinion on the proposed method of certification of the Higher Value Change (if not covered by the procedures specified in PART 7 (Testing, Commissioning and Service Availability)); and
- (xi) any Capital Expenditure that is required or no longer required as a result of the Higher Value Change; and

- (xii) any approval required from insurers and/or Senior Lenders (as applicable); and
- (xiii) if the Higher Value Change is:
 - (1) a Medium Value Change, the Estimated Change in Project Costs that results from the Change, calculated in accordance with Clause 84.9.5 (Calculating the Estimated Change in Project Costs and/or Capital Expenditure – Higher Value Change (Medium Value Changes)) broken down into the matters set out in Section 2 (CONTRACTOR’S ESTIMATE) of the Notice of Change; or
 - (2) a Major Change, the Estimated Change in Project Costs that result from the Change, calculated in accordance with Clause 84.9.6 (Calculating the Estimated Change in Project Costs and/or Capital Expenditure – Higher Value Change (Major Changes)), broken down into the matters set out in Section 2 (CONTRACTOR’S ESTIMATE) of the Notice of Change; and
 - (3) a Major Change, an estimate of any third party costs and the details of the third party activity that will be incurred in providing the Higher Value Change Estimate including (where applicable pursuant to Clause 84.13 (Due Diligence)) the anticipated cost of the Senior Lender carrying out due diligence (which shall be a capped sum) together with a proposed process for approval of such costs by the Authority before they are incurred,

provided that, subject to Clause 84.14 (Change Refusals), the Higher Value Change Estimate shall show such Estimated Change in Project Costs and/or Capital Expenditure for the account of the Authority and/or the Contractor in accordance with the table set out in Clause 84.10 (Allocation of Estimated Change in Project Costs and/or Capital Expenditure between the Parties).

84.9.5 Calculating the Estimated Change in Project Costs and/or Capital Expenditure – Higher Value Change (Medium Value Changes)

- (a) In calculating the Estimated Change in Project Costs and/or Capital Expenditure involved in any Medium Value Change the Contractor shall apply the following principles to the extent applicable to the Project and the Medium Value Change:
 - (i) the unit cost of any construction or installation works (excluding any temporary or demolition works, professional fees, contingencies, overheads and profit margins) required to implement the Medium Value Change shall be the equivalent unit rates set out in Section 1 (Construction Unit Rates) of Schedule 14 Part

3 (Documents and Data referred to in PART 18). If the Contractor can demonstrate to the reasonable satisfaction of the Authority that such works are designed to a higher or lower quality as compared to the Asset Provision, then the unit rates may be increased or decreased to reflect such increase or decrease in quality; and

- (ii) any lifecycle maintenance associated with additional works (or Changes to the Asset Provision) shall be consistent with the maintenance profile of the Specified Assets immediately prior to the Change (for example, but without limitation, in terms of the replacement cycles for equipment), provided that the Contractor shall reflect improvements in technology that can optimise whole life costs for the Authority. The unit costs to be applied to the pricing of the lifecycle maintenance shall be the equivalent unit rates set out in Section 2 (Lifecycle Unit Rates) of Schedule 14 Part 3 (Pricing Information). If any additional works are designed to a higher quality as compared to the Asset Provision, then the unit lifecycle maintenance costs shall be (in real terms) lower; and
- (iii) any professional fees, contingencies, overheads and/or profit margins charged by any consultant, sub-contractor or supplier in respect of construction and/or installation and/or lifecycle and/or service provision shall be the equivalent rates set out in Section 3 (Fees and Profit Margins) of Schedule 14 Part 3 (Pricing Information). If the Contractor can demonstrate to the reasonable satisfaction of the Authority that the fees, overheads and profit margins being charged by consultants, sub-contractors and/or suppliers in current market conditions have changed significantly from those set out in Section 3 (Fees and Profit Margins) of Schedule 14 Part 3 (Pricing Information), then the Authority may agree to amend the rates set out in Section 3 (Fees and Profit Margins) of Schedule 14 Part 3 (Pricing Information) to reflect current market rates and to apply them to the change in question; and
- (iv) the unit cost of any extension of, or change to, any Service (either in scope or area) shall be consistent with the equivalent unit rates set out in Section 4 (Contractor Management Costs) of Schedule 14 Part 3 (Pricing Information). If the Contractor can demonstrate, to the reasonable satisfaction of the Authority, that as a result of the Medium Value Change, the relevant Service will be of a higher quality than required by the relevant Service Provision Requirements then the Authority may agree to increase such rates to reflect any increase in quality; and
- (v) the cost of Contractor time, reasonably incurred in preparing the estimate for the Medium Value Change (or proposed Medium Value Change) may be charged for at the rates set out in Section 4 (Contractor

Management Costs) of Schedule 14 Part 3 (Pricing Information) (and no additional mark-up or management fee shall be charged by the Contractor over and above the costs it will be liable to pay its sub-contractors in carrying out the works and/or services (as the case may be)); and

(vi) where the Parties agree that Clauses 84.9.5(a)(i) to 84.9.5(a)(v) are not applicable the value of any Medium Value Change shall be calculated in accordance with rates which are fair and reasonable and reflect market rates.

(b) The Contractor shall ensure that the performance risk involved in implementing the Medium Value Change and any interface risks involved in linking new specified assets or services with the Specified Assets and/or the Services are reflected (depending on the risk profile of the Higher Value Change) in the Estimated Change in Project Costs and not priced separately over and above the Estimated Change in Project Costs. The Contractor shall not include any separate charge or fee payable to the Contractor or any sub-contractor of the Contractor in the costs included in the Estimated Change in Project Costs.

84.9.6 Calculating the Estimated Change in Project Costs and/or Capital Expenditure – Higher Value Change (Major Changes)

(a) If the Change is a Major Change:

(i) the Authority's Representative may, in its absolute discretion but subject to Clause 84.9.6(b), notify the Contractor's Representative that it requires the Contractor to obtain competitive quotations for the work or elements entailed in the Major Change from at least three Suitable Substitute Sub-contractors, two of which must not be Associated Companies of the Contractor, provided that if the Contractor reasonably believes that there are not at least three Suitable Third Parties, two of which are not Associated Companies of the Contractor, in the market for the work or elements entailed in the Major Change, the Parties shall discuss and agree, pursuant to Schedule 19 (Project Management), amendments to the requirements in this Clause; and

(ii) On agreement of the requirements in Clause 84.9.6(a)(i):

(1) the Contractor shall provide the Authority's Representative with an initial list of proposed Suitable Substitute Sub-contractors that it wishes to approach for a quotation (each a "**Prospective Tenderer**"). The Authority may also suggest Prospective Tenderers; and

(2) the Authority may (acting reasonably), within five Business Days from receipt of the list pursuant to Clause 84.9.6(a)(ii)(1), object to

any of the Prospective Tenderers. If the Authority objects to any of the Prospective Tenderers such Prospective Tenderer shall no longer be involved in the Major Change; and

- (3) the Parties shall discuss and agree, pursuant to Schedule 19 (Project Management) ⁴⁰, the objective criteria upon which such tenders shall be evaluated along with any other criteria required for a bidder to be compliant and the Contractor shall carry out such competitive tender process; and
 - (4) as soon as reasonably practicable and within thirty Business Days (or such longer period as the Authority may reasonably permit having regard to the size, scope and nature of the Major Change or as may be required in order to comply with any applicable laws relating to public procurement of the Services) of the agreement of the identity of Prospective Tenderers and the criteria on which they will be evaluated, the Contractor shall issue a report to the Authority's Representative specifying the results of the competitive tender process carried out pursuant to Clause 84.9.6(a)(ii)(3) including:
 - I the identities of the Prospective Tenderer(s) that submitted compliant tenders ("**Qualifying Tenderers**") and information relating to their prices and technical proposals (including programmes if submitted); and
 - II the Qualifying Tenderer the Contractor wishes to appoint and the detailed terms on which the Contractor proposes to engage such Qualifying Tenderer; and
- (iii) the Authority's Representative may (acting reasonably), within five Business Days from receipt of the information provided by the Contractor pursuant to Clause 84.9.6(a)(ii)(4) notify the Contractor's Representative that it does not accept the Qualifying Tenderer proposed by the Contractor and/or the terms on which it will be engaged by the Contractor and the Parties shall thereafter discuss and agree, pursuant to Schedule 19 (Project Management), the Qualifying Tenderer to be appointed by the Contractor and the terms on which it will be engaged, together with any appropriate revision to the original Estimate where such Qualifying Tenderer reduces any costs provided therein.

⁴⁰ As this Clause envisages that the Parties will agree on a course of action (without any obligation to act reasonably), pursuant to Schedule 19 (Project Management), the project team must ensure that Schedule 19 (Project Management) includes a mechanism for decision-making if the Parties are not able to agree where required to under this Clause.

- (b) Subject to any requirement to comply with Legislation relating to public procurement of assets and services, the Authority's Representative shall not be entitled to require the Contractor to obtain competitive quotations under Clause 84.9.6(a) in respect of any element of work involved in any Major Change to the extent that:
- (i) such elements of work are to be carried out or are no longer to be carried out (as applicable) during the Asset Provision Period for a Service Level and the relevant Major Change affects the Specified Asset(s) used to provide that Service Level; and
 - (ii) the Contractor can demonstrate to the Authority's Representative's satisfaction (the latter acting reasonably) that such elements of work would affect the Contractor's risk profile.
- (c) If the Authority does not choose to require competitive quotations further to Clause 84.9.6(a) or is not entitled to do so under Clause 84.9.6(b) then the Contractor shall demonstrate that the additional Capital Expenditure and/or the impact on the Unitary Charge (as applicable) represents value for money for the Authority pursuant to either Clause 84.9.6(e) (Benchmarking Process) or Clause 84.9.6(f) (Independent Technical Advisor), as agreed between the Parties (acting reasonably).⁴¹
- (d) The Contractor shall ensure that the performance risk involved in implementing the Major Change and any interface risks involved in linking new services and/or assets used to provide services with the Services and/or the Specified Assets are reflected (depending on the risk profile of the Major Change) in the Estimated Change in Project Costs and not priced separately over and above the Estimated Change in Project Costs. The Contractor shall not include any separate charge or fee payable to the Contractor or any sub-contractor of the Contractor in the costs included in the Estimated Change in Project Costs.
- (e) **Benchmarking Process**
- (i) Where the Parties agree pursuant to Clause 84.9.6(c) that this Clause should apply, the Contractor shall benchmark all construction, facilities management and lifecycle costs (including professional fees, contingencies, overheads and profit margins) using benchmark figures from the Ministry of Defence's Commercial Project Enablement Team – Cost Assurance and Analysis Service (CAAS) (or any replacement thereof), wherever available and applicable or, where not available and/or applicable, using benchmarks available from a reputable independent source that are generally recognised in the industry.

⁴¹ Where the change involves reduced asset provision with a consequent reduction in cost to the Authority then it is likely that the most appropriate methods for calculating the reduction in the Authority's costs will be benchmarking or assessment by an Independent Technical Advisor.

(f) **Independent Technical Adviser**

- (i) Where the Parties agree pursuant to Clause 84.9.6(c) that this Clause should apply, upon issue of a Notice of Change by the Authority or the Parties agreeing that the Authority will shortly issue a Notice of Change in respect of a Major Change, the Authority and the Contractor shall jointly appoint an Independent Technical Adviser to assist in the processing of the Major Change. The terms of reference for the Independent Technical Adviser shall include:
 - (1) developing a Reference Assessment; and
 - (2) commenting on the Estimated Change in Project Costs.
- (ii) Upon appointment of the Independent Technical Adviser (or if later, upon service of the Notice of Change by the Authority), the Authority and the Contractor shall instruct the Independent Technical Adviser to develop a Reference Assessment.
- (iii) The Independent Technical Adviser shall develop a Reference Assessment in consultation with the Contractor and the Authority. The Reference Assessment shall include (as applicable) all finance, design development, construction, manufacturing, installation, lifecycle, maintenance and operating costs and savings (including professional fees and charges, overheads, profits and contingencies and explicitly including the pricing for any performance risks associated with implementing the Major Change). The Parties agree that the Reference Assessment shall include the pricing of performance risk and that no separate Contractor mark up should be included in the Estimated Change in Project Cost.
- (iv) The Independent Technical Adviser shall provide to the Contractor and the Authority the Reference Assessment. The Contractor shall use the Reference Assessment to produce the Estimated Change in Project Costs. The Independent Technical Adviser shall comment on the Estimated Change in Project Costs within the time periods to be agreed by the Contractor and the Authority and specified in the appointment of the Independent Technical Adviser.

84.10 Allocation of Estimated Change in Project Costs and/or Capital Expenditure between the Parties

84.10.1 Subject to Clause 84.14 (Change Refusals), the Estimate shall show the Estimated Change in Project Costs and/or Capital Expenditure involved in a Minor Change or Higher Value Change for the account of the Authority and/or the Contractor in accordance with the Table below:

	Change proposed before the Services Commencement Date for Service Levels affected by the Change		Change proposed after Services Commencement Date for Service Levels affected by the Change	
	change in Operating Expenditure resulting from the Change	change in Capital Expenditure resulting from the Change	change in Operating Expenditure resulting from the Change	change in Capital Expenditure resulting from the Change
Change not necessary to comply with a Change in Law	<p>INCREASES</p> <p>Authority pursuant to Clause 87.3.1 if the Change is a Minor Change or Clause 87.3.3 if the Change is a Higher Value Change</p> <p>DECREASES</p> <p>Shared between the Authority and the Contractor pursuant to Clause 84.2.2 if the Contractor is the Change Proposer</p> <p>or</p> <p>Authority pursuant to Clause 84.2.1 if the Authority is the Change Proposer</p>	<p>INCREASES</p> <p>Authority pursuant to Clause 87.3.1 if the Change is a Minor Change or Clause 87.3.2 if the Change is a Higher Value Change</p> <p>DECREASES</p> <p>Shared between the Authority and the Contractor pursuant to Clause 84.2.2 if the Contractor is the Change Proposer</p> <p>or</p> <p>Authority pursuant to Clause 84.2.1 if the Authority is the Change Proposer</p>	<p>INCREASES</p> <p>Authority pursuant to Clause 87.3.1 if the Change is a Minor Change or Clause 87.3.3 if the Change is a Higher Value Change</p> <p>DECREASES</p> <p>Shared between the Authority and the Contractor pursuant to Clause 84.2.2 if the Contractor is the Change Proposer</p> <p>or</p> <p>Authority pursuant to Clause 84.2.1 if the Authority is the Change Proposer</p>	<p>INCREASES</p> <p>Authority pursuant to Clause 87.3.1 if the Change is a Minor Change or Clause 87.3.2 if the Change is a Higher Value Change</p> <p>DECREASES</p> <p>Shared between the Authority and the Contractor pursuant to Clause 84.2.2 if the Contractor is the Change Proposer</p> <p>or</p> <p>Authority pursuant to Clause 84.2.1 if the Authority is the Change Proposer</p>
Change necessary to comply with a Discriminatory Change in Law or a Specific Change in	<p>INCREASES</p> <p>Authority pursuant to Clause 87.4.1 if the Change is a Minor Change or Clause 87.4.3 if the</p>	<p>INCREASES</p> <p>Authority pursuant to Clause 87.4.1 if the Change is a Minor Change or Clause 87.4.2 if the Change is a</p>	<p>INCREASES</p> <p>Authority pursuant to Clause 87.4.1 if the Change is a Minor Change or Clause 87.4.3 if the</p>	<p>INCREASES</p> <p>Authority pursuant to Clause 87.4.1 if the Change is a Minor Change or Clause 87.4.2 if the Change is a</p>

	Change proposed before the Services Commencement Date for Service Levels affected by the Change		Change proposed after Services Commencement Date for Service Levels affected by the Change	
	change in Operating Expenditure resulting from the Change	change in Capital Expenditure resulting from the Change	change in Operating Expenditure resulting from the Change	change in Capital Expenditure resulting from the Change
Law	<p>Change is a Higher Value Change</p> <p>DECREASES</p> <p>Shared between the Authority and the Contractor pursuant to Clause 84.2.2 if the Contractor is the Change Proposer</p> <p>or</p> <p>Authority pursuant to Clause 84.2.1 if the Authority is the Change Proposer</p>	<p>Higher Value Change</p> <p>DECREASES</p> <p>Shared between the Authority and the Contractor pursuant to Clause 84.2.2 if the Contractor is the Change Proposer</p> <p>or</p> <p>Authority pursuant to Clause 84.2.1 if the Authority is the Change Proposer</p>	<p>Change is a Higher Value Change</p> <p>DECREASES</p> <p>Shared between the Authority and the Contractor pursuant to Clause 84.2.2 if the Contractor is the Change Proposer</p> <p>or</p> <p>Authority pursuant to Clause 84.2.1 if the Authority is the Change Proposer</p>	<p>Higher Value Change</p> <p>DECREASES</p> <p>Shared between the Authority and the Contractor pursuant to Clause 84.2.2 if the Contractor is the Change Proposer</p> <p>or</p> <p>Authority pursuant to Clause 84.2.1 if the Authority is the Change Proposer</p>
Change necessary to comply with a General Change in Law	<p>INCREASES</p> <p>Contractor pursuant to Clause 87.5.1</p> <p>DECREASES</p> <p>Shared between the Authority and the Contractor pursuant to Clause 84.2.2 if the Contractor is the Change Proposer</p> <p>or</p> <p>Authority pursuant to</p>	<p>INCREASES</p> <p>Contractor pursuant to Clause 87.5.2</p> <p>DECREASES</p> <p>Shared between the Authority and the Contractor pursuant to Clause 84.2.2 if the Contractor is the Change Proposer</p> <p>or</p> <p>Authority pursuant to</p>	<p>INCREASES</p> <p>Contractor pursuant to Clause 87.5.1</p> <p>DECREASES</p> <p>Shared between the Authority and the Contractor pursuant to Clause 84.2.2 if the Contractor is the Change Proposer</p> <p>or</p> <p>Authority pursuant to</p>	<p>INCREASES</p> <p>Contractor pursuant to Clause 87.5.2 if the Change in Law was foreseeable at the Commencement Date.</p> <p>Otherwise, shared – the Contractor's Share shall be solely for the account of the Contractor and the remaining Capital Expenditure shall</p>

Change proposed before the Services Commencement Date for Service Levels affected by the Change		Change proposed after Services Commencement Date for Service Levels affected by the Change	
change in Operating Expenditure resulting from the Change	change in Capital Expenditure resulting from the Change	change in Operating Expenditure resulting from the Change	change in Capital Expenditure resulting from the Change
Clause 84.2.1 if the Authority is the Change Proposer	Clause 84.2.1 if the Authority is the Change Proposer	Clause 84.2.1 if the Authority is the Change Proposer	<p>be for the account of the Authority pursuant to Clause 87.5.3 if the Change is a Minor Change or Clause 87.5.4 if the Change is a Higher Value Change</p> <p>DECREASES</p> <p>Shared between the Authority and the Contractor pursuant to Clause 84.2.2 if the Contractor is the Change Proposer</p> <p>or</p> <p>Authority pursuant to Clause 84.2.1 if the Authority is the Change Proposer</p>

84.11 Value for Money of the Estimate

84.11.1 Subject to Clause 84.14 (Change Refusals), the Contractor shall prepare, and shall provide evidence to the Authority's Representative that it has prepared, the Estimate in accordance with Good Industry Practice including:

- (a) demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is to be incurred, foreseeable Changes in Law at that time have been taken into account by the Contractor; and

- (b) demonstrating that any expenditure to be avoided, which was anticipated to be incurred to replace or maintain any Specified Assets which are affected by the Change, has been taken into account in the amount which in its opinion has resulted or is required under Clauses 84.6 (Matters to be covered in the Minor Change Estimate) or 84.9.4 (Matters to be covered in the Higher Value Change Estimate), as the case may be; and
- (c) providing evidence that the Contractor has used reasonable endeavours (including, where practicable, the use of competitive quotes, open-book accounting and benchmarking) to oblige its [Sub-contractors][sub-contractors] to minimise any increase in costs and maximise any reduction in costs; and
- (d) where the Contractor considers that additional resources are required, demonstrating to the Authority's reasonable satisfaction that the Change cannot be implemented by using resources that the Contractor is expressly or impliedly required to provide in order to carry out the Services that were to be provided prior to such Change, and that those additional resources are required for the purposes stated in the Estimate.

84.12 Funding for Higher Value Changes

84.12.1 If the Authority has not elected to fund the Capital Expenditure element through milestone payments further to Clause 83.3.2 (Details of the Change) and:

- (a) if the Parties agree or it is determined pursuant to Clause 144 (Disputes) that the Contractor is required to incur additional Capital Expenditure due to:
 - (i) a Change necessary to comply with a Change in Law (other than a Change in Law referred to in Clause 84.12.1(b)), then, subject to Clause 84.14 (Change Refusals), the Contractor shall use its reasonable endeavours to obtain funding for the whole of the estimated additional Capital Expenditure; or
 - (ii) a Change necessary to comply with a General Change in Law, which is proposed after the Services Commencement Date for Service Levels affected by the Change, then, subject to Clause 84.14 (Change Refusals), the Contractor shall use its reasonable endeavours to obtain funding for such part of the estimated additional Capital Expenditure remaining after the Contractor's Share has been deducted; or
- (b) if the Estimate involves estimated Capital Expenditure due to a Higher Value Change which is not necessary to comply with a Change in Law, then, subject to Clause 84.14 (Change Refusals), the Contractor shall use its reasonable endeavours to obtain funding for the whole of the estimated additional Capital Expenditure,

84.12.2 The Contractor shall keep the Authority's Representative informed throughout the period from its receipt of the Notice of Change until it returns the Notice of Change to the Authority's Representative further to

Clause 84.9 (Higher Value Changes – Providing the Estimate), of the progress of its endeavours to obtain funding for the estimated Capital Expenditure pursuant to Clause 84.12 (Funding for Higher Value Changes); and

84.12.3 The Authority's Representative may, at any time until the Contractor returns the Notice of Change to the Authority's Representative further to Clause 84.9 (Higher Value Changes – Providing the Estimate), notify the Contractor that the Authority agrees to meet all or, to the extent the Contractor has obtained funding for part of the Capital Expenditure, the remaining part of the estimated Capital Expenditure.

84.13 Due Diligence

84.13.1 The Senior Lenders may carry out legal, financial, technical and insurance due diligence on any proposal for a Major Change proposed by the Authority, as required.⁴²

84.13.2 If the Senior Lenders need to procure legal, technical, financial or insurance due diligence, the Parties shall agree, pursuant to Schedule 19 (Project Management)⁴³, a budget and capped cost for the due diligence pursuant to Clauses 84.9.4(a)(xiii)(3)⁴⁴ (Matters to be covered in the Higher Value Change Estimate) and 86 (Step 4 – Confirmation or Withdrawal of Notice of Change).

84.13.3 Notwithstanding any due diligence process further to Clause 84.13.1 the Contractor shall procure that:

- (a) the Senior Lenders shall promptly give any consents which are required pursuant to the Financing Agreements to any Change and shall only withhold its consent on one (or more) of the grounds set out in Clause 84.14.2 (Changes Proposed by the Authority);
- (b) the Contractor's insurance broker shall be notified by the Contractor promptly of any material Change (materiality being judged in relation to the size and nature of the scope of the Change and any necessary authorisation obtained).

84.14 Change Refusals

84.14.1 Changes Proposed by the Contractor

- (a) If the Contractor is the Change Proposer the Authority may, unless the Change is necessary to comply with a Change in Law, at its absolute discretion refuse to allow the Change and the Contractor shall not implement such Change. The Authority

⁴² The Authority should not be asked to re-imburse the Contractor in respect of Minor Changes or Medium Value Changes as these are specifically defined as Changes which: "will not increase the likelihood of the Contractor failing to meet the Authority's Requirements or materially and adversely affect the Contractor's ability to perform its obligations under this Contract".

⁴³ As this Clause envisages that the Parties will agree on a course of action (without any obligation to act reasonably), pursuant to Schedule 19 (Project Management), the team must ensure that Schedule 19 (Project Management) includes a mechanism for decision-making if the Parties are not able to agree where required to under this Clause.

⁴⁴ Whether or not this cross reference to Clause 84.9.4(a)(xiii)(3) is inserted in this Clause will depend on whether the Authority requires a capped fee for third party costs in the Contractor Stage 1 Response. If not, it should be deleted.

shall not be obliged to give reasons for such refusal. Unless the Authority's acceptance specifically agrees to a change to the Unitary Charge there shall be no change to the Unitary Charge as a result of a Change proposed by the Contractor and unless the Authority specifically agrees to meet any increased cost arising from any Change proposed by the Contractor such increases shall be paid and borne by the Contractor.

84.14.2 Changes Proposed by the Authority

- (a) If the Authority is the Change Proposer, the Contractor may refuse to implement the Change if it:
- (i) has used its reasonable endeavours to obtain funding for the whole of the estimated Capital Expenditure (where the Authority has not elected to fund the Capital Expenditure element through milestone payments further to Clause 83.3.2 (Details of the Change)), but has been unable to do so before it is required to return the Notice of Change to the Authority's Representative under Clause 84.9 (Higher Value Changes – Providing the Estimate); unless the Authority agrees pursuant to Clause 84.12 (Funding for Higher Value Changes) to pay the costs for which funding is not available on the basis provided for in Clauses 87.3.2 (Funding and Payment for a Change not Necessary to Comply with a Change in Law), 87.4.2 (Funding and Payment for a Discriminatory Change in Law/Specific Change in Law) or 87.5.1 (Funding and Payment for a General Change in Law), as applicable; or
 - (ii) requires Asset Provision and/or Service Provision to be performed in a way that infringes any relevant Legislation or is incompatible with Good Industry Practice; or
 - (iii) would cause any existing Necessary Consent to be revoked (or would require a new Necessary Consent to be obtained to implement the Change which, after using reasonable efforts, the Contractor has been unable to obtain and reasonably believes it will be unable to obtain using reasonable efforts); or
 - (iv) would materially and adversely affect the Contractor's ability to deliver Asset Provision and/or Service Provision (except those elements of Asset Provision and/or Service Provision which have been specified as requiring to be amended in the Notice of Change in a manner not compensated pursuant to this PART 18); or
 - (v) would materially and adversely affect the health and safety of any person; or
 - (vi) would, if implemented, materially and adversely change the nature of the Project (including its risk profile); or
 - (vii) is outside the Authority's legal power or capacity to require implementation of the Change.

85 **STEP 3 – AGREEING THE ESTIMATE**

85.1 **Receiving the Estimate**

85.1.1 As soon as reasonably practicable after the Authority's Representative receives the Estimate (having due regard for the Authority's evaluation further to Clause 85.2 (Evaluating the Estimate)):

- (a) the Authority shall notify the Contractor that the Estimate is agreed, in which case the agreement shall be documented in accordance with Clause 85.3 (Documenting Agreement of the Estimate); or
- (b) the Authority shall notify the Contractor that the Estimate is not yet agreed in which case the Parties shall, subject to Clause 84.14 (Change Refusals), discuss and endeavour to agree the issues set out in the Estimate and any such agreement shall be documented in accordance with Clause 85.3 (Documenting Agreement of the Estimate).

85.2 **Evaluating the Estimate**

85.2.1 The Authority's Representative will evaluate the Estimate in good faith, taking into account all relevant issues including whether:

- (a) a change in the Unitary Charge will occur; and/or
- (b) the Change will affect the quality of Service Provision or the likelihood of successful delivery of the Services; and/or
- (c) the Change will interfere with the relationship of the Authority and third parties; and/or
- (d) the financial strength of the Contractor is sufficient to perform the Change; and/or
- (e) the residual value of the Assets will be reduced; and/or
- (f) the Change materially affects the risks or costs to which the Authority is exposed.

85.2.2 The Authority may conduct a full technical and cost audit of an Estimate in respect of a Major Change (which if it is a Major Change proposed by the Authority shall be at the Authority's cost and if it is a Major Change proposed by the Contractor shall be at the Contractor's cost) and the Contractor shall give the Authority access to all reasonable information requested by the Authority.

85.3 **Documenting Agreement of the Estimate**

85.3.1 Subject to Clause 84.14 (Change Refusals), the Parties shall document their agreement and any effect on the Unitary Charge in Section 3 (AGREEMENT OF THE CHANGE) of the Notice of Change including, for all Changes other than Administrative Changes, any of the following matters which are relevant:

- (a) the agreed relief to be given to the Contractor, including relief from its obligations to achieve a Planned Services Commencement Date and/or meet the Service Provision

Requirements and/or the Service Availability Requirements during or as a result of the implementation of the Change; and/or

- (b) if the Change is a Minor Change or a Higher Value Change which does not affect Asset Provision, the agreed time periods for the carrying out of the Change, or, if the Change is a Higher Value Change which affects Asset Provision, the agreed revised Asset Provision Programme, showing in all cases the agreed timing of any Capital Expenditure to be incurred as a result of the Change; and/or
- (c) the agreed method of certification of the Change; and/or
- (d) if the Change is not necessary to comply with a Change in Law and the Authority agrees to pay the costs of the Change for which funding is not available:
 - (i) a payment schedule in respect of the payment of the Capital Expenditure reflecting the amount and timing of the costs to be incurred by the Contractor in carrying out the Change to the extent borne by the Authority (the "**Change Payment Schedule**"); and
 - (ii) where payment for part of a Change reflects the carrying out of, or specific progress towards, an element of the Change, an objective means of providing evidence confirming that the part of the Change corresponding to each occasion when payment is due under the Change Payment Schedule appears to have been duly carried out; and/or
- (e) any other agreed effects of the Change.

85.4 **Failure to Agree the Estimate**

85.4.1 If the Parties cannot agree the contents of Section 3 (AGREEMENT OF THE CHANGE) of the Notice of Change, then the dispute shall be determined in accordance with Clause 144 (Disputes).

86 **STEP 4 – CONFIRMATION OR WITHDRAWAL OF THE NOTICE OF CHANGE**

86.1 Subject to Clause 84.14 (Change Refusals), as soon as practicable after the contents of Section 3 (AGREEMENT OF THE CHANGE) of the Notice of Change have been agreed or otherwise determined pursuant to Clause 144 (Disputes), the Contractor shall sign Section 4 (EQUALITY OF INFORMATION STATEMENT) of the Notice of Change unless the Change is an Administrative Change or Minor Change in which case it shall mark Section 4 as "not applicable" and send the Notice of Change with Sections 1 (REQUEST FOR CHANGE), 2 (CONTRACTOR'S ESTIMATE) and 3 (AGREEMENT OF THE CHANGE) of the Notice of Change completed and signed to the Authority's Representative.

86.2 The Authority's Representative shall either:

86.2.1 sign Section 4 (EQUALITY OF INFORMATION STATEMENT) (for Higher Value Changes only) and Section 5 (NOTICE TO PROCEED) of the Notice of Change (as modified if appropriate) and send a copy of the Notice of Change to the Contractor ("**Notice to Proceed**"); or

- 86.2.2 if the Authority is the Change Proposer, withdraw the Notice of Change by giving written notice to the Contractor; or
- 86.2.3 if the Contractor is the Change Proposer and the Authority is entitled to refuse to implement such Change pursuant to Clause 84.14 (Change Refusals), refuse the Change by giving written notice to the Contractor.
- 86.3 For all Changes not necessary to comply with a Change in Law, if the Authority's Representative does not confirm the Notice of Change by signing Sections 4 (EQUALITY OF INFORMATION STATEMENT) and 5 (NOTICE TO PROCEED) of the Notice of Change and provide a copy of the Notice of Change to the Contractor within twenty Business Days of its receipt of the Notice of Change pursuant to Clause 86.1 then the Notice of Change shall be deemed to have been withdrawn.
- 86.4 If the Authority is the Change Proposer of a Major Change and the Notice of Change is withdrawn pursuant to Clauses 86.2.2 or 86.3 the Authority shall pay to the Contractor the reasonable additional third party costs incurred by the Contractor in preparing the Estimate provided that:
- 86.4.1 the Contractor has used all reasonable endeavours to submit a reasonably priced Estimate; and
- 86.4.2 the Contractor has made available to the Authority's Representative a cost breakdown of the Estimate including an estimate of the third party costs to be incurred by the Authority if the Notice of Change is withdrawn or deemed to be withdrawn; and
- 86.4.3 the Authority has:
- (a) approved the estimate of third party costs referred to in Clause 86.4.2 and the type of third party prior to any third party costs being incurred; and
- (b) agreed that, given the nature of the proposed Change, it is reasonable to expect the relevant third party to incur costs in preparing the Estimate on the basis of the extent of the proposed Change to the Services or the Assets and the work required in submitting an accurate Estimate in compliance with this Clause 86.4; and
- 86.4.4 the Contractor has provided the Authority's Representative with such evidence as it may reasonably require in order to verify the additional third party costs incurred by the Contractor and that such costs can be substantiated in accordance with Clause 116 (Contractor's Information, Documents and Records); and
- 86.4.5 where any capped fee given by the Contractor (whether in the Contractor Stage 1 Response or otherwise) in respect of any third party cost has been exceeded the Authority shall not make any payment to the Contractor in respect of such third party cost in excess of the amount of such capped fee,
- such payment to be made in accordance with Clause 66.2.2(c) (Report and Invoice).
- 86.5 Any dispute arising in relation to this Clause 86 shall be determined in accordance with Clause 144 (Disputes).

87 **STEP 5—IMPLEMENTATION OF CHANGES**

87.1 **Contractor's Obligations**

- 87.1.1 If the Notice of Change has been confirmed by the Authority pursuant to Clause 86.2.1 (Step 4 – Confirmation or Withdrawal of the Notice of Change), then, subject to any Necessary Consent which must be obtained or modified being so obtained or modified, the Contractor shall implement the Change as set out in Section 3 (AGREEMENT OF THE CHANGE) of the Notice of Change.
- 87.1.2 When the Contractor considers that the Change has been implemented in accordance with the terms set out in the Notice to Proceed, the Contractor shall confirm completion of the work required to implement the Change by completing Section 6 (CONFIRMATION OF COMPLETION OF WORK COVERED BY THE CHANGE) of the Notice of Change, in accordance with the terms set out in Section 3 (AGREEMENT OF THE CHANGE) of the Notice of Change.
- 87.1.3 Following confirmation of the completion of the Change as set out in Clause 87.1.2 the Contractor, the Authority and/or the Independent Certifier (as applicable) shall carry out the certification procedure as set out in Section 3 (AGREEMENT OF THE CHANGE) of the Notice of Change and completion of Section 7 (CERTIFICATION OF WORK COVERED BY THE CHANGE) of the Notice of Change shall be completed accordingly. Completion of Section 7 (CERTIFICATION OF WORK COVERED BY THE CHANGE) of the Notice of Change shall indicate only that the certifier is of the opinion that the Change appears to have been implemented in accordance with the terms set out in the Notice to Proceed and shall in no way lessen or affect the obligations of the Contractor under this Contract in relation to the Service Levels or any other part of Asset Provision and/or Service Provision or signify the Authority's approval of the means of implementation of the Change or the Services.
- 87.1.4 Notwithstanding any failure by the Contractor to demonstrate successful implementation of a Change in accordance with Clause 87.1.3 by the completion date agreed in the Notice to Proceed pursuant to Clause 86.2.1 (Step 4 – Confirmation or Withdrawal of the Notice of Change), as from that completion date all the provisions of the Contract (including without limitation the Authority's right to make Unavailability Deductions and/or Service Performance Deductions in accordance with Schedule 13 (Payment Mechanism) as a result of faults or failures caused by such Change being implemented either correctly or incorrectly or not completed by the date agreed in the Notice to Proceed) shall apply.
- 87.1.5 Subject to the Notice to Proceed pursuant to Clause 87.3.1 (Step 4 – Confirmation or Withdrawal of the Notice of Change), the Contractor shall ensure that during and following the implementation of any Change Asset Provision and Service Provision are performed in accordance with the terms of this Contract.

87.2 **Authority's Obligations**

- 87.2.1 The Authority's obligations pursuant to this Clause 87 shall:
- (a) only take effect if the Notice of Change has been confirmed by the Authority pursuant to Clause 87.3.1 (Step 4 – Confirmation or Withdrawal of the Notice of Change); and

- (b) be set out in Section 3 (AGREEMENT OF THE CHANGE) of the Notice of Change provided that unless Section 3 (AGREEMENT OF THE CHANGE) of the Notice of Change specifically agrees to an increase in the Unitary Charge, there shall be no increase in the Unitary Charge; and
- (c) only take effect if the Change has been certified in accordance with the terms set out in Section 3 (AGREEMENT OF THE CHANGE) of the Notice of Change and the Authority's Representative is in receipt of a Notice of Change with Section 7 completed pursuant to Clause 87.1.3.

87.2.2 Any compensation payable pursuant to this Clause 87 by means of an adjustment to or reduction in the Unitary Charge shall be calculated in accordance with the Base Case.

87.2.3 Any compensation payable pursuant to this Clause 87 other than payments to be made by means of an adjustment to or reduction in the Unitary Charge shall be made pursuant to Clause 66.2.2(d) and in accordance with Clause 66 (Payment Provisions) provided that the Relevant Form/delivery label⁴⁵ shall be accompanied by relevant evidence that such payment is due.

87.3 Funding and Payment for a Change not Necessary to Comply with a Change in Law

87.3.1 If the Change is not necessary to comply with a Change in Law and is a Minor Change, then the Authority shall compensate the Contractor:

- (a) for agreed Capital Expenditure, documented pursuant to Clause 85.3 (Documenting Agreement of the Estimate), in accordance with the agreed Change Payment Schedule; and
- (b) for agreed Operating Expenditure, documented pursuant to Clause 85.3 (Documenting Agreement of the Estimate), by adjusting the Base Case to give effect to such Minor Changes once each Contract Year and all relevant Minor Changes that have occurred in the preceding Contract Year shall be aggregated together into a single cumulative adjustment as set out in Clause 65.2 (Submission of Revised Base Case).

87.3.2 Subject to Clause 84.14 (Change Refusals), if the Change is not necessary to comply with a Change in Law and the Change is a Higher Value Change, then if the Contractor has used reasonable endeavours to obtain funding for Capital Expenditure pursuant to Clause 84.12 (Funding for Higher Value Changes):

- (a) but has been unable to do so within thirty Business Days of the date that the agreement or determination in Clause 84.12 (Funding for Higher Value Changes) occurred, then the Authority shall pay to the Contractor an amount equal to the agreed Capital Expenditure, documented pursuant to Clause 85.3 (Documenting Agreement of the Estimate), in accordance with the agreed Change Payment Schedule; or

⁴⁵ The latter option is appropriate where the P2P system will be used.

- (b) and has been able to do so within **thirty** Business Days of the date that the agreement or determination in Clause 84.12 (Funding for Higher Value Changes) occurred, then the Authority shall compensate the Contractor for incurring the agreed Capital Expenditure, documented pursuant to Clause 85.3 (Documenting Agreement of the Estimate), by means of an adjustment to the Unitary Charge.

87.3.3 If the Change is not necessary to comply with a Change in Law and the Change is a Higher Value Change, then the Authority shall compensate the Contractor for the agreed Operating Expenditure, documented pursuant to Clause 85.3 (Documenting Agreement of the Estimate), by means of an adjustment to or reduction in the Unitary Charge.

87.4 **Funding and Payment for a Discriminatory Change in Law/Specific Change in Law**

87.4.1 If the Change is necessary to comply with a Discriminatory Change in Law or a Specific Change in Law and the Change is a Minor Change, then the Authority shall compensate the Contractor for the agreed Capital Expenditure and Operating Expenditure, documented pursuant to Clause 85.3 (Documenting Agreement of the Estimate):

- (a) at the Minor Rates in the case of Capital Expenditure on or before the date falling **thirty** days after a valid request for Payment Approval is received by the Authority's Representative in accordance with Clause 66.2 (Report and Invoice) in respect of such incurred Capital Expenditure; and
- (b) in the case of Operating Expenditure the Base Case shall be adjusted to give effect to such Minor Changes once each Contract Year and all relevant Minor Changes that have occurred in the preceding Contract Year shall be aggregated together into a single cumulative adjustment as set out in Clause 65.2 (Submission of Revised Base Case).

87.4.2 If the Change is necessary to comply with a Discriminatory Change in Law or a Specific Change in Law and the Change is a Higher Value Change, then if the Contractor has used reasonable endeavours to obtain funding for Capital Expenditure pursuant to Clause 84.12 (Funding for Higher Value Changes):

- (a) but has been unable to do so within **thirty** Business Days of the date that the agreement or determination in Clause 84.12 (Funding for Higher Value Changes) occurred, then the Authority shall pay to the Contractor an amount equal to the agreed Capital Expenditure, documented pursuant to Clause 85.3 (Documenting Agreement of the Estimate), on or before the date falling **thirty** days after a valid request for Payment Approval is received by the Authority's Representative in accordance with Clause 65.2 (Submission of Revised Base Case) in respect of such incurred Capital Expenditure; or
- (b) and has been able to do so within **thirty** Business Days of the date that the agreement or determination in Clause 84.12 (Funding for Higher Value Changes) occurred, then the Authority shall compensate the Contractor for incurring the agreed Capital Expenditure, documented pursuant to Clause

85.3 (Documenting Agreement of the Estimate), by means of an adjustment to or reduction in the Unitary Charge.

87.4.3 If the Change is necessary to comply with a Discriminatory Change in Law or a Specific Change in Law and the Change is Higher Value Change, then the Authority shall compensate the Contractor for the agreed Operating Expenditure, documented pursuant to Clause 85.3 (Documenting Agreement of the Estimate), by means of an adjustment to or reduction in the Unitary Charge.

87.5 Funding and Payment for a General Change in Law

87.5.1 If the Change is necessary to comply with a General Change in Law the Contractor shall receive no compensation in respect of Operating Expenditure arising from the Change.

87.5.2 If the Change is proposed:

- (a) **before the Services Commencement Date for Service Levels affected by the Change** and is necessary to comply with a General Change in Law; or
- (b) **after the Services Commencement Date for Service Levels affected by the Change** and is necessary to comply with a General Change in Law which was foreseeable at the Commencement Date,

the Contractor shall receive no compensation in respect of Capital Expenditure arising from the Change.

87.5.3 If the Change is proposed after the Services Commencement Date for Service Levels affected by the Change and is necessary to comply with a General Change in Law which was not foreseeable at the Commencement Date and the Change is a Minor Change, then the Authority shall pay to the Contractor the agreed Capital Expenditure, documented pursuant to Clause 85.3 (Documenting Agreement of the Estimate), over and above the Contractor's Share at the Minor Rates, on or before the date falling **thirty** days after a valid request for Payment Approval is received by the Authority's Representative in accordance with Clause 66.2 (Report and Invoice) in respect of such incurred Capital Expenditure.

87.5.4 If the Change is proposed after the Services Commencement Date for Service Levels affected by the Change and is necessary to comply with a General Change in Law which was not foreseeable at the Commencement Date and the Change is a Higher Value Change and if the Contractor has used reasonable endeavours to obtain funding for Capital Expenditure pursuant to Clause 84.12 (Funding for Higher Value Changes):

- (a) but has been unable to do so within **thirty** Business Days of the date that the agreement or determination in Clause 84.12 (Funding for Higher Value Changes) occurred, then the Authority shall pay to the Contractor an amount equal to the agreed Capital Expenditure, documented pursuant to Clause 85.3 (Documenting Agreement of the Estimate), which is over and above the Contractor's Share. Such payment shall be made on or before the date falling **thirty** days after a valid request for Payment Approval is received by the Authority's Representative

in accordance with Clause 66.2 (Report and Invoice) in respect of such incurred Capital Expenditure; or

- (b) and has been able to do so within **thirty** Business Days of the date that the agreement or determination in Clause 84.12 (Funding for Higher Value Changes) occurred, then the Authority shall compensate the Contractor for incurring the agreed Capital Expenditure, documented pursuant to Clause 85.3 (Documenting Agreement of the Estimate), which is over and above the Contractor's Share by means of an adjustment to or reduction in the Unitary Charge.

87.6 Irrecoverable VAT on Change in Law

87.6.1 The Authority shall pay to the Contractor from time to time as the same is incurred by the Contractor sums equal to any Irrecoverable VAT but only to the extent it arises from a Change which is necessary to comply with a Change in Law. Any such payment shall be made pursuant to Clause 66.2.2(d).

87.7 Any dispute arising in relation to this Clause 87.6 shall be determined in accordance with Clause 144 (Disputes).

88 IMPLEMENTATION OF URGENT CHANGES

88.1 If the Authority is the Change Proposer, it may (in its sole discretion) for a Change other than an Administrative Change issue a Notice of Change with Sections 1 (REQUEST FOR CHANGE) and 5 (NOTICE TO PROCEED) completed and signed thereby authorising the implementation of such Change notwithstanding that the Estimate has not been agreed in accordance with Clause 85 (Step 3 – Agreeing the Estimate).

88.2 If the Contractor receives a Notice of Change pursuant to Clause 88.1, the Contractor shall provide to the Authority's Representative an estimate of costs to undertake the urgent Change before proceeding.

88.3 The Authority's Representative and the Contractor's Representative shall use their reasonable endeavours to reach agreement on the estimate submitted by the Contractor pursuant to Clause 88.2 as soon as possible following the issue of the Notice of Change authorising the implementation of an urgent Change and the following conditions shall apply:

88.3.1 immediately following confirmation by the Authority's Representative that the estimate provided pursuant to Clause 88.2 is acceptable, the Contractor shall (unless it is entitled to refuse to implement such Change pursuant to Clause 84.14 (Change Refusals)) proceed to implement the Change promptly and shall inform the Authority on a regular basis as to the progress of implementation of the Change;

88.3.2 while the Contractor is implementing the Change, the Contractor shall take all necessary steps to agree the Estimate relating to the Change and Clauses 84 (Step 2 – Preparing the Estimate) to 86 (Step 4 – Confirmation or Withdrawal of the Notice of Change) shall apply to the Change; and

88.3.3 the Authority's Representative may at any time instruct the Contractor to discontinue the implementation of the Change.

88.4 Unless and until the Notice of Change is agreed pursuant to Clause 86.2.1 (Step 4 – Confirmation or Withdrawal of the Notice of Change) and/or the Authority instructs the Contractor to discontinue the Change pursuant to Clause 88.3.3, the Authority shall reimburse the Contractor's costs incurred as a result of implementing the Change up to a maximum sum of the Contractor's estimate provided pursuant to Clause 88.2.

PART 19 – PEOPLE AND SUB-CONTRACTORS (CORE CLAUSES)

89 CONTRACTOR'S REPRESENTATIVE

89.1 The Contractor shall appoint the person whose name, address and telephone number is set out in Clause 145.4 (Addresses) as the Contractor's Representative to act as the Contractor's Representative in connection with Asset Provision, Service Provision and generally in connection with this Contract.

89.2 Authority of Contractor's Representative

89.2.1 The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes of this Contract. Unless notified in writing before such act or instruction, the Authority and the Authority's Representative shall be entitled to treat any act of the Contractor's Representative which is authorised by the Contract as being expressly authorised by the Contractor and the Authority and the Authority's Representative shall not be required to determine whether authority has in fact been given.

89.2.2 The Contractor shall procure that the Contractor's Representative acts in accordance with the Contractor's Representative's powers and functions in this Contract.

89.3 Change in Contractor's Representative

89.3.1 The Contractor may, as an Administrative Change pursuant to PART 18 (Changes and Change in Law), propose a change in the identity of the Contractor's Representative or that more than one Contractor's Representative is appointed (provided that if more than one Contractor's Representative is proposed, the Contractor shall provide written confirmation to the Authority's Representative pursuant to PART 18 (Changes and Change in Law) of the extent of each person's authority). If the Authority confirms the Administrative Change in the Contractor's Representative pursuant to PART 18 (Changes and Change in Law), Clause 145.4 (Addresses) shall be updated accordingly.

89.3.2 During any period when the Contractor's Representative is unable through illness, incapacity, holidays or any other reason to carry out or exercise his functions under this Contract, the Contractor's Representative may, with the Authority's Representative's approval delegate his functions to another person by giving the Authority's Representative written notice of the identity of such person and the extent of his authority. The Authority's Representative shall not unreasonably withhold or delay his approval of the delegate under this Clause 89.3.2.

90 AUTHORITY'S REPRESENTATIVE

90.1 The Authority shall appoint the persons whose names, addresses and telephone numbers are set out in Clause 145.4 (Addresses) as the Authority's project manager ("**Authority's Project Manager**") and the Authority's commercial officer ("**Authority's Commercial Officer**"), both of whom shall be the Authority's Representatives, for different purposes as outlined below.

90.2 Authority of Authority's Representatives

90.2.1 The Authority's Project Manager shall have full authority to act on behalf of the Authority for all purposes of this Contract, with the exception of

the issue of confirmation of a Notice of Change other than an Administrative Change, which must be issued by the Authority's Commercial Officer.

90.2.2 The Authority's Commercial Officer shall have full authority to act on behalf of the Authority for all purposes of this Contract. Unless notified in writing before such act or instruction, the Contractor and the Contractor's Representative shall be entitled to treat any act of the Authority's Representative which is authorised by this Contract and is in accordance with Clause 90.2.2 as being expressly authorised by the Authority and the Contractor and the Contractor's Representative shall not be required to determine whether authority has in fact been given.

90.2.3 The Authority shall procure that the Authority's Representative acts in accordance with the Authority's Representative's powers and functions in this Contract.

90.3 Change in Authority's Representative

90.3.1 The Authority may, as an Administrative Change pursuant to PART 18 (Changes and Change in Law), propose a change in the identity of the Authority's Representatives or that additional Authority's Representatives are appointed (provided that if more than two Authority's Representatives are proposed, the Authority shall provide written confirmation to the Contractor pursuant to PART 18 (Changes and Change in Law) of the extent of each person's authority). If the Authority confirms the Administrative Change in the Authority's Representative pursuant to PART 18 (Changes and Change in Law), Clause 145.4 (Addresses) shall be updated accordingly.

90.3.2 During any period when either of the Authority's Representatives are unable through illness, incapacity, holidays or any other reason to carry out or exercise their functions under this Contract, such Authority's Representative may delegate such functions to another person by giving the Contractor's Representative written notice of the identity of such person and the extent of his authority.

91 NOTICES TO REPRESENTATIVES

91.1 Subject to Clause 145 (Communications), any notice, information, instructions or public communication given to:

91.1.1 the Contractor's Representative shall be given in writing and shall be deemed to have been given to the Contractor; and

91.1.2 the Authority's Representative shall be given in writing and shall be deemed to have been given to the Authority.

91.2 The Authority shall not be responsible for and the Contractor shall not be entitled to rely on and shall not do so or claim relief, additional time, losses, expenses, damages, costs or other liabilities should the Contractor act on or fail to act on any notice, communication or other purported instruction given by a person alleging to act for and on behalf of the Authority unless such person is the Authority's Representative.

92 CONTRACTOR'S QUALITY AND ENVIRONMENTAL MANAGERS

92.1 The Contractor shall appoint (or shall procure the appointment of) as soon as reasonably practicable following the Commencement Date a quality manager,

who may be the Contractor's Representative and may be directly involved in the day-to-day performance of Asset Provision and/or Service Provision, and the Contractor shall through the quality manager, in respect of Asset Provision and/or Service Provision:

- 92.1.1 ensure the effective operation of and implementation of the quality assurance system in accordance with the Quality Plan; and
 - 92.1.2 audit the quality assurance system in accordance with the Quality Plan and report the findings of such audit to the Contractor and the Authority; and
 - 92.1.3 review the quality assurance system in accordance with the Quality Plan to ensure its continued suitability and effectiveness; and
 - 92.1.4 liaise with the Authority on all matters relating to quality assurance.
- 92.2 The Contractor shall appoint (or shall procure the appointment of) as soon as reasonably practicable following the Commencement Date an environmental manager, who may be the Contractor's Representative and may be directly involved in the day-to-day performance of Asset Provision and/or Service Provision, and the Contractor shall through the environmental manager, in respect of Asset Provision and/or Service Provision:
- 92.2.1 ensure the effective operation of and implementation of the Environmental Management System and Environmental Management Plan; and
 - 92.2.2 audit of the Environmental Management System at in accordance with the Environmental Management Plan and report the findings of such audit to the Contractor and the Authority; and
 - 92.2.3 review the Environmental Management System in accordance with the Environmental Management Plan to ensure its continued suitability and effectiveness; and
 - 92.2.4 liaise with the Authority on all matters relating to environmental management.

93 **NAMED EMPLOYEES**

93.1 **Discrimination**

- 93.1.1 The Contractor will not unlawfully discriminate within the meaning and scope of the provisions of the [Equality Act 2010][to the extent in force from time to time]⁴⁶ .
- 93.1.2 The Contractor shall, and shall procure that its Sub-contractors shall, take all reasonable steps to procure the observance of the provisions of Clause 93.1.1 by all Named Employees.
- 93.1.3 If the Contractor becomes aware of any prosecution or proceedings, brought under the Acts set out in Clause 93.1.1, against the Contractor and/or any Sub-contractor and/or any servants, employees or agents of such persons, the Contractor shall immediately notify the Authority's

⁴⁶ Project team should consider extent to which Equality Act 2010 provisions have yet to come in to force and amend this Clause accordingly.

Representative. The Contractor shall not be required to so notify in breach of any duty of confidentiality between the Contractor and any of his employees and notification by the Contractor of any information shall not prejudice any rights of the Authority or the Contractor under this Contract.

93.2 Resources and Training

93.2.1 The Contractor shall procure that:

- (a) there shall be at all times sufficient staff (including all relevant grades of supervisory staff) engaged in Asset Provision and/or Service Provision with the requisite level of skill and experience. This obligation shall include ensuring that there are sufficient staff to cover periods of holiday, sickness, other absences and anticipated and actual peaks in demand for Asset Provision and each of the Services; and
- (b) all staff receive such training and supervision as is necessary to ensure the proper performance of Asset Provision and/or Service Provision under this Contract.

93.3 Personnel Policies and Procedures

93.3.1 The Contractor shall procure that there are set up and maintained by it and by all Sub-contractors personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The Contractor shall procure that the terms and implementation of such policies and procedures comply with Legislation and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are issued to the Authority's Representative within a reasonable time of their publication.

94 SUB-CONTRACTORS

94.1 If the Project includes, or shall involve, the disclosure of information about a Secret Matter, for the purposes of this Clause 94 "Sub-contractor" shall mean a sub-contractor to the Contractor, a sub-contractor of a sub-contractor to the Contractor, and any other sub-contractor of whatever tier involved in Asset Provision and/or Service Provision who has or may have access to the Secret Matter.

94.2 The Contractor shall perform its obligations under and observe all the terms of any Sub-contract which it has entered into with a Sub-contractor.

94.3 Nothing in this Contract shall prohibit or prevent any Sub-contractor employed by the Contractor from being employed by the Authority at any establishments of the Authority.

94.4 Prior to entering into any sub-contract relating to IPR, the Contractor shall notify the proposed sub-contractor that the Contractor is not, by virtue of prior agreement with the Authority, entitled to place a contract with the sub-contractor which does not comply with the conditions of Clause 95.3 (Sub-contractor IPR).

94.5 The Contractor shall retain, for two Years from the earlier of the Termination Date or the Expiry Date as the case may be, a copy of all Sub-contracts (or the relevant parts thereof) sufficient to demonstrate the Authority's rights with

respect to 95.3 (Sub-contractor IPR) including rights in respect of Sub-contractor IPR and shall provide certified copies of such records to the Authority's Representative upon request.

94.6 Approval of Sub-contractors and Terms of Sub-contracts

94.6.1 By entering into this Contract, the Authority approves the Sub-contractors appointed by the Contractor as at the Commencement Date.

94.6.2 If the Contractor wishes to replace a Sub-contractor or add an additional Sub-contractor, the Contractor shall propose a Change pursuant to PART 18 (Changes and Change in Law) by submitting for the Authority's Representative's approval:

- (a) the name of the proposed Sub-contractor; and
- (b) a statement of the work to be carried out; and
- (c) a copy of the proposed Sub-contract which shall include the matters required pursuant to Clause 95 (Matters to be Included in Sub-contracts); and
- (d) any other details known to the Contractor which the Authority's Representative shall reasonably require.

94.6.3 The Authority may, at its sole discretion, seek to acquire the same rights from a proposed Sub-contractor as are recited in Clauses 108.5 (Licence of Contractor Background IPR and Contractor Foreground IPR) and 108.6 (Licence and Sub-Licence of Third Party IPR Provided by the Contractor) by means of a direct IPR agreement with a proposed Sub-contractor and the Contractor may not place a Sub-contract until the Authority's Representative has confirmed in writing either that it has entered into such a direct agreement or that it does not wish to do so. Should the Authority opt for such a direct agreement, the Authority's Representative shall inform the Contractor provided always that the Authority shall be responsible for its own costs in procuring and negotiating any such direct agreements.

94.6.4 The Authority's Representative shall (acting reasonably) confirm or reject the identity of the proposed Sub-contractor and/or the terms of the proposed Sub-contract within **thirty** Business Days of the Contractor's Notice of Change provided that it shall be reasonable for the Authority's Representative to reject any proposed Sub-contractor who is not a Suitable Substitute Sub-contractor and/or who will not be appointed under a Sub-contract including the matters required pursuant to Clause 95 (Matters to be Included in Sub-contracts).

94.6.5 The Contractor shall not, in respect of the Project, employ a proposed new sub-contractor and/or use a proposed sub-contract **and shall procure that a Sub-contractor does not, in respect of the Project, employ a sub-contractor and/or use a proposed sub-contract** rejected by the Authority pursuant to this Clause 94.6.

94.6.6 On:

- (a) the Authority's Representative's approval pursuant to this Clause 94.6; and

- (b) the entering into of the relevant sub-contract documentation by the parties to it,
- (c) the proposed new sub-contractor and sub-contract shall become a Sub-contractor and Sub-contract respectively for the purposes of this Contract.

95 MATTERS TO BE INCLUDED IN SUB-CONTRACTS

95.1 For the purposes of Clause 95.2 (Secrecy and Security), "Sub-contractor" shall mean a sub-contractor to the Contractor, a sub-contractor of a sub-contractor to the Contractor, and any other sub-contractor of whatever tier involved in Asset Provision and/or Service Provision and "Sub-contracts" means the contracts entered into between the Contractor and the Sub-contractors and between the sub-contractors to the Sub-contractors and any other sub-contractor of whatever tier involved in Asset Provision and/or Service Provision

95.2 Secrecy and Security

- 95.2.1 All Sub-contracts shall include provisions for placing the Sub-contractor under obligations in relation to secrecy and security corresponding to those placed on the Contractor by Clauses 100 (Security Requirements) to 105 (Breach of Security) inclusive.
- 95.2.2 The Contractor shall, and shall procure that its Sub-contractors shall give such notices, directions, requirements and decisions to the Sub-contractors as may be necessary to bring the provisions relating to secrecy and security which are included in Sub-contracts pursuant to this Clause 95.2 into operation in such cases and to such extent as the Authority's Representative may direct.
- 95.2.3 The Contractor's Representative shall give the Authority's Representative such information and particulars as the Authority's Representative may from time to time require for the purposes of satisfying the Authority that the obligations imposed by or under the provisions of this Clause 94.2 have been and are being observed and as to what the Contractor has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof.
- 95.2.4 Nothing in this Clause 95.2 shall be construed as intended to prevent any person from giving any information or doing any thing on any occasion when it is, by virtue of any Legislation, the duty of that person to give that information or do that thing.

95.3 Sub-contractor IPR

- 95.3.1 All Sub-contracts shall include:
 - (a) a licence for the Authority under Sub-contractor IPR in the same terms as the licence the Authority receives in relation to Contractor IPR as set out in Clause 108.5 (Licence of Contractor Background IPR and Contractor Foreground IPR); and
 - (b) an assignment of rights in Sub-contractor IPR in the same terms as the assignment to the Authority of Contractor IPR as set out in Clause 108.8 (Sub-contractors); and
 - (c) provisions such that the Sub-contract shall not be rescinded, or varied in such a way as to alter or extinguish any rights granted

to the Authority without the prior written consent of the Authority's Representative; and

- (d) provisions that the Authority's rights referred to in this Clause 95, which are otherwise enforceable under the Contracts (Rights of Third Parties) Act 1999, are not rendered unenforceable; and
- (e) a requirement that either party to the Sub-contract may release to the Authority any of those parts of the Sub-contract as are necessary to be sufficient to demonstrate compliance with the provisions of this Clause 94 and that any such release shall not amount to a breach of any provision of confidentiality contained within the Sub-contract; and
- (f) provisions that the Authority and the Contractor may register any licence of registered Third Party IPR against that IPR.

96 **CHANGES TO SUB-CONTRACTORS AND THE IMPACT ON DEDUCTIONS**

96.1 On not more than two occasions during the Contract Period on the substitution or replacement of a defaulting Sub-contractor, the Contractor may elect that for the purposes of Clause 132.1.2 (Termination by the Authority) only:

96.1.1 any accrued Unavailability Deductions; and/or

96.1.2 any accrued Service Performance Deductions; and/or

96.1.3 any warning notices or Final Warning Notices in respect of Clause 132.6 (Termination Notices Prior to Termination for Persistent Breach by the Contractor),

in each case relating to the relevant Services in respect of which the Sub-contractor is being replaced, shall be cancelled. The Contractor shall notify the Authority's Representative on or before the appointment of any such substitute or replacement Sub-contractor whether it elects for this Clause 96.1 to apply on that occasion.

96.2 If an election is made pursuant to Clause 96.1 on the replacement or substitution of a defaulting Sub-contractor then for the purposes of Clauses 132.4 (Termination Notice for Termination for Contractor Default) and 132.5 (Termination Date and Compensation for Termination for Contractor Default) only:

96.2.1 no Unavailability Deductions; and

96.2.2 no Service Performance Deductions; and

96.2.3 no warning notices or Final Warning Notices in respect of Clauses 132.6 (Termination Notices prior to Termination for Persistent Breach by the Contractor) and 132.13 (Termination Date on Termination for Persistent Breach by the Contractor),

shall accrue for the purposes of sub-paragraphs (l), (m) and (n) of the definition of Contractor Default in respect of a Service during a period of two months from the date on which that Service is first provided by the replacement or substitute Sub-contractor but the Authority shall still make deductions from the Unitary Charge in respect of Unavailability Deductions and Service Performance Deductions incurred during that period.

PART 20 – SECURITY (CORE CLAUSES)

97 DEFINITIONS

97.1 In this PART 20, unless the context otherwise requires:

"**Named Employee**" means any of the Contractor's and/or a Sub-contractor's employees, staff, directors or officers performing Asset Provision and/or Service Provision (other than Relevant Employees/Transferring Employees); and

"**Sub-contractor**" shall mean a sub-contractor to the Contractor, a sub-contractor of a sub-contractor to the Contractor, and any other sub-contractor of whatever tier involved in Asset Provision and/or Service Provision.

98 SECURITY ASPECTS LETTER

98.1 On or before the Effective Date, the Contractor shall provide the Authority's Representative with a signed copy of the security aspects letter included in the Security Requirements.

99 SECURITY LIAISON OFFICER

99.1 The Contractor shall appoint (or shall procure the appointment of) as soon as reasonably practicable following the Commencement Date a security liaison officer to be responsible, in consultation with such representative as the Authority's Representative may designate, for the implementation of all security arrangements concerning the Named Employees, the area in which they are employed, their offices and their equipment. The security liaison officer shall also be responsible for the training and supervision of the Named Employees to ensure that appropriate security regulations are met.

100 SECURITY REQUIREMENTS

100.1 The Security Requirements shall be deemed to include:

100.1.1 in respect of any elements of Asset Provision and/or Service Provision which are to be carried out on an Authority Site, a requirement that such elements are carried out at all times in accordance with the provisions of the current version of Joint Service Publication 440; and

100.1.2 in respect of any elements of Asset Provision and/or Service Provision which are to be carried out on a Contractor Site, a requirement that such elements are carried out at all times in accordance with the provisions of the current version of the Manual of Protective Security; and

100.1.3 if the Project includes, or shall involve, Secret Matters, a requirement that the Project is carried out at all times in accordance with the provisions of the current version of Joint Service Publication 440.

100.2 The Authority's Representative shall, insofar as is practical, inform the Contractor's Representative of any specific or general security information which would reasonably be expected to affect the security of the Contractor or any Sub-contractor or their property.

101 SECURITY PROPOSALS

101.1 By entering into this Contract, the Authority approves the Security Proposals set out in Schedule 2 Part 3 (Security Proposals).

101.2 From the Commencement Date, the Contractor shall, and shall ensure that its Sub-contractors shall, carry out the Project in accordance with the Security Requirements and the Security Proposals, provided that the fact that the Contractor has complied with the Security Proposals but not the Security Requirements shall not be a defence to an allegation that the Contractor has not complied with the Security Requirements.

102 PERSONNEL SECURITY

102.1 Security Clearance

102.1.1 In respect of each Named Employee, not less than **forty** Business Days before such person begins to perform Asset Provision and/or Service Provision, the **Authority/Contractor** shall be responsible for ensuring that such Named Employee is security cleared to the level required by the Security Requirements by application to the Defence Vetting Agency (or other issuing body from time to time). **If the Authority is responsible for applying for security clearance of Named Employees pursuant to this Clause 101.1, the Contractor shall provide a completed security clearance application form for such Named Employee to the Authority's Representative not less than thirty Business Days before such Named Employee begins to perform Asset Provision and/or Service Provision.**

102.2 Official Secrets

102.2.1 If and when directed by the Authority's Representative, the Contractor shall secure that any of the Named Employees shall sign a statement that it understands that the Official Secrets Acts 1911-1989 **and, where applicable, the Atomic Energy Act 1946,** apply to the Named Employee both during and after the Contract Period.

102.3 Admission to Authority Sites

102.3.1 In respect of each Named Employee, not less than **thirty** Business Days before such person is intended to enter onto an Authority Site in order to perform Asset Provision and/or Service Provision, the Contractor shall provide the Authority's Representative with details of such Named Employee and any other details the Authority's Representative may require (including full details of birthplace and parentage) together with details of the Authority Site to which access is required and the capacity in which such person is concerned with Asset Provision and/or Service Provision.

102.3.2 The Authority's Representative shall issue a pass for all Named Employees who are security cleared to an appropriate level for the Authority Site pursuant to Clause 102.1 (Security Clearance) on or before such person is intended to enter onto an Authority Site in order to perform Asset Provision and/or Service Provision. Passes shall remain the property of the Authority and shall be surrendered on demand or on termination or expiry of the Contract.

102.3.3 A person not in possession of a pass who is required by the Contractor or any Sub-contractor to attend an Authority Site to provide emergency reactive services shall be allowed temporary admission to the Authority

Site if the Contractor shall, or shall procure that any Sub-contractor shall, ensure that such individual is accompanied at all times whilst on the Authority Site by a member of the Contractor or Sub-contractor's staff who has been issued with a pass pursuant to Clause 102.1 (Security Clearance).

102.3.4 Whilst engaged at the Authority's Sites the Contractor shall, and shall procure that any Sub-contractor shall, ensure that all Named Employees and other accompanied emergency reactive workers pursuant to Clause 102.3.3 comply with the Authority's Policies relating to the conduct of staff and security arrangements.

102.3.5 Notwithstanding the provisions of Clauses 102.3.1 to 102.3.3, the Authority may refuse any person admission to an Authority Site or require the removal of any person from an Authority Site:

- (a) if such person is not in possession of a pass pursuant to Clause 102.3.2 or is not an accompanied emergency reactive worker pursuant to Clause 102.3.3; and/or
- (b) if such person, in the Authority's opinion, represents a risk to themselves or an Authority Related Party or property and the Authority's Representative has given written notice to the Contractor's Representative to this effect; and/or
- (c) if the Authority has reasonable grounds for considering that the presence or conduct of such person at the Authority Site is undesirable and the Authority's Representative has given written notice to the Contractor's Representative to this effect; and/or
- (d) as part of a security investigation pursuant to Clause 104 (Co-operation for Security Investigation) and the Authority's Representative has given written notice to the Contractor's Representative to this effect; and/or
- (e) for any other reason,

and the Authority's decision on any matter arising under this Clause 101.3 shall be final and conclusive.

102.3.6 If any person is refused admission to an Authority Site or is removed from an Authority Site pursuant to Clause 102.3.5(e), then the Authority shall give the Contractor such relief from deductions in respect of those Services in which such person is or would have been engaged for a reasonable period to allow the Contractor or any Sub-contractor to make alternative arrangements to replace the person whose admission has been refused or whose removal has been requested.

103 SECRET MATTERS

103.1 Disclosure of Secret Matters

103.1.1 In addition to its obligations pursuant to Clause 113 (Confidentiality), the Contractor shall not, either during or after the Contract Period, do or permit to be done anything which it knows or ought reasonably to know may result in information about a Secret Matter being:

- (a) without the prior consent in writing of the Authority's Representative, disclosed to or acquired by a person who is an alien or who is a British subject by virtue only of a certificate of naturalisation in which his name was included; and
- (b) disclosed to or acquired by a person in respect of whom the Authority's Representative has given to the Contractor's Representative a written notice, which has not been cancelled, stating that the Authority requires that Secret Matters shall not be disclosed to that person; and
- (c) without the prior consent in writing of the Authority's Representative, disclosed to or acquired by any person who is not a servant of the Contractor; and
- (d) disclosed to or acquired by a person who is a servant of the Contractor except in a case where it is necessary for the proper performance of this Contract that that person shall have the information.

103.2 Access to Secret Matters

103.2.1 In addition to its obligations pursuant to Clause 113 (Confidentiality), the Contractor shall, both during and after the Contract Period, take all reasonable steps to ensure:

- (a) that no such person as is mentioned in Clause 103.1 (Disclosure of Secret Matters) shall have access to any thing or document under the control of the Contractor containing information about a Secret Matter except with the prior written consent of the Authority's Representative; and
- (b) that no visitor to any premises in which there is any thing to be supplied under this Contract or where work in pursuance of this Contract is being carried on shall see or discuss with the Contractor or any person employed by it any Secret Matter unless the visitor is authorised in writing by the Authority's Representative to do so; and
- (c) that no photograph of any thing to be supplied under this Contract or of any portion of the work carried out in pursuance of this Contract shall be taken except so far as may be necessary for the proper performance thereof or with the prior written consent of the Authority's Representative, and that no such photograph shall, without such consent, be published or otherwise circulated; and
- (d) that all information about any Secret Matter and every document, model or other thing which contains or may reveal any such information is at all times strictly safeguarded, and that, except in so far as may be necessary for the proper performance of this Contract or with the prior written consent of the Authority's Representative, no copies of or extracts from any such document, model or thing shall be made or used and no designation or description which may reveal information about the nature or contents of any such document, model or thing shall be placed thereon; and

(e) that if the Authority's Representative gives written notice to the Contractor's Representative at any time requiring the delivery to the Authority of any such document, model or thing as is mentioned in Clause 103.2.1(d) that document, model or thing (including all copies thereof or extracts therefrom) shall forthwith be delivered to the Authority who shall be deemed to be the owner thereof and accordingly entitled to retain the same.

103.2.2 The decision of the Authority on the question of whether the Contractor has taken or is taking all reasonable steps as required by the provisions of this Clause 103.2 shall be final and conclusive.

103.3 Named Employees and Other Persons with Access to Secret Matters

103.3.1 If and when directed by the Authority's Representative, the Contractor's Representative shall furnish full particulars of all Named Employees and other persons who are at any time concerned with any Secret Matter.

103.3.2 If at any time either during or after the Contract Period it comes to the notice of the Contractor that any person acting without lawful authority is seeking or has sought to obtain information concerning this Contract or any thing done or to be done in pursuance thereof, the matter shall be forthwith reported by it to the Authority's Representative and the report shall, in each case, be accompanied by a statement of the facts including, if possible, the name, address and occupation of that person. The Contractor shall be responsible for making all such arrangements as it may consider appropriate to ensure that if any such occurrence comes to the knowledge of any person employed by it, that person shall forthwith report the matter to the Contractor with a statement of the facts as aforesaid.

103.3.3 The Contractor shall place every person employed by it or a Sub-contractor who in his opinion has or shall have such knowledge of any Secret Matter as to appreciate its significance, under a duty to the Contractor to observe the same obligations in relation to that matter as are imposed on the Contractor by Clauses 103.1 (Disclosure of Secret Matters) and 103.2 (Access to Secret Matters). The Contractor shall, if directed by the Authority's Representative, place every person who is specified in the direction or is one of a class of persons so specified, under the like duty in relation to any Secret Matter which may be specified in the direction, and shall at all times use his best endeavours to ensure that every person upon whom obligations are imposed by virtue of Clause 103.2 (Access to Secret Matters) observes the said obligations, and the Contractor shall give such instructions and information to every such person as may be necessary for that purpose, and shall, immediately upon becoming aware of any act or omission which is or would be a breach of the said obligations, report the facts to the Authority's Representative with all necessary particulars.

104 CO-OPERATION FOR SECURITY INVESTIGATION

104.1 The Contractor shall, and shall procure that each Sub-contractor shall, notify the Authority's Representative immediately it becomes aware that a Named Employee or accompanied emergency reactive worker pursuant to Clause 102.1 (Security Clearance) has breached the provisions of this PART 20.

- 104.2 On a breach of the provisions of this PART 20 by the Contractor or a Sub-contractor or any of their employees:
- 104.2.1 the Contractor shall procure that the Authority's Representative and/or any other representative or adviser of the Authority shall have the right to enter any of the Contractor's Sites or any property belonging to a Sub-contractor in order to investigate such breach; and/or
 - 104.2.2 the Contractor shall use its reasonable endeavours to make its employees (and those of Sub-contractors) identified by the Authority's Representative available to be interviewed by the Authority for the purposes of the investigation; and/or
 - 104.2.3 the Contractor shall, subject to any legal restriction on their disclosure, provide all copies of documents, records or other material of any kind which may reasonably be required by the Authority for the purposes of the investigation. The Authority shall have the right to retain copies of any such material for use in connection with the investigation; and/or
 - 104.2.4 the Authority shall have the right to audit the Contractor's and/or Sub-contractors' compliance with the provisions of this PART 20.
- 104.3 The Contractor shall, and shall procure that its Sub-contractors shall, make available, and give reasonable assistance to the Authority's Representative and/or any other representative or adviser of the Authority for the purposes of Clause 104.2.
- 104.4 Nothing in Clause 104.2 shall affect any entitlement to make deductions under Clause 66 (Payment Provisions) and Schedule 13 (Payment Mechanism) during the period in which the security investigation is subsisting or thereafter.
- 104.5 **Results of Authority's Security Audit**
- 104.5.1 If the Authority's audit carried out pursuant to Clause 104.2.4 shows that the Security Proposals do not fulfil the Security Requirements or that the Contractor is not otherwise complying with the provisions of this PART 20, then the Contractor shall, at its own expense and without invoking the change procedure pursuant to PART 18 (Changes and Change in Law), amend the Security Proposals so as to ensure that the Security Proposals shall satisfy the Security Requirements.
- 105 **BREACH OF SECURITY**
- 105.1 If, notwithstanding Clause 104.5 (Results of Authority's Security Audit), the Authority in its absolute discretion considers that the breach of this PART 20 by the Contractor or a Sub-contractor or any of their employees amounts to a Breach of Security, the Authority's Representative may serve a Termination Notice on the Contractor's Representative pursuant to Clause 132.10 (Termination Notice Prior to Termination for Prohibited Acts).
 - 105.2 If the Authority does not consider that the breach of this PART 20 by the Contractor or a Sub-contractor or any of their employees amounts to a Breach of Security, the Authority's Representative may nevertheless instruct the Contractor to terminate a Sub-contract or to procure that a Sub-contractor terminates a sub-contract immediately:
 - 105.2.1 if the Sub-contractor is in breach of any secrecy or security obligation imposed by any other contract with the Crown; or

105.2.2 where the Authority's Representative considers the circumstances of the breach jeopardise the secrecy or security of a Secret Matter and notifies the Contractor accordingly; or

105.2.3 following notice by the Authority's Representative to the Contractor, on a failure to bring the Sub-contract into compliance with Clause 95.3 (Sub-contractor IPR).

105.3 The Contractor shall, and shall procure that the Sub-contractors shall, give effect to this instruction. The Authority shall not be liable for any Direct Losses or Indirect Losses of the Contractor and/or a Sub-contractor as the case may be and nothing in this Clause 104 shall affect the Authority's entitlement to make Unavailability Deductions and/or Service Performance Deductions pursuant to Schedule 13 (Payment Mechanism) arising directly or indirectly out of such termination.

PART 21 – TUPE, CONDO AND SPONSORED RESERVES (CORE CLAUSES)⁴⁷

106 EMPLOYEE TRANSFER ARRANGEMENTS ON ENTRY

See Schedule 15 Part 1 and develop appropriate text to reflect project specific needs in conjunction with MOD Central Legal services – Commercial Law Division.

107 STAFF TRANSFER ARRANGEMENTS ON EXIT

See Schedule 15 Part 2 and develop appropriate text to reflect project specific needs in conjunction with MOD Central Legal services – Commercial Law Division.

⁴⁷ If relevant in the context of the project, project teams should insert DEFCON wording here to cover Contractors on Deployed Operations (CONDO) and Sponsored Reserves

PART 22 – INTELLECTUAL PROPERTY, INFORMATION AND DISCLOSURE (CORE CLAUSES)

108 INTELLECTUAL PROPERTY RIGHTS

108.1 PART 22 Definitions

108.1.1 For the purposes of this PART 22, "**Sub-contractor**" shall mean a sub-contractor to the Contractor, a sub-contractor of a sub-contractor to the Contractor, and any other sub-contractor of whatever tier involved in Asset Provision and/or Service Provision.

108.2 Ownership of IPR

108.2.1 The Contractor shall not by virtue of this Contract acquire title to or rights in any Authority Background IPR other than under the licences set out in this Contract. The Authority shall not by virtue of this Contract acquire title to or rights in any Background IPR owned by the Contractor or any third party other than under the licences set out in this Contract.

108.2.2 Subject to Clause 108.2.3, the Party creating any intellectual property in the course of this Contract shall own the IPR in it.

108.2.3 Subject to Clause 108.2.1 all IPR in any materials comprising:

- (a) training material (including training syllabuses, lessons, records, course training plans and courseware);
- (b) records relating to Authority and Authority-sponsored personnel;
- (c) databases;
- (d) information relating to the operation, repair and maintenance of Government Furnished Assets and/or Existing Assets; and
- (e) modifications, updates and developments to Authority Background IPR, or third party IPR supplied by the Authority to the Contractor for the purpose of this Contract,

created and/or modified by the Contractor and any Sub-contractor under the Contract for use in connection with the Services under the Contract, shall vest in and be the property of the Authority (the "**Authority Foreground IPR**"). The Contractor shall ensure, where necessary, that it secures the right to effect such vesting and the Contractor hereby assigns to the Authority, with full title guarantee, all present and future Authority Foreground IPR. The Contractor shall mark any copyright work comprising Authority Foreground IPR with the legend "© Crown-owned copyright [insert the year of generation of the work]".

108.2.4 Subject to Clause 108.2.3, the Contractor shall not assign, or otherwise transfer or sell, any Contractor Foreground IPR to any third party without the prior written consent of the Authority.

108.3 Licence of Authority Background IPR and Authority Foreground IPR

108.3.1 The Authority hereby grants to the Contractor a non-exclusive, royalty-free licence to use all Authority Foreground IPR necessary for the

purpose of the Contractor's performance of the Contract for the Authority.

108.3.2 The Authority shall make available to the Contractor all Authority **Background IPR** the Authority believes is relevant to the Contractor's performance of the Contract. The Authority hereby grants a licence to the Contractor on a non-exclusive royalty-free basis to use such Authority **Background IPR** solely for performance of the Contract. The Authority may at its discretion and by written notice to the Contractor impose restrictions on the Contractor's use of such IPR that limit use to specific purposes within the scope of this Contract.

108.3.3 The Contractor shall not use Authority **Background IPR** or **Authority Foreground IPR** for any purpose other than those specified in Clauses 108.3.1 and 108.3.2 without the prior written consent of the Authority's Representative, which, if given, will include conditions attaching to such wider use.

108.3.4 The Authority gives no warranty as to the suitability for the Contractor's purpose of any Authority **Background IPR** licensed under Clause 108.3.2. The Contractor shall not do anything or act in any way which will prejudice the rights of ownership by the Crown or the Authority of any Authority **Background IPR**.

108.3.5 The licences granted to the Contractor under Clauses 108.3.1 to 108.3.2 above include the right to grant sub-licenses to Sub-contractors engaged in the performance of any part of this Contract for the Contractor provided that such Sub-contractors have entered into a confidentiality undertaking with the Authority in the same form as that set out in Schedule 16 Part 1 (Form of Confidentiality Undertaking). The licence rights set out in Clauses 108.3.1 and 108.3.2 are otherwise non-transferable and no other sub-licence may be granted by the Contractor without the Authority's consent.

108.4 Sub-Licence of Third Party IPR provided by the Authority

108.4.1 The Authority shall at its discretion make Third Party IPR that is the subject of a licence or other agreement between the third party and the Authority available to the Contractor, where the Authority has reason to believe that use by the Contractor of such Third Party IPR is relevant to the Contractor's performance of the Contract. To the extent that the Contractor requests a sub-licence to use such Third Party IPR from the Authority for a specific purpose within its obligations to perform this Contract for the Authority, and provides the Authority with a reasonable justification for its request, then subject to the provisions of Clause 108.4.2 below the Authority, so far as it is lawfully able to do so, hereby grants a sub-licence to the Contractor on a non-exclusive, royalty-free basis, with the right to grant sub-sub-licenses to Sub-contractors engaged in the performance of any part of this Contract for the Contractor.

108.4.2 The sub-licence referred to in Clause 108.4.1 above shall only be granted if the Authority has determined that it is encompassed by the Authority's rights under such licence or other agreement with the third party concerned, and that the sub-licence is reasonably necessary for the specific purpose notified to the Authority by the Contractor. A sub-sub-licence shall only be granted to a Sub-contractor who has entered

into a confidentiality undertaking with the Authority in the same form as that set out in Schedule 16 Part 1 (Form of Confidential Undertaking).

108.5 Licence of Contractor Background IPR and Contractor Foreground IPR

108.5.1 The Contractor hereby grants to the Authority for the Contract Period and for all times thereafter in respect of IPR it owns or controls a non-exclusive, irrevocable, royalty-free licence or sub-licence including, without limitation the licence or sub-licence right to copy, modify, disclose and use), with the right to grant sub-licences, in Contractor Background IPR and Contractor Foreground IPR to:

- (a) receive and use the Services and/or the Specified Assets and replace, substitute or follow on services and substantially similar assets; and
- (b) operate, perform, maintain, modify, update and develop the Services, the Specified Assets or any part of either, and to provide replacement, substitute or follow-on services and substantially similar assets provided that no such act is performed in such a way as to constitute a material change to the Authority's Requirements or relevant part thereof; and
- (c) otherwise perform the Authority's duties and obligations under the Project Documents; and
- (d) perform any review, audit, or legal duty (statutory or otherwise); and
- (e) integrate the Services with the Authority's procurement, operation and support of Authority assets with which the Services are reasonably associated at any time during or after the Contract Period; and
- (f) conduct any UK Governmental purpose which may be connected with the use of the Services by the Authority provided always that such purpose does not extend to the commercial exploitation of such rights during or after the Contract Period; and
- (g) recomplete the provision of replacement, substitute or follow-on services, or of assets similar to the Specified Assets, in furtherance to the provisions of Clause 108.5.1(b).

108.5.2 The Contractor shall not assign, or otherwise transfer or sell any Contractor Background IPR or Contractor Foreground IPR to any third party during or after the Contract Period unless it preserves for the Authority the rights granted to it hereunder.

108.6 Licence and Sub-Licence of Third Party IPR Provided by the Contractor

108.6.1 The Contractor shall promptly notify the Authority's Representative whenever the Contractor or any of its Sub-contractors requires use of Third Party IPR, other than those subject to the provisions of Clause 108.4.1 (Sub-licence of Third Party IPR Provided by the Authority), for the purpose of Asset Provision and/or Service Provision.

108.6.2 The Contractor shall ensure that all licences entered into with third parties for the right to use of Third Party IPR notified in accordance with

Clause 108.6.1 shall be held either in its own name or that of its relevant Sub-contractor as licensee.

108.6.3 In respect of all licences referred to in Clause 108.6.2 the Contractor shall ensure that the licence either:

- (a) grants the Contractor or Sub-contractor the right to sub-license the Third Party IPR to the Authority or to any other party nominated by the Authority for the Contract Period and all times thereafter; or
- (b) directly grants to the Authority for the Contract Period and all times thereafter, a non-exclusive and irrevocable in the Third Party IPR (including, in that limitation, the licence right to copy modify, disclose and use) with the right to grant sub-licences to do the same,

to a substantially similar extent to that licensed to the Contractor to:

- (i) receive and use the Services, the Specified Assets and substantially similar services and assets; and
- (ii) operate, perform, maintain, modify, update and develop the Services, the Specified Assets or any part of either, and to provide replacement, substitute or follow-on services and substantially similar assets provided that no such act is performed in such a way as to constitute a material change to the Authority's Requirements or relevant part thereof; and
- (iii) in addition, for the Authority to:
 - (1) otherwise perform the Authority's duties and obligations under the Project Documents; and
 - (2) perform any review, audit, or legal duty (statutory or otherwise); and
 - (3) integrate the Services with the Authority's procurement, operation and support of Authority assets and services falling outside the Contract with which the Services are reasonably associated at anytime during or after the Contract Period; and
 - (4) conduct any UK Governmental purpose which may be connected with the use of the Services by the Authority provided always that such purposes do not extend to the commercial exploitation of such rights during or after the Contract Period; and
 - (5) recomplete the provision of replacement, substitute or follow-on services, or of assets similar to the Specified Assets, in furtherance to the provisions of Clause 108.5.1(b); and
- (c) in either case in Clause 108.6.3(a) or 108.6.3(b), ensure that any such licence either includes the right to sub-license to the

Authority or any other party nominated by the Authority, or that there is a direct licence to the Authority and in each case that the licence or sub-licence is capable of assignment, novation or transfer in accordance with Clause 147 (Transfer of this Contract by the Authority).

108.6.4 If, after the exercise of reasonable endeavours by the Contractor, a licence as set out in Clause 108.6.3 is not available, the Contractor shall procure the grant to the Authority of a licence of that Third Party IPR on the best available terms closest to those set out in Clause 108.6.3 and consult with the Authority's Representative prior to the grant of that licence on the terms of the licence and whether any such Third Party IPR or any equivalent Third Party IPR which is acceptable to the Contractor on technical grounds and will not be detrimental to the Contractor's ability to undertake Asset Provision and/or Service Provision in accordance with the terms of this Contract or disproportionately increase the Contractor's costs is available on better terms in order to mitigate the effect of such a licence.

108.6.5 Any royalties or other fees payable in obtaining or exercising any licence or sub-licence of Third Party IPR or any fees which are incurred using any right granted thereunder in accordance with the terms and conditions of this Contract during the Contract Period shall be for the account of the Contractor provided always that the Contractor shall have no responsibility to pay any such royalties or other fees which may be payable to the owners of such Third Party IPR for any continued use of such IPR after the end of the Contract Period.

108.7 Transfer of Licences in Third Party IPR on Termination or Expiry

108.7.1 On the Termination Date or the Expiry Date, as the case may be, the Contractor shall procure the novation, free of charge, of all licences of Third Party IPR obtained by the Contractor in accordance with Clause 108.6 (Licence and Sub-Licence of Third Party IPR Provided by the Contractor) to the Authority or, at the Authority's request, to a Follow-on Contractor in respect of which it has managed to secure novation rights. On the expiry of the Contract Period the Authority shall become responsible for the payment of royalties or other fees which may be payable under such licences for continued use after the Contract Period.

108.8 Sub-contractors

108.8.1 The Contractor shall ensure that the provisions of Clauses 108.2 (Ownership of IPR) to 108.6 (Licence and Sub-Licence of Third Party IPR Provided by the Contractor) are in accordance with Clause 95.3 (Sub-contractor IPR) flowed down to Sub-contractors of the Contractor. In accordance with Clause 95.3 (Sub-contractor IPR) the Authority shall be entitled to directly enforce its contractual rights from the Sub-contractors pursuant to its rights under the Contracts (Rights of Third Parties) Act 1999 in respect of any sub-contract made under English law.

109 PROTECTION OF INFORMATION

109.1 Contractor's Obligations⁴⁸

109.1.1 In respect of all information relating to [and/or comprising] Authority Background IPR, Authority Foreground IPR, Contractor Background IPR and Contractor Foreground IPR, the Contractor shall:

- (a) mark the information comprising Authority Background IPR and Authority Foreground IPR with such notice regarding confidentiality or ownership as the Authority may notify from time to time and shall not delete or remove any copyright notices contained within the information; and
- (b) not [store, copy, disclose], use, modify or adapt the information comprising Authority Background IPR and Authority Foreground IPR, except in accordance with its licence rights under Clause 108.3 (Licence of Authority Background IPR and Authority Foreground IPR) as may be required to provide the Services or as instructed by the Authority; and
- (c) undertake the obligations set out in PART 20 (Security) in such a manner as to preserve so far as possible the integrity of and prevent any loss, disclosure, theft, manipulation or interception of the information; and
- (d) without prejudice to Clause 109.1.1(c), ensure the back-up and storage in safe custody of all data, materials and documents in accordance with Good Industry Practice and the Business Continuity Plan, such back-ups to be available to the Authority at any time on request and [copies of] such back-ups to be delivered to the Authority at no less than [insert period] monthly intervals; and
- (e) to the extent that such information is held and/or processed by the Contractor, supply such information to the Authority as requested by the Authority in the format [reasonably specified by the Authority][specified in the Service Provision Requirements]; and
- (f) not knowingly infringe any IPR subsisting in the information; and
- (g) at its own expense, as soon as reasonably practicable and in any event within [insert details] Business Days, restore (or procure the restoration of) any of the information which is corrupted or lost as a result of the Contractor's failure to fulfil its obligations under Clauses 109.1.1(a) and/or 109.1.1(b) and/or 109.1.1(c) and/or the Contractor's failure to exercise reasonable care and skill, by using the back-up copy made in accordance with Clause 109.1.1(d).

109.1.2 If the Contractor fails (or is unable) to restore information in accordance with the provisions of Clause 109.1.1(g), the Authority may itself restore

⁴⁸ Text in square brackets in Clause 109.1 (Contractor's Obligations) is incorporated (with amendments) from OGC ICT Services Model Agreement further to IUK note "Data Handling Review and SOPC4" 27 May 2010 for use where data security is relevant to the Project.

(or procure the restoration of) the information in any manner reasonably available to it (at the expense of the Contractor).

109.1.3 If at any time the Contractor suspects or has reason to believe that any such information has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

109.1.4 The Contractor shall, as an enduring obligation throughout the Contract Period, use the latest versions of anti-virus definitions and software available [from an industry accepted anti-virus software vendor] to check for, contain the spread of, and minimise the impact of Malicious Software in the ICT Environment (or as otherwise agreed by the Parties).

109.2 Authority's Obligations

109.2.1 In respect of all information relating to Contractor Background IPR and Contractor Foreground IPR, the Authority shall:

- (a) not delete or remove any copyright notices contained within the information that accord with the provisions of the Contract; and
- (b) not use modify or adapt the information, except in the exercise of its rights under the Contract; and
- (c) not knowingly infringe any IPR subsisting in the information.

110 IPR INDEMNITIES

110.1 If there is an indemnity claim under this Clause 110 the Parties shall provide each other with reasonable assistance (at the expense of the Indemnifying Party) and shall act in accordance with the provisions of Clause 126 (Conduct of Indemnity Claims).

110.2 Contractor's IPR Indemnity

110.2.1 The Contractor shall fully and effectually indemnify and hold harmless the Authority, its employees, agents and contractors on demand from all claims relating to any actual or alleged infringement of Third Party IPR arising from the Contractor's performance of the Contract and the Authority's receipt and use of the Services and exercise of its rights granted under the Contract, including from the Contractor's failure to comply with the terms of Clauses 108.5 (Licence of Contractor Background IPR and Contractor Foreground IPR) and 108.6 (Licence and Sub-Licence of Third Party IPR Provided by the Contractor).

110.2.2 The indemnity in Clause 110.2.1 shall not apply in respect of a claim:

- (a) that arises from any use by or for the Authority of Third Party IPR in combination with any item not supplied or approved by the Contractor where, were it not for that use in combination, a claim would not have arisen; or
- (b) that arises from the use of Contractor Background IPR and Contractor Foreground IPR or Third Party IPR by the Authority otherwise than in accordance with the terms of this Contract and any applicable licence or sub-licence conditions provided

that these have been notified to the Authority's Representative on the grant of the applicable licences or sub-licence; or

- (c) that arises from any modification, updating or development carried out by or for the Authority to any item supplied by the Contractor under this Contract, where such modification, updating or development is not authorised or approved by the Contractor.

110.3 Authority's IPR Indemnity

110.3.1 The Authority shall fully and effectually indemnify and hold harmless the Contractor, its employees, agents and Sub-contractors of the Contractor on demand from all claims relating to any actual or alleged infringement of Third Party IPR:

- (a) where the Contractor has procured a licence or sub-licence under Clause 108.6 (Licence and Sub-Licence of Third Party IPR Provided by the Contractor), notified the Authority of the terms of the licence or sub-licence, and the Authority has exceeded its licensed or sub-licensed rights; or
- (b) arising from use by the Contractor of the Authority Background IPR in accordance with Clause 108.3 (Licence of Authority Background IPR and Authority Foreground IPR); or
- (c) arising from use by the Authority of the Contractor Background IPR and Contractor Foreground IPR outside the terms of this Contract where the Contractor is not in breach of its obligations under this Contract in respect of Third Party IPR.

110.3.2 The indemnity in Clause 110.3.1 shall not apply in respect of a claim:

- (a) that arises from any use by or for the Contractor of Authority Background IPR or Authority Foreground IPR in combination with any item not supplied or approved by the Authority where, were it not for that use in combination, a claim would not have arisen; or
- (b) that arises from the use of Authority Background IPR or Authority Foreground IPR by the Contractor otherwise than in accordance with the terms of this Contract and any applicable licence or sub-licence conditions provided that these have been notified to the Contractor's Representative on the grant of the applicable licences or sub-licence; or
- (c) that arises from any modification, updating or development carried out by or for the Contractor to any item supplied by the Authority under this Contract, where such modification, updating or development is not authorised or approved by the Authority.

111 INTELLECTUAL PROPERTY RIGHTS UNDERTAKINGS AND ASSURANCES

111.1 Further Assurances

111.1.1 The Contractor undertakes to execute all documents and do all acts which may be necessary for the Authority to obtain the benefit of Clauses 108.2 (Ownership of IPR) to 110 (IPR Indemnities) including,

without limitation, consenting to the registration of any licence against any IPR which is registered.

111.1.2 The Contractor shall register all licences granted to it under Third Party IPR comprising patent, registered designs and any similar form of registered IPR, including any applications thereof.

111.1.3 The Contractor shall either:

- (a) mark any copies of Contractor IPR comprising copyright works with a copyright notice provided that such a copyright notice acknowledges the Authority's rights under this Contract; or
- (b) not mark such copyright works with any notice regarding ownership of IPR.

111.1.4 The Contractor agrees that on request by the Authority it will enter into good faith negotiations to grant to the Authority a licence of Contractor IPR or a sub licence of Third Party IPR on fair and reasonable terms for purposes outside those specified in Clauses 108.2 (Ownership of IPR) to 110 (IPR Indemnities).

112 DATA PROTECTION

112.1 General

112.1.1 In relation to all Personal Data, the Contractor shall at all times comply with the DPA as required under the DPA as a data controller (as defined in Section 1 of the DPA), including maintaining a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with the Services and shall not act in such a way as to cause the Authority to breach any of its obligations under the DPA.

112.1.2 The Contractor and any sub-contractor shall only undertake processing of Personal Data reasonably required in connection with Asset Provision and/or Service Provision and shall not transfer any such Personal Data to any country or territory outside the European Economic Area.

112.2 No Disclosure

112.2.1 The Contractor shall not disclose Personal Data to any third parties other than:

- (a) to employees and sub-contractors to whom such disclosure is reasonably necessary in order for the Contractor to carry out Asset Provision and/or Service Provision; or
- (b) to the extent required under the DPA and/or a court order,

provided that disclosure under Clause 112.2.1(a) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 112.2.1 and that the Contractor shall notify the Authority's Representative of any disclosure of Personal Data which either the Contractor or a Sub-contractor is required to make under Clause 112.2.1(b) immediately upon becoming aware of such a requirement.

112.2.2 The Contractor shall bring into effect and maintain all appropriate technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data in accordance with the seventh Data protection principle of the DPA including taking reasonable steps to ensure that staff having access to the Personal Data are aware of their responsibilities in relation to that data. Such measures and steps shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.

112.2.3 The Contractor shall ensure that all Named Employees who are required to access the Personal Data are informed of the confidential nature of the personal data and comply with the obligations set out in this Clause 112.

112.2.4 The Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor or the Sub-contractors referred to in this Clause 112.2. Within twenty Business Days of such a request, the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Authority can determine whether or not, in connection with the Personal Data, it is compliant with the DPA.

112.2.5 The Contractor shall:

- (a) notify the Authority (within **five** Business Days) if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data; or
 - (ii) a complaint or request relating to the Authority's obligations under the DPA; and
- (b) provide the Authority with full cooperation and assistance in relation to any such request or complaint made, including by:
 - (i) providing the Authority with full details of the complaint or request; and
 - (ii) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Authority's instructions; and
 - (iii) providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
 - (iv) providing the Authority with any information requested by the Authority.

112.3 Indemnity by the Contractor

112.3.1 The Contractor shall, indemnify and keep indemnified the Authority against all losses, claims, damages, liabilities, costs and expenses (including reasonable legal costs) incurred by it in respect of any breach of this Clause 112 by the Contractor and/or any act or omission of any sub-contractor.

113 **CONFIDENTIALITY**

- 113.1 The Parties agree that provisions of this Contract and each of the Project Documents shall, subject to Clause 113.2, not be treated as Confidential Information and may be disclosed without restriction.
- 113.2 Clause 113.1 shall not apply to any of those provisions of this Contract or to any information contained within a Project Document, which is designated as Commercially Sensitive Information and listed in Schedule 16 Part 2 (Commercially Sensitive Information). Any such provision of information shall, subject to Clause 113.7, be kept confidential for the periods specified in that Part.
- 113.3 Notwithstanding any other term of the Contract, but subject to Clauses 113.2, 113.4 and 113.5, the Contractor gives its consent to the Authority to publish to the general public including on a website the content of the Contract and the Project Documents including from time to time agreed changes to the Contract and Project Documents. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Contract and Project Documents.
- 113.4 Where a change to the Contract or a Project Document occurs, the Authority shall consult with the Contractor over whether any of those changes should be treated as Commercially Sensitive Information and so redacted for public availability.
- 113.5 The Contractor acknowledges and accepts that its representations on redactions during consultation under Clause 113.4 may not be determinative and that the decision whether to redact information is a matter in which the Authority shall exercise its own discretion, using as its guiding principles the exemptions from disclosure available under the provisions of the FOIA or the Environmental Information Regulations.
- 113.6 Subject to the provisions of Clause 113.1, each Party shall treat all information it receives from the other Party under this Contract as Confidential Information, shall only disclose such information to those of its officers, agents and employees having a need to know for the purpose of the Contract and exploiting rights granted under the Contract, and shall not disclose any such information to third parties except as permitted under, and subject to the provisions of, Clauses 113.7 to 113.14.
- 113.7 The obligations set out under 113.6 not to release information to third parties shall not apply to:
- 113.7.1 any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under the Contract for the performance of those obligations; or
 - 113.7.2 any disclosure of information which a Party can demonstrate is already or comes into the public domain otherwise than as a result of a breach of this Clause 113; or
 - 113.7.3 any disclosure to enable a determination to be made under PART 27 (Disputes) or in connection with a dispute between the Contractor and any of its Sub-contractors; or
 - 113.7.4 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the Party making the disclosure or the rules of any stock exchange or governmental or regulatory authority

having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned; or

113.7.5 any disclosure of information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party; or

113.7.6 any provision of information to the Parties' own professional advisers or insurance advisers or to the Senior Lenders or the Senior Lenders' professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Contractor to enable it to carry out its obligations under the Contract, or may wish to acquire shares in the Contractor and/or HoldCo in accordance with the provisions of this Contract, to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal; or

113.7.7 any disclosure by the Authority of information as may be reasonably required:

(a) for the purpose of conducting a due diligence exercise, to any proposed New Contractor, its advisers and lenders, should the Authority decide to retender all or part of the Contract or a replacement or continuation thereof or any part thereof; or

(b) for any other purpose in the exercise of the Authority's rights of disclosure and use set out under Clause 108 (Intellectual Property Rights); or

113.7.8 any registration or recording of the Necessary Consents and property registration required; or

113.7.9 any disclosure of information by the Authority to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to the Contract; or

113.7.10 any disclosure of information for the purpose of:

(a) the examination and certification of the Authority's or the Contractor's accounts;

(b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;

(c) complying with a proper request from either Party's insurance adviser, or insurer on placing or renewing any insurance policies; or

(d) (without prejudice to the generality of Clause 113.7.4) compliance with the FOIA and/or the Environmental Information Regulations,

provided that neither Clause 113.7.4 nor Clause 113.7.10(d) shall permit disclosure of Confidential Information otherwise prohibited by Clause

113.6 where that information is exempt from disclosure under Section 41 of the FOIA.

- 113.8 Where disclosure is permitted under the provisions of Clause 113.7, the Party disclosing the information shall procure that the recipient of the information shall be subject to obligations of confidentiality no less onerous than those contained in this Contract. This obligation shall not however apply to disclosures of information made under the provisions of Clauses 113.7.2, 113.7.4, 113.7.5, 113.7.8 or 113.7.10.
- 113.9 For the purposes of the National Audit Act 1983 the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and any Sub-contractor and may require the Contractor and any Sub-contractor to produce such oral or written explanations as he considers necessary. It is hereby declared that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the Contractor is not a function exercisable under this Contract.
- 113.10 The Contractor shall not and shall procure that the Named Employees and Sub-contractors shall not make use of the Contract or any information issued or provided by or on behalf of the Authority in connection with the Contract otherwise than for the purpose of the Contract, except with the written consent of the Authority's Representative.
- 113.11 Where the Contractor, in carrying out its obligations under the Contract, is provided with information by or on behalf of the Authority relating to a person or persons, the Contractor shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Contractor has obtained the prior written consent of the Authority's Representative.
- 113.12 On or before the Expiry Date, the Contractor shall ensure that all documents or computer records in its possession, custody or control, which contain information relating to persons for whom Services have been provided under this Contract, including any documents in the possession, custody or control of a sub-contractor, are delivered up to the Authority.
- 113.13 The Parties acknowledge that the National Audit Office has the right to publish details of the Contract (including Commercially Sensitive Information) in its relevant reports to Parliament.
- 113.14 The provisions of this Clause 113 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 and to Clause 112 (Data Protection).

114 **FREEDOM OF INFORMATION**

- 114.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Authority's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in Clauses 114.2 to 114.7 (inclusive).
- 114.2 Where the Authority receives a Request for Information in relation to Information that the Contractor is holding on its behalf and which the Authority does not hold itself⁴⁹ the Authority shall refer to the Contractor such Request for Information that it receives as soon as reasonably practicable and in any event within **five Business Days** of receiving a Request for Information and the Contractor shall:

⁴⁹ The Authority may wish to retain responsibility where it already holds the relevant Information.

- 114.2.1 provide the Authority's Representative with a copy of all such Information in the form that the Authority's Representative requires as soon as reasonably practicable and in any event within **ten** Business Days (or such other period as the Authority acting reasonably may specify) of the Authority's request; and
- 114.2.2 provide all necessary assistance as reasonably requested by the Authority's Representative in connection with any such Information, to enable the Authority to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations (as applicable).
- 114.3 Following notification under Clause 114.2, and up until such time as the Contractor has provided the Authority's Representative with all the Information specified in Clause 114.2.1, the Contractor may make representations to the Authority's Representative as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the Information requested, provided always that the Authority shall be responsible for determining at its absolute discretion:
- 114.3.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
- 114.3.2 whether Information is to be disclosed in response to a Request for Information, and
- in no event shall the Contractor respond directly, or allow its sub-contractors to respond directly, to a Request for Information unless expressly authorised to do so by the Authority's Representative.
- 114.4 The Contractor shall ensure that all Information held on behalf of the Authority is retained for disclosure for at least **[insert details]** years (from the date it is acquired) and shall permit the Authority to inspect such Information as requested from time to time.
- 114.5 The Contractor shall transfer to the Authority any Request for Information received by the Contractor as soon as practicable and in any event within two Business Days of receiving such Request for Information.
- 114.6 The Contractor acknowledges that any lists provided by him listing or outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Information Regulations.
- 114.7 In the event of a request from the Authority pursuant to Clause 114.2 above the Contractor shall as soon as practicable, and in any event within **five** Business Days of receipt of such request, inform the Authority of the Contractor's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Authority under Section 12(1)20 of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Authority's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the "**Appropriate Limit**") the Authority shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request and where it does require the Contractor to comply with the request the ten Business Days period for compliance shall be extended by such number of additional days for compliance as the Authority is entitled to

under Section 10 of the FOIA. In such case, the Authority shall notify the Contractor of such additional days as soon as practicable after becoming aware of them and shall reimburse the Contractor for such costs as the Contractor incurs in complying with the request to the extent the Authority is itself entitled to reimbursement of such costs in accordance with the Authority's own FOIA policy from time to time.

- 114.8 The Contractor acknowledges that (notwithstanding the provisions of Clause 113 (Freedom of Information and Confidentiality)) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the "**Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Contractor or the Project:

114.8.1 in certain circumstances without consulting with the Contractor; or

114.8.2 following consultation with the Contractor and having taken its views into account,

provided always that where Clause 114.8.1 applies the Authority's Representative shall, in accordance with the recommendations of the Code, draw this to the attention of the Contractor prior to any disclosure.

115 PUBLIC RELATIONS AND PUBLICITY

- 115.1 The Contractor shall not by itself, its employees or agents, and shall procure that its Sub-contractors shall not:

115.1.1 communicate with representatives of the press, television, radio or other communications media on any matter concerning this Contract or the Project; or

115.1.2 photograph or film in or upon any Authority Sites; or

115.1.3 erect or exhibit on any part of the Authority Sites any signs or trade boards; or

115.1.4 exhibit or attach to any part of the Authority Sites any notice or advertisement

unless the Authority's Representative has given its prior written consent or as otherwise required to comply with Legislation.

116 CONTRACTOR'S INFORMATION, DOCUMENTS AND RECORDS

116.1 Records Relating to Asset Provision and/or Service Provision

116.1.1 The Contractor shall (and where appropriate to procure that the sub-contractors shall) at all times, and in accordance with Good Industry Practice, maintain information, documents, records and the like in the possession of, or available to, the Contractor relating to the Project including information, documents, and records of:

- (a) hazardous substances pursuant to Clause 15.2 (Hazardous Substances); and
- (b) the Contractor's performance monitoring pursuant to Clause 20.2 (Contractor's Performance Monitoring); and

- (c) the Contractor's compliance with Clauses 15.3 (Environmental Management System), 20.1 (Contractor's Quality Assurance) and 21.8 (Annual Compliance Testing); and
 - (d) all incidents relating to health, safety and security which occur during the Contract Period; and
 - (e) all maintenance procedures carried out during the Contract Period; and
 - (f) all claims notified pursuant to Clause 117.7 (Notification and Conduct of Claims); and
 - (g) [insert others],
- (together the "**Project Records**").

116.1.2 The Authority shall be entitled to disclose the Project Records to potential Follow-on Contractors for the purposes of recompetition.

116.2 **Financial Records and Open Book Accounting**

116.2.1 The Contractor shall (and where appropriate to procure that the sub-contractors shall), at all times and in accordance with Good Industry Practice, maintain information, documents, records and the like in the possession of, or available to, the Contractor relating to the Project including information, documents, and records of the costs of carrying out Asset Provision and Service Provision, including those relating to the design, construction, maintenance, operation and financing of the Project including all books of account kept in accordance with UK Generally Accepted Accounting Principles showing in detail:

- (a) administrative overheads; and
- (b) payments made or received from Sub-contractors or sub-contractors; and
- (c) capital and revenue expenditure; and
- (d) Third Party Use Costs and Third Party Use Income; and
- (e) such other items as the Authority may reasonably require from time to time to conduct cost audits for verification of cost expenditure or estimated expenditure, for the purpose of this Contract; and
- (f) the Contractor's consolidated income statement and audited financial statements for each of its annual financial periods; and
- (g) copies of any formal notices in respect of waivers, consents and similar actions in respect of breaches of representations or warranties under the Financing Agreements from the Contractor to the Agent; and
- (h) [insert others],

(together the "**Financial Records**").

116.2.2 The Contractor shall at all times upon request by the Authority's Representative, provide a written summary of any of the Financial Records, including details of any funds held by the Contractor specifically to cover such costs, in such other form and detail as the Authority may reasonably require, to enable the Authority to monitor the performance by the Contractor of its obligations under this Contract.

116.2.3 The Contractor shall:

- (a) provide to the Authority on 31 March, 30 June, 30 September and 31 December each year a document listing all information provided by it to the Senior Lenders during the preceding three month period and, at the request of the Authority, provide to the Authority any information provided by it to the Senior Lenders during the Contract Period and any other information relating to the Project that the Authority may reasonably require;
- (b) provide to the Authority copies of its annual report and accounts within thirty days of publication;
- (c) provide to the Authority a copy of the **Senior Lenders' Financial Model** at Financial Close and (as the same may be amended) within thirty days of any amendment thereto;
- (d) promptly upon the occurrence of a **Financing Default**⁵⁰ notify the Authority of such Financing Default; and
- (e) use all reasonable endeavours to assist the Authority in its preparation of any report required by the Authority or HM Treasury, from time to time.

116.2.4 The Authority may, in the circumstances referred to in Clause 116.2.3(d) (regardless of whether the Senior Lenders have exercised any enforcement or similar rights under the Senior Financing Agreements) require the Contractor to provide an Interim Project Report⁵¹ and to attend, and use all reasonable endeavours to ensure that the Senior Lenders attend, such meetings as the Authority may convene to discuss such Interim Project Report and the circumstances giving rise to it.

116.3 Deliverable Documents for Asset Provision and/or Service Provision

116.3.1 During each month of the Payment Period, the Contractor shall deliver to the Authority's Representative a report showing the results of the Contractor's performance monitoring pursuant to Clause 20.2 (Contractor's Performance Monitoring).

116.3.2 On or before each Services Commencement Date, the Contractor shall deliver to the Authority's Representative all documents necessary to support and maintain any relevant Specified Assets (whether provided,

⁵⁰ This should be defined by reference to the borrower defaults under the Senior Financing Agreements (and applies whether or not the Senior Lenders choose to accelerate their loan). Please note that this obligation is additional to the obligations of the Agent under clause 10(d) of the Direct Agreement (see SOPC4 Section 31.5).

⁵¹ The Authority should insert a definition of Interim Project Report, setting out in this the broad headings and issues which it requires it to cover.

amended, used or held by the Contractor or any Sub-contractor) at the relevant Service Level. These shall include delivery of:

- (a) the documents set out in Schedule 16 Part 3 (Deliverable Documents); and
- (b) a list of all registered and material unregistered Contractor **Foreground and Background** IPR and all licences of Third Party IPR including full details of the terms of those licences; and

116.3.3 If the Authority's Representative reasonably considers the documents set out in Schedule 16 Part 3 (Deliverable Documents) to be inadequate for the support and maintenance of any relevant Specified Assets, it shall notify the Contractor to this effect, specifying the amendments or new documents required. The Contractor shall, within **twenty** Business Days of notification from such notification, create and deliver to the Authority's Representative any amended or new documents specified.

116.4 Deliverable Documents on Termination or Expiry

116.4.1 Not less than six months before the Expiry Date, or immediately on the exercise by the Authority of its rights of step-in in accordance with PART 17 (Authority Step-In) or immediately on service of a Termination Notice, the Contractor shall deliver to the Authority's Representative or to such other person as notified by the Authority's Representative in a hard copy format (or electronic copy where relevant and available):

- (a) the documents set out in Schedule 16 Part 3 (Deliverable Documents) to the extent these have been created but not yet delivered to the Authority's Representative pursuant to Clause 116.1.1 (Records Relating to Asset Provision and/or Service Provision); and
- (b) any new or updated documents pursuant to Clause 116.3.3; and
- (c) the Project Records which are proprietary to the Contractor or Sub-contractors and all software in object code used to provide the Services. The Contractor's obligation under this Clause 116.4.1(c) in respect of documents which are owned by a third party shall be to use reasonable endeavours.

116.4.2 Upon termination or expiry of this Contract, and if the Authority wishes to enter into another agreement for the operation and management of a project the same as or similar to the Project, the Contractor shall (and shall ensure that the sub-contractors will) comply with all reasonable requests of the Authority's Representative to provide information relating to the Contractor's costs of operating and maintaining the Project including the Financial Records.

116.5 Updating the Records and Deliverable Documents

116.5.1 The Contractor shall ensure that the Project Records and Financial Records are kept up to date at all times and/or are updated when reasonably requested by the Authority's Representative and shall deliver a copy of any updated Project Records and Financial Records to the Authority's Representative:

- (a) in respect of Project Records within **twenty** Business Days from the later of their creation or updating (as applicable) or the Authority's Representative's request; and
- (b) in respect of Financial Records within **twenty** Business Days from the Authority's Representative's request.

116.5.2 The Contractor shall keep the Authority fully informed as to the procedures in place for ensuring that the Project Records and Financial Records are at all times fully up to date, and at the Authority's reasonable request provide the Authority's Representative with evidence that the Project Records and Financial Records are fully up to date.

116.6 Retention, Inspection and Audit Access

116.6.1 The Project Records and Financial Records shall be retained for a period of at least six Years after the Contractor's obligations under this Contract have come to an end.

116.6.2 The Contractor shall at all times provide such facilities as the Authority may reasonably require for its representatives to visit any place where the Project Records and Financial Records are held and examine such documents.

116.6.3 The Contractor shall provide a report on any or all of the Project Records and Financial Records to the Authority's Representative as and when requested by the Authority's Representative.

116.6.4 The Contractor shall:

- (a) permit all Project Records and Financial Records to be examined and copied from time to time by any auditor (whether internal or external) of the Authority and other representatives of the Authority; and
- (b) co-operate fully and in a timely manner with any reasonable request from time to time of any auditor (whether internal or external) of the Authority and at the expense of the Contractor to provide documents, or to procure the provision of documents, relating to the Project, and to provide, or to procure the provision of, any oral or written explanation relating to the same.

116.6.5 For the purposes of the National Audit Act 1983 the Comptroller and Auditor General may examine all or any of the Project Records and Financial Records as he may reasonably require which are owned, held or otherwise within the control of the Contractor and any Sub-contractor and may require the Contractor and any Sub-contractor to produce such oral or written explanations as he considers necessary.

116.6.6 The Parties acknowledge that the Comptroller and Auditor General has the right to publish details of this Contract (including Commercially Sensitive Information) in its relevant reports to Parliament.

116.7 Confidentiality

116.7.1 The Project Records and Financial Records shall be subject to the obligations set out in Clause 113 (Confidentiality).

PART 23 – INSURANCE (CORE CLAUSES)

117 INSURANCES

- 117.1 The Contractor shall, prior to commencing Asset Provision, take out and maintain or procure the taking out and maintenance of the insurances described in Schedule 17 Part 1 (Policies to be taken out by the Contractor and maintained during Asset Provision) and any other insurances as may be required by law. These insurances must be effective in each case not later than the date on which the relevant risk commences.
- 117.2 The Contractor shall, from the Service Commencement Date for the first Service Level, take out and maintain or procure the maintenance of the insurances described in Schedule 17 Part 2 (Policies to be taken out by the Contractor and maintained during Service Provision) and any other insurances as may be required by law. These insurances must be effective in each case not later than the date on which the relevant risk commences.
- 117.3 No Party shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person.

117.4 Nature of the Insurances

117.4.1 With the exception of any insurances required by law, the insurances referred to in Clauses 117.1 and 117.2 (Insurances) shall:

- (a) subject to Clause 117.4.1(f) name the Contractor as co-insured with any other party maintaining the insurance; and
- (b) provide for non-vitiation protection in respect of any claim made by the Authority as co-insured in accordance with endorsement 2 of Schedule 17 Part 3 (Endorsements); and
- (c) be effected with insurers approved by the Authority's Representative, such approval not to be unreasonably withheld or delayed; and
- (d) contain a clause waiving the insurers' subrogation rights against the Authority, its employees and agents in accordance with endorsement 2 of Schedule 17 Part 3 (Endorsements); and
- (e) provide for thirty days prior written notice of their cancellation, non-renewal or amendment to be given to the Authority's Representative in accordance with endorsement 1 of Schedule 17 Part 3 (Endorsements); and
- (f) in respect of the Physical Damage Policies provide for payment of any proceeds received by the Contractor to be applied in accordance with Clause 122.5 (Costs of Reinstatement).

117.4.2 Wherever possible, where the Authority is to be a co-insured party in accordance with Schedule 17 (Documents and Data Referred to in PART 23), the insurances referred to in Clauses 117.1 and 117.2 (Insurances) shall name the Authority as a co-insured for its separate interest.

117.5 Evidence of Policies and Renewal Certificates

117.5.1 The Contractor shall provide to the Authority's Representative:

- (a) copies on request of all insurance policies referred to in Clauses 117.1 and 117.2 (together with any other information reasonably requested by the Authority's Representative relating to such insurance policies) and the Authority's Representative shall be entitled to inspect them during ordinary business hours; and
- (b) evidence that the premiums payable under all insurance policies have been paid and that the insurances are in full force and effect in accordance with the requirements of this Clause 117 (Contractor's Required Insurance) and Schedule 17 Documents and Data referred to in PART 23).

117.5.2 Renewal certificates or such other evidence of renewal as may be acceptable to the Authority in relation to the insurances referred to in Clauses 117.1 and 117.2 (Insurances) shall be obtained as and when necessary and copies (certified in a manner acceptable to the Authority's Representative) shall be forwarded to the Authority's Representative as soon as possible but in any event on or before the renewal date.

117.6 Failure to Take Out and Maintain Required Insurances

117.6.1 If the Contractor is in breach of Clauses 117.1 or 117.2 (Insurances) the Authority may pay any premiums, fees, broker's costs or other expenses required to keep such insurance in force or itself procure such insurance and may in either case recover such amounts from the Contractor on written demand.

117.7 Notification and Conduct of Claims

117.7.1 The Contractor shall give the Authority's Representative notification within thirty days after any claim:

- (a) in excess of £[insert amount] (Indexed); and/or
- (b) relating to any matter which, if adversely determined, might adversely affect the reputation of the Authority; and/or
- (c) relating to any matter having a high degree of public interest; and/or
- (d) if the claim includes or could involve a Secret Matter,

on any of the insurance policies referred to in Clauses 117.1 and 117.2 (Insurances) accompanied by full details of the incident giving rise to the claim.

117.8 Premiums and General Provisions relating to Insurances

117.8.1 Neither failure to comply nor full compliance with the insurance provisions of this Contract shall limit or relieve the Contractor of its liabilities and obligations under this Contract.

117.8.2 Subject to the Insurance Review Procedure, the insurance premiums in respect of the insurances referred to in Clauses 117.1 and 117.2 (Insurances) shall be the responsibility of the Contractor.

117.8.3 The limit of indemnity and the maximum deductible for each of the insurances referred to in Schedule 17 Part 2 (Policies to be taken out by the Contractor and maintained during Service Provision) shall be Indexed, provided such limits of indemnity and maximum deductibles shall only be increased on each renewal date such that the amount that is Indexed becomes equal to or exceeds the next whole insurable limit or deductible (as the case may be) available in the insurance market.

117.8.4 The Contractor shall use its reasonable endeavours to procure that any insurance broker (who at all times shall be of good repute) of the Contractor charged with responsibility from time to time of placing or maintaining the insurance referred to in Clauses 117.1 and/or 117.2 (Insurances) provides the Authority with a letter of undertaking substantially in the form set out in Schedule 17 Part 4 (Broker's Letter of Undertaking).

118 INSURANCE REVIEW PROCEDURE

118.1 This procedure shall be used to determine whether the Authority shall bear any increase or benefit from any decrease in Relevant Insurance costs.

118.2 The Contractor's insurance broker shall prepare a report on behalf of both the Contractor and the Authority (the "**Joint Insurance Cost Report**"). The Report is to be prepared at the Contractor's expense, and should, as a minimum, contain the following information for the relevant Insurance Review Period:

118.2.1 a full breakdown of the Actual Relevant Insurance Cost; and

118.2.2 a full breakdown of the Base Relevant Insurance Cost; and

118.2.3 A spreadsheet (the "**Insurance Summary Sheet**") detailing separately:

- (a) the sum(s) insured / limit of indemnity (i.e. rateable factor) for each of the Relevant Insurances;
- (b) the premium rate for each of the Relevant Insurances;
- (c) the net premium paid (or to be paid) for each of the Relevant Insurances (i.e. excluding both insurance premium tax and brokers fees and commissions);
- (d) the deductible(s) for each Relevant Insurance;
- (e) details of any claims (paid or reserved) (including incident date, type and quantum) in excess of £[insert amount] (Indexed), being the amount stated in Clause 117.7 (Notification and Conduct of Claims) or other claims which the Contractor is required to notify under Clause 117.7 (Notification and Conduct of Claims);
- (f) an assessment and quantification of each Project Insurance Change together with the reasons therefore; and
- (g) full details of any Portfolio Cost Saving; and

- (h) any other reasons that the Contractor believes may have caused a change (by way of increase or decrease relative to the Base Relevant Insurance Costs) in the Actual Relevant Insurance Cost; and
- (i) the opinion of the Contractor's insurance broker as to the reasons why the Actual Relevant Insurance Cost has varied from the Base Relevant Insurance Cost, specifying the impact of each of the factors and quantifying the amount attributable to each factor specified above; and
- (j) the calculation of the Insurance Cost Differential and any Exceptional Cost or Exceptional Saving arising from this calculation; and
- (k) evidence satisfactory to the Authority (acting reasonably) of any changes to circumstances generally prevailing in the Relevant Insurance Market that are claimed to account for the Insurance Cost Differential; and
- (l) Details of movements in the CBS Private Capital non marine index plus, if available from other appropriate sources, details of changes in insurance cost across the PFI market as a whole.

118.3 The Contractor shall procure that the Broker, no later than the date which is ten Business Days after the Insurance Review Date, delivers to the Authority's Representative, at the same time as it delivers to the Contractor, at least two copies of the Joint Insurance Cost Report. At the same time the Contractor should send a copy of the Insurance Summary Sheet to HM Treasury private finance unit or its nominee. Following receipt of the Joint Insurance Cost Report, the Authority's Representative shall notify the Contractor in writing within fifteen Business Days whether or not it accepts the Joint Insurance Cost Report including full details of any disagreement. If the Authority's Representative does not provide such notification and/or details of any disagreement to the Contractor within fifteen Business Days, the Authority shall be deemed to have accepted the Joint Insurance Cost Report. If the Authority's Representative disagrees with any item in the Joint Insurance Cost Report, the Parties shall use their respective reasonable endeavours acting in good faith to agree the contents of the Joint Insurance Cost Report. If the Parties fail to agree the contents of the Joint Insurance Cost Report within thirty five Business Days from the date it was delivered to the Authority, the matter shall be resolved pursuant to Clause 144 (Disputes), provided always that references in Clause 144 (Disputes) to an Adjudicator/Expert shall be construed as references to an independent insurance expert agreed by the Parties or, in the absence of agreement, appointed by the President for the time being of the Chartered Institute of Arbitrators.

118.4 The Authority may make the Joint Insurance Cost Report available to any of its or HM Treasury's agents or advisers or other body or bodies nominated by HM Treasury for insurance cost verification, benchmarking or similar purpose.

118.5 Sharing of Exceptional Cost and Exceptional Saving

118.5.1 If, following the completion of the Insurance Review Procedure, it is agreed or determined that there is an Exceptional Cost, the Authority shall within thirty days of completion of the Insurance Review Procedure make a one-off lump-sum payment to the Contractor equal to eighty five percent of the Exceptional Cost. Any such payment shall be made pursuant to Clause 66.2 (Report and Invoice).

118.5.2 If, following the completion of the Insurance Review Procedure, it is agreed or determined that there is an Exceptional Saving, the Contractor shall within thirty days of completion of the Insurance Review Procedure make a one-off lump-sum payment to the Authority equal to eighty five percent of the Exceptional Saving.

118.5.3 Following the completion of the Insurance Review Procedure, if it is agreed or determined that there is neither an Exceptional Cost nor an Exceptional Saving, any Insurance Cost Differential shall be borne by or benefit the Contractor.

118.6 Insurance Cost Index

118.6.1 If at any time an Insurance Cost Index is published and intended for use in PFI contracts of a similar nature to this Contract, the Parties shall meet pursuant to Schedule 19 (Project Management) with a view to agreeing:

- (a) its application to the Project, taking into account any relevant guidance issued by HM Treasury; and
- (b) how a Portfolio Cost Saving may be accounted for when the index is in use.

119 UNINSURABILITY

119.1 Nothing in this PART 23 (Insurance) shall oblige the Contractor to take out insurance in respect of a risk which is Uninsurable save where the predominant cause of the risk being Uninsurable is any act(s) or omission(s) of the Contractor or a Contractor Related Party.

119.2 If a risk usually covered by the insurances (including delay in start-up insurance and business interruption insurance (but not loss of profits)) referred to in Clauses 117.1 and 117.2 (Insurances) or statutory insurances in each case as required under this Contract becomes Uninsurable then:

119.2.1 the Contractor shall notify the Authority's Representative within five Business Days of the risk becoming Uninsurable⁵²; and

119.2.2 if both Parties agree, or it is determined in accordance with Clause 144 (Disputes) that the risk is Uninsurable and that:

- (a) the risk being Uninsurable is not caused by the actions of the Contractor or any sub-contractor of the Contractor (of any tier); and
- (b) the Contractor has demonstrated to the Authority that the Contractor and a prudent board of directors of a company operating the same or substantially similar PFI businesses in the United Kingdom to that operated by the Contractor would in similar circumstances (in the absence of the type of relief envisaged by this Clause 119.2.2) be acting reasonably and in the best interests of the company if they resolved to cease to operate such businesses as a result of that risk becoming

⁵² At the Authority's discretion it may elect to use the following alternative wording: the Contractor shall notify the Authority of any risk becoming uninsurable within 5 Business Days of becoming aware of the same and in any event at least 5 Business Days before expiry or cancellation of any existing insurance in respect of that risk.

Uninsurable, taking into account inter alia (and without limitation) the likelihood of the Uninsurable risk occurring (if it has not already occurred), the financial consequences for such company if such Uninsurable risk did occur (or has occurred) and other mitigants against such consequences which may be available to such company,

the Parties shall meet pursuant to Schedule 19 (Project Management) to discuss the means by which the risk should be managed or shared (including considering the issue of self-insurance by either Party).

119.3 If the requirements of Clause 119.2 are satisfied, but the Parties cannot agree as to how to manage or share the risk, then:

119.3.1 in respect of such Third Party Liability Insurance only the Authority shall (at the Authority's option) either pay to the Contractor an amount equal to the amount calculated in accordance with Clause 141 (Compensation on Termination for Force Majeure) and this Contract will terminate pursuant to Clause 133.2 (Termination Date and Compensation on Termination for Force Majeure or on Uninsurability) or elect to allow the Contract to continue and Clause 119.3.2 shall thereafter apply in respect of such risk; and

119.3.2 in respect of such Physical Damage Policies and Third Party Liability Insurance (if the Authority elects to allow the Contract to continue in accordance with Clause 119.3.1), Delay in Start Up Insurance and Business Interruption Insurance (but not loss of profits) or statutory insurances the Contract shall continue and on the occurrence of the risk (but only for as long as such risk remains Uninsurable) the Authority shall (at the Authority's option) either pay to the Contractor an amount equal to insurance proceeds that would have been payable had the relevant insurance continued to be available and the Contract will continue or pay to the Contractor an amount equal to the amount calculated in accordance with Clause 141 (Compensation on Termination for Force Majeure) plus (in relation to Third Party Liability Insurance only) the amount of insurance proceeds that would have been payable whereupon the Contract will terminate pursuant to Clause 133.2 (Termination Date and Compensation on Termination for Force Majeure or on Uninsurability); and

119.3.3 if, pursuant to Clauses 119.3.1 and/or 119.3.2, this Contract continues, then the Unitary Charge shall be reduced in each year for which the relevant insurance is not maintained by an amount equal to the premium paid (or which would have been paid) by the Contractor in respect of the relevant risk in the year prior to it becoming Uninsurable (Indexed from the date that the risk becomes Uninsurable). Where the risk is Uninsurable for part of a year only the reduction in the Unitary Charge shall be pro rated to the number of months for which the risk is Uninsurable; and

119.3.4 if, pursuant to Clauses 119.3.1 and/or 119.3.2 this Contract continues, the Contractor shall approach the insurance market at least every four months to establish whether the risk remains Uninsurable. As soon as the Contractor is aware that the risk is no longer Uninsurable, the Contractor shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) for such risk in accordance with this Contract;

119.3.5 in respect of any period between the Authority receiving notification in accordance with Clause 119.2 that a risk which is required to be insured under the Third Party Liability Insurance ("**TPL Risk**") has become Uninsurable and the Authority's notification to the Contractor in accordance with Clause 119.3.1 in respect of such risk then, provided it is ultimately agreed or determined that the requirements of Clause 119.3.2 are satisfied in respect of the Uninsurable TPL Risk and subject to Clause 119.3.6, Clause 119.3.2 shall apply in respect of occurrences of the Uninsurable TPL Risk during such period unless the Parties otherwise agree how to manage the risk during this period; and

119.3.6 Clause 119.3.2 shall only apply provided the Contractor does not unreasonably materially delay:

(a) agreement and/or determination in accordance with the Dispute Resolution Procedure as to whether the requirements of Clause 119.3.2 are satisfied in respect of the Uninsurable TPL Risk; and/or

(b) meeting with the Authority to discuss the means by which the risk should be managed.

119.4 If, pursuant to Clause 119.3.2, the Authority elects to make payment to the Contractor (such that the Contract will terminate) (the "**Relevant Payment**"), the Contractor shall have the option (exercisable in writing within twenty Business Days of the date of such election by the Authority (the "**Option Period**")) to pay to the Authority on or before the end of the Option Period, an amount equal to the insurance proceeds that would have been payable had the relevant risk not become Uninsurable, in which case the Contract will continue (and the Relevant Payment will not be made by the Authority), and the Contractor's payment shall be applied for the same purpose and in the same manner as insurance proceeds would have been applied had the relevant risk not become Uninsurable.

120 UNAVAILABILITY OF TERMS AND CONDITIONS

120.1 If, upon the renewal of any insurance which the Contractor is required to maintain or to procure the maintenance of pursuant to this Contract:

120.1.1 any Insurance Term is not available to the Contractor in the worldwide insurance market with reputable insurers of good standing; and/or

120.1.2 the insurance premium payable for insurance incorporating such Insurance Term is such that the Insurance Term is not generally being incorporated in insurance procured in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom,

(other than, in each case, by reason of one or more actions of the Contractor and/or any sub-contractor of the Contractor (of any tier)) then this Clause 120 shall apply.

120.2 If it is agreed or determined that Clause 120.1 applies then the Authority shall waive the Contractor's obligations in Clause 117 (Insurances) and/or 17Schedule (Documents and Data Referred to in PART 23) in respect of that particular Insurance Term and the Contractor shall not be considered in breach of its obligations regarding the maintenance of insurance pursuant to this Contract as a result of the failure to maintain insurance incorporating such Insurance Term

for so long as the relevant circumstances described in Clause 120.1 continue to apply to such Insurance Term.

120.3 To the extent that the Parties agree (acting reasonably), or it is determined pursuant to the Dispute Resolution Procedure, that an alternative or replacement term and/or condition of insurance is available to the Contractor in the worldwide insurance market which if included in the relevant insurance policy would fully or partially address the Contractor's inability to maintain or procure the maintenance of insurance with the relevant Insurance Term, at a cost which contractors in the UK are (at such time) generally prepared to pay, the Contractor shall maintain or procure the maintenance of insurance including such alternative or replacement term and/or condition. Notwithstanding any other provision of this Contract, the costs of such insurance shall be subject to the premium costs sharing mechanism set out in Schedule 17 Part 5 (Insurance Premium Risk Sharing).

120.4 If the Authority has exercised the waiver pursuant to Clause 120.2 it shall be entitled to deduct from the annual Unitary Charge (the "**Adjusted Amount**"), such amount being an amount equal to the amount paid for the particular Insurance Term in the preceding year (using a reasonable estimate of such amount where a precise figure is not available) less any annual amount paid or payable by the Contractor to maintain and/or procure the maintenance of any (whether full or partial) alternative or replacement insurance in respect of such Insurance Term pursuant to Clause 120.3.

120.5 While Clause 120.1 applies, the annual Unitary Charge shall be reduced each Contract Year by the Adjusted Amount, Indexed from the date that the particular Insurance Term is no longer available.

120.6 The Contractor shall notify the Authority as soon as reasonably practicable and in any event within five days of becoming aware that Clauses 120.1.1 and/or 120.1.2 are likely to apply or (on expiry of the relevant insurance then in place) do apply in respect of an Insurance Term (irrespective of the reason for the same). The Contractor shall provide the Authority's Representative with such information as the Authority's Representative reasonably requests regarding the unavailability of the Insurance Term and the Parties shall meet pursuant to Schedule 19 (Project Management) to discuss the means by which such unavailability should be managed as soon as is reasonably practicable.

120.7 If Clauses 120.1.1 and/or 120.1.2 apply in respect of an Insurance Term, (irrespective of the reasons for the same) the Contractor shall approach the insurance market at least every four months to establish whether Clauses 120.1.1 and/or 120.1.2 remain applicable to the Insurance Term. As soon as the Contractor is aware that 120.1.1 and/or 120.1.2 have ceased to apply to the Insurance Term, the Contractor shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) incorporating such Insurance Term in accordance with this Contract.

121 JOINT INSURANCE ACCOUNT

121.1 The Contractor shall set up and at all times maintain an account in the joint names of the Authority and the Contractor **and the Senior Lenders**⁵³ (the "**Joint Insurance Account**").

121.2 All insurance proceeds paid under any Physical Damage Policy in respect of a

⁵³ If reference is made to the Senior Lenders as joint names for the joint account, the Funders Direct Agreement must have a clause in it saying that the Senior Lenders agree that all monies in the joint Account shall be applied in accordance with the PFI Contract.

single event (or a series of related events) in an amount in excess of £[insert amount] (Indexed) shall be paid into the Joint Insurance Account.

PART 24 – DAMAGE TO THE SPECIFIED ASSETS, INDEMNITIES AND CONTRACTUAL CLAIMS (CORE CLAUSES)

122 DAMAGE TO THE SPECIFIED ASSETS

122.1 This Clause 122 applies after the Services Commencement Date for a given Service Level in respect of Specified Assets used in Service Provision for such Service Level. Under this Clause 122, the Contractor shall be responsible as against the Authority for the acts or omissions of Contractor Related Parties as if they were the acts or omissions of the Contractor, and the Authority shall be responsible as against the Contractor for the acts or omissions of Authority Related Parties as if they were the acts or omissions of the Authority.

122.2 Upon the discovery of any damage to the Specified Assets occurring after the Services Commencement Date for the Service Level in respect of which such Specified Asset is used for Service Provision, the Contractor's Representative shall:

122.2.1 as soon as practicable notify the Authority's Representative, providing a record of any relevant details of the damage (including photographs if necessary); and

122.2.2 discuss with the Authority's Representative, pursuant to Schedule 19 (Project Management), whether or not the damage is damage which:

- (a) has resulted from an action or omission or a series of actions or omissions by any employee or contractor (other than the Contractor) of the Authority or an Authority Related Party, unless such employee or contractor is acting under the instruction of the Contractor or a Sub-contractor); and
- (b) does not constitute fair wear and tear to the Specified Assets; and
- (c) has arisen as a result of the damaged item being used other than for its reasonable and proper purpose,

(and damage falling within 122.2.2 shall be referred to as "**Authority Damage**"); and

122.2.3 discuss with the Authority's Representative, pursuant to Schedule 19 (Project Management), whether or not the damage is insured under any Physical Damage Policy and if it is agreed or determined pursuant to Clause 122.3 (Failure to Agree) that the damage is insured under any Physical Damage Policy the provisions of Clause 122.5 (Costs of Reinstatement) shall apply.

122.3 Failure to Agree

122.3.1 If the Parties cannot agree pursuant to Schedule 19 (Project Management) on whether damage is Authority Damage pursuant to Clause 122.2.2 or is insured pursuant to Clause 122.2.3, either Party may refer the matter to the Dispute Resolution Procedure.

122.4 Timing of Reinstatement

122.4.1 The Contractor shall reinstate, replace or make good all damage (including damage which the Parties agree pursuant to Schedule 19 (Project Management) constitutes Authority Damage, or which is

determined pursuant to Clause 144 (Disputes) to constitute Authority Damage):

- (a) if Clause 122.5.3 applies, in accordance with the reinstatement procedure pursuant to the provisions of Clause 123 (Reinstatement on an Insured Event); or
- (b) if Clause 122.5.3 does not apply, as soon as is practicable following the agreement or determination of the damage as Authority Damage.

122.5 Costs of Reinstatement

122.5.1 The Contractor's reinstatement, replacement or making good pursuant to Clause 122.4 (Timing of Reinstatement) shall be at its own cost if the damage is other than Authority Damage or is Authority Damage but of such a minor nature (when considered both item by item and in aggregate) that it can be remedied by the Contractor without incurring any additional costs through the use of its site-based resources during their normal working hours and without adversely affecting the ability of the Contractor to perform the Services.

122.5.2 The Contractor's reinstatement, replacement or making good pursuant to Clause 122.4 (Timing of Reinstatement) shall be at the Authority's cost if the damage is Authority Damage and not of a minor nature as assessed in accordance with Clause 122.5.1. Subject to Clause 122.5.3, the Contractor shall be entitled to issue an invoice in respect of, and the Authority shall pay the Contractor's reasonable costs incurred in reinstating, replacing or making good such Authority Damage pursuant to Clause 66.2.2(g) and may be in respect of multiple incidents of damage, provided that the Relevant Form/delivery label⁵⁴ is supported by any relevant information recorded pursuant to Clause 122.2.1.

122.5.3 If the reinstatement, replacement or making good of any damage (whether at the Contractor's cost pursuant to Clause 122.5.1 or the Authority's cost pursuant to Clause 122.5.2) is insured or partly insured under any Physical Damage Policy:

- (a) the provisions of Clause 123 (Reinstatement on an Insured Event) shall apply; and
- (b) the Contractor shall take such funding and the timing of such repair or replacement into account in:
 - (i) claiming payment from the Authority pursuant to Clause 122.5.2 (if applicable); and
 - (ii) preparing and agreeing with the Authority's Representative a revised Planned Maintenance Programme to take account of such reinstatement, replacement or making good of any damage.

122.5.4 At the end of each Contract Year the Contractor's Representative shall supply to the Authority's Representative a report in accordance with Good Industry Practice showing any damage to the Specified Assets and associated repair costs in the preceding Contract Year, as well as money

⁵⁴ The latter option is appropriate where the P2P system will be used

spent or saved and/or likely to be spent or saved in accordance with the Planned Maintenance Programme. If such report shows that there has been or is likely to be a saving in the money spent and/or needing to be spent by the Contractor in complying with its obligations under this Contract because of funding from any Physical Damage Policy or the Authority pursuant to Clause 122.5.2 then the Contractor will, within thirty Business Days of submission of the report pursuant to this Clause 122.5.4, pay to the Authority half of such saving.

123 REINSTATEMENT ON AN INSURED EVENT

123.1 Subject to Clause 123.5 (Economic Reinstatement Test), all insurance proceeds received under any policy referred to in the Physical Damage Policies shall be applied to repair, reinstate and replace each part or parts of the Assets in respect of which the proceeds were received.

123.2 Contractor's Obligations

123.2.1 Subject to Clause 123.5 (Economic Reinstatement Test), where a claim is made or proceeds of insurance are received or are receivable under any Physical Damage Policy in respect of a single event (or a series of related events) (the "**Relevant Incident**") in an amount in excess of £[insert number]⁵⁵ (indexed) the Contractor shall deliver to the Authority's Representative as soon as practicable and in any event within twenty days after the making of the claim a plan prepared by the Contractor for the carrying out of the works necessary to repair, reinstate or replace the Specified Assets which are the subject of the relevant claim or claims in accordance with Clause 123.4.2 (the "**Reinstatement Works**"). Such plan (the "**Reinstatement Plan**") shall set out:

- (a) if not the Asset Provider, the identity of the person proposed to effect the Reinstatement Works; and
- (b) the proposed terms and timetable upon which the Reinstatement Works are to be effected (including the date that the Project shall become fully operational),

which shall be subject to the prior written approval of the Authority's Representative pursuant to Clause 123.3 (Authority's Obligations), such approval not to be unreasonably delayed.

123.3 Authority's Obligations

123.3.1 The Authority's Representative shall, within ten Business Days of receipt of the proposed Reinstatement Plan, notify the Contractor's Representative as to whether the Authority:

- (a) approves or rejects the identity of the person set out in the Proposed Reinstatement Plan to be appointed to effect the Reinstatement Works; and
- (b) approves or rejects or approves subject to incorporation of the Authority's comments (which may include a proposal for changes to the Assets pursuant to PART 18 (Changes and

⁵⁵ The same figure should be inserted in this Clause as in Clause 121 (Joint Insurance Account).

Change in Law)) the terms and timetable in the Proposed Reinstatement Plan.

123.3.2 In deciding whether to approve matters pursuant to Clause 123.3.1 the Authority's Representative shall act reasonably, provided that it shall be reasonable for the Authority's Representative to take into account all or any requirements of Clauses 94.6 (Approval of Sub-contractors and Terms of Sub-contracts) and 95 (Matters to be Included in Sub-contracts) and the Authority's operational requirements.

123.3.3 If the Authority's Representative does not approve, or makes comments on, any part of the Proposed Reinstatement Plan it shall set out in the notice given pursuant to Clause 123.3.1 its reasons or comments, in sufficient detail so as to enable the Contractor to understand the nature and extent of the non-approval or comments and to assess whether the Authority's approval has been unreasonably withheld. The Contractor shall amend and re-submit the Proposed Reinstatement Plan once only to the Authority's Representative for its reconsideration in accordance with Clause 123.3.1 and, if still not approved, the Contractor may submit the Proposed Reinstatement Plan to the Dispute Resolution Procedure.

123.3.4 If the Authority does not submit its notice pursuant to Clause 123.3.1 within **ten** Business Days of receipt of the Proposed Reinstatement Plan, it shall be deemed to have approved the Proposed Reinstatement Plan, unless the Authority's Representative has reasonably requested any further information from the Contractor, in which case the time limit outlined in Clause 123.3.1 shall be deemed to commence upon receipt of such information by the Authority's Representative.

123.4 Reinstatement Works

123.4.1 When the Authority is satisfied that the Reinstatement Plan will enable the Contractor to comply with its obligations pursuant to Clause 123.4.2 within a reasonable timescale:

- (a) the Reinstatement Plan shall be adopted;
- (b) the Contractor shall enter into contractual arrangements to effect the Reinstatement Works with the person identified in the Reinstatement Plan approved by the Authority's Representative;
- (c) prior to the earlier to occur of the Termination Date or the Expiry Date, any amounts standing to the credit of the Joint Insurance Account (the "**Relevant Proceeds**") (together with any interest accrued) may be withdrawn by the Contractor from the Joint Insurance Account as required to enable it to make payments in accordance with the terms of the contractual arrangements referred to in Clause (b)123.4.1(b), and to meet any other reasonable costs and expenses of the Contractor for the sole purposes of funding the Reinstatement Works and the Parties shall operate the signatory requirements of the Joint Insurance Account in order to give effect to such payments. Following the earlier to occur of the Termination Date and the Expiry Date, the Authority may withdraw amounts standing to the credit of the Joint Insurance Account for the purposes of funding any Reinstatement Works;

- (d) the Authority agrees and undertakes that, subject to compliance by the Contractor with its obligations under this Clause 123.4, and provided that the Contractor procures that the Reinstatement Works are carried out and completed in accordance with the contractual arrangements referred to in Clause 123.4.1(b), it shall not exercise any right which it might otherwise have to terminate this Contract by virtue of the event which gave rise to the claim for the Relevant Proceeds;
- (e) the Authority undertakes to use reasonable endeavours to assist the Contractor in the carrying out of the Reinstatement Plan;
- (f) after the Reinstatement Plan has been implemented to the reasonable satisfaction of the Authority and in accordance with Clause 123.4.2 the Authority shall permit withdrawal by the Contractor of any Relevant Proceeds then held in the Joint Insurance Account that have not been paid under Clause 123.4.1(c), in respect of the Relevant Incident, together with any interest accrued.

123.4.2 Subject to the provisions of Clause 125.1 (Contractor's Indemnity) the Contractor shall be solely responsible for the payment of any deficiency.

123.4.3 Where insurance proceeds are to be used, in accordance with this Contract, to repair, reinstate or replace any Specified Asset, the Contractor shall carry out the work in accordance with the Asset Provision Requirements and Asset Provision Proposals so that on completion of the work, the provisions of the Contract are complied with.

123.5 Economic Reinstatement Test⁵⁶

123.5.1 If all of the Specified Assets are destroyed or substantially destroyed in a single event and the insurance proceeds (when taken together with any other funds available to the Contractor) are equal to or greater than the amount required to repair or reinstate the Specified Assets, then the Contractor shall calculate the senior debt loan life cover ratio as used in the Base Case (on the assumption that the Specified Assets are repaired or reinstated in accordance with Clauses 123.2 (Contractor's Obligations) and 123.4 (Reinstatement Works)).

123.5.2 If the calculation referred to in Clause 123.5.1 shows that the senior debt loan life cover ratio is greater than or equal to [event of default level] then the Contractor shall be subject to the procedure set out in Clauses 123.2 (Contractor's Obligations) and 123.4 (Reinstatement Works).

123.5.3 If the calculation referred to in Clause 123.5.1 shows that the senior debt loan life cover ratio is less than [event of default level] then:

- (a) if the Authority has incurred Operating Expenditure or Capital Expenditure in taking the Required Action pursuant to Clause 80.4.1 (Effect of Step-In on a Relief Event) which it has not recovered by deduction from the Unitary Charge pursuant to Clause 80.4.1 (Effect of Step-In on a Relief Event), the

⁵⁶ This clause should not be used in multi-site or multi-asset projects

Authority shall be entitled to recover such costs from the monies in the Joint Insurance Account; and

- (b) the balance of the monies in the Joint Insurance Account or, if less, the monies in the Joint Insurance Account equal to the Base Senior Debt Termination Amount (or, if any Additional Permitted Borrowing has been advanced, the Revised Senior Debt Termination Amount) shall be released from the Joint Insurance Account to the Contractor.

123.5.4 If, pursuant to Clause 123.5.3, insurance proceeds are released from the Joint Insurance Account to the Contractor, the Contractor shall be in breach of its obligations under this Contract and shall not be relieved of its obligations pursuant to Clause 76 (Relief Events) unless it can demonstrate, to the reasonable satisfaction of the Authority, that it can carry out the works necessary to repair, reinstate or replace the Specified Assets which are subject to the relevant claims in accordance with Clause 123.4 (Reinstatement Works) within a reasonable timescale.

124 DEATH AND PERSONAL INJURY, DAMAGE TO PROPERTY AND THIRD PARTY CLAIMS

124.1 Upon one Party's discovering any damage to property and/or receiving notice of a claim by a third party against it, such Party's Representative shall, as soon as practicable, notify the other Party's Representative, providing a record of any relevant details of the damage (including photographs if necessary) and/or third party claim.

124.2 Contractor's Indemnity

124.2.1 The Contractor shall, subject to Clause 124.2.2, be responsible for, and shall release and indemnify the Authority, its employees, agents and contractors on demand from and against all liability for:

- (a) death or personal injury; and
- (b) loss of or damage to property (including property belonging to the Authority or for which it is responsible ("**Authority Property**")) but excluding the land and buildings forming part of the Specified Assets; and
- (c) third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis),

which may arise out of, or in consequence of the design, construction, manufacture, operation or maintenance of the Specified Assets or the performance or non-performance by the Contractor of its obligations under this Contract or the presence on the Authority's Sites (or property which is within the ownership or control of the Authority and adjacent to [any of] the Site(s)) of the Contractor or any Contractor Related Party.

124.2.2 The Contractor shall, subject to Clause 124.2.3, be responsible for, and shall release and indemnify the Authority, its employees, agents and contractors on demand from and against all liability for Direct Losses and Indirect Losses arising from third party actions, claims or demands (as described in Clause 124.2.1(c) brought against the Authority or any Authority Related Party for breach of statutory duty which may arise out of, or in consequence of a breach by the Contractor of its obligations

under this Contract to the extent there are no other remedies available to the Authority under this Agreement.

124.2.3 The Contractor shall not be responsible or be obliged to indemnify the Authority for:

- (a) any matter referred to in Clause 125.1 (Contractor's Indemnity) which arises as a direct result of the Contractor acting on a written notice issued by the Authority's Representative; and/or
- (b) any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Authority or any Authority Related Party or by the breach of the Authority of its obligations under this Contract; and/or
- (c) any injury, loss, damage, cost and expense which is the responsibility of the Authority pursuant to Clause 122.5 (Costs of Reinstatement).

125 OTHER INDEMNITY CLAIMS

125.1 Contractor's Indemnity

125.1.1 The Contractor shall, subject to Clause 124.2.2, be responsible for, and shall release and indemnify the Authority, its employees, agents and contractors on demand pursuant to:

- (a) Clause 14.4.4(g)(iii) (Contamination at Authority Sites Arising From a Source Off-Site); and
- (b) Clause 19.1.3 (Necessary Consents); and
- (c) Clause 21.4 (Effect of Authority's Monitoring during Service Provision); and
- (d) Clause 41.2.3 (Novation of Novating Contracts and Terminating Contracts); and
- (e) Clause 110.2 (Contractor's IPR Indemnity); and
- (f) Clause 112.3 (Indemnity by the Contractor).

125.2 Authority's Indemnity

125.2.1 The Authority shall indemnify the Contractor:

- (a) if it invokes Measures in a Crisis, pursuant to Clause 7878.6 (Authority's Indemnity on Measures in a Crisis); and
- (b) pursuant to Clause 110.3 (Authority's IPR Indemnity)

such payment to be made in accordance with Clause 66 (Payment Provisions).

126 **CONDUCT OF INDEMNITY CLAIMS**

126.1 An indemnity by either Party under any provision of this Contract shall be without limitation to any indemnity by that Party under any other provision of this Contract.

126.2 If any claim is subject to an indemnity from either Party to the other the Party wishing to make a claim (the "**Indemnified Party**") shall notify the other Party (the "**Indemnifying Party**") of the relevant claim as soon as reasonably practicable, giving full particulars of the claim.

126.3 **Contractor's IPR Indemnity Claims**

126.3.1 If the Authority is the Indemnified Party, the Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim brought against the Authority or the Contractor under Clause 110.2 (Contractor's IPR Indemnity) ("**Contractor's IPR Indemnity Claim**") provided always that the Contractor:

- (a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations; and
- (b) shall take due and proper account of the interests of the Authority; and
- (c) shall not settle or compromise any claim without the Authority's Representative's prior written consent (such consent not to be unreasonably withheld or delayed).

126.3.2 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made on action brought against the Authority or the Contractor for infringement or alleged infringement of any IPR in connection with the performance of the Contract and shall be repaid all costs and expenses (including, but not limited to, legal costs and disbursements on a solicitors and client basis) incurred in so doing.

126.3.3 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim or action for infringement or alleged infringement of any IPR by the Authority or the Contractor in connection with the performance of the Contract.

126.3.4 If a claim, demand or action for infringement or alleged infringement of any IPR is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor may at its own expense and subject to the consent of the Authority's Representative (such consent not to be unreasonably withheld or delayed) either:

- (a) modify any or all of the Assets or Services without reducing the performance or functionality of the same, or substitute alternative Assets or Services of equivalent performance and functionality, so as to avoid the infringement or alleged infringement, provided that the terms herein shall apply (with necessary changes) to such modified or substituted Assets or Services; or

- (b) procure a licence to use and provide the Assets and Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority.

126.4 Other Indemnity Claims

126.4.1 If the claim is not a Contractor's IPR Indemnity Claim:

- (a) the Indemnified Party shall take all reasonable steps (and, if the Contractor is the Indemnified Party, it shall procure that the Sub-contractors shall take all reasonable steps) to minimise and mitigate any Loss for which the Indemnifying Party is liable under this Contract; and
- (b) if the claim relates to an action by a third party against the Indemnified Party, the Indemnifying Party may, unless the Contractor is the Indemnifying Party and a Senior Civil Servant personally notifies the Contractor that the Authority is refusing to allow the Contractor to have conduct of the claim on grounds of national security, at its own expense and with the assistance and co-operation of the Indemnified Party have conduct of such claim including its settlement and the Indemnified Party shall not, unless the Indemnifying Party has failed to resolve the claim within a reasonable period, take any action to settle or prosecute the claim.

126.4.2 If the Indemnifying Party wishes to have conduct of the claim it shall:

- (a) give reasonable security to the Indemnified Party for any cost or liability arising out of the conduct of the claim by the Indemnifying Party; and
- (b) keep the Indemnified Party reasonably informed of the conduct of the claim and consult with the Indemnified Party to the extent reasonably practicable and not compromise the claim in any way whatsoever by making statements or admissions (other than in accordance with the Indemnified Party's consent, not to be unreasonably withheld or delayed) and do nothing which could prejudice the defence of any such claim; and
- (c) not bring the name of the Indemnified Party into disrepute.

126.4.3 If the Indemnifying Party pays to the Indemnified Party an amount in respect of an indemnity and the Indemnified Party subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Indemnified Party shall forthwith repay to the Indemnifying Party whichever is the lesser of:

- (a) an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out of pocket costs and expenses properly incurred by the Indemnified Party in recovering the same; and
- (b) the amount paid to the Indemnified Party by the Indemnifying Party in respect of the claim under the relevant indemnity;

provided that:

- (c) there shall be no obligation on the Indemnified Party to pursue such recovery; and
- (d) the Indemnifying Party shall be repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Indemnifying Party exceeds any loss sustained by the Indemnified Party (including for this purpose Indirect Losses or claims for loss of profits which are excluded by this Contract from being recovered from the Indemnifying Party).

127 CONTRACTOR'S CLAIMS IN RELATION TO THIS CONTRACT

- 127.1 Without prejudice to any entitlement of the Contractor to specific performance of any obligation under this Contract, the Contractor shall not be entitled to any common law or equitable rights including rights to damages or to any other rights under contract, tort or otherwise in relation to any breach of this Contract to the extent that such breach is a Compensation Event or this Contract provides an express remedy in relation to the breach.
- 127.2 The Contractor shall, if it is obliged to effect insurance under PART 23 (Insurance), not bring any claim or action against the Authority (or any Authority Related Party) in respect of any loss or damage in circumstances where the Contractor is able to recover such loss or damage under such insurance (or where it would have been able to recover such loss had it been complying with its obligations under this Contract) provided that, to avoid doubt, this Clause 127.2 shall not by itself prevent the Contractor from claiming against the Authority (or any Authority Related Party) for any loss or damage not covered because of the level of deductibles under such insurance permitted by this Contract or to the extent such loss or damage exceeds the maximum level of such insurance required by this Contract.

128 AUTHORITY'S CLAIMS IN RELATION TO SERVICE FAILURE

- 128.1 Subject to:
 - 128.1.1 any other express right of the Authority pursuant to this Contract; and
 - 128.1.2 the Authority's right to claim, on or after termination of this Contract, the amount of its reasonable costs, losses, damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of this Contract by the Contractor, save to the extent that the same has already been recovered by the Authority pursuant to this Contract or has been taken into account to calculate any compensation payable by the Authority pursuant to PART 26 (Compensation on Termination),
- the sole remedy of the Authority in respect of a failure to provide the Services in accordance with this Contract shall be the operation of Schedule 13 (Payment Mechanism).

129 LIMITATIONS ON CLAIMS

- 129.1 Notwithstanding any other provisions of this Contract, neither Party shall be entitled to recover compensation or make a claim under this Contract in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Contract or otherwise.

PART 25 – TERMINATION (CORE CLAUSES)

130 CORE PROVISIONS

- 130.1 The provisions set out in this PART 25 (Termination) are subject to the Direct Agreement.
- 130.2 Notwithstanding any other provision of this Contract, this Contract shall only terminate in accordance with the express provisions of this Contract.

131 TERMINATION BY THE CONTRACTOR

- 131.1 If an Authority Default has occurred, the Contractor may terminate this Contract at any time on or before the Expiry Date.

131.2 Termination Notice Prior to Termination by the Contractor

131.2.1 If an Authority Default has occurred and the Contractor wishes to terminate this Contract, the Contractor must serve a termination notice (the "**Contractor's Termination Notice**") on the Authority's Representative within **thirty** Business Days of becoming aware of the Authority Default.

131.2.2 The Contractor's Termination Notice must specify the type of Authority Default which has occurred entitling the Contractor to terminate.

131.3 Termination Date and Compensation on Termination by the Contractor

131.3.1 This Contract shall terminate on the day falling thirty Business Days after the date the Authority receives the Contractor's Termination Notice, unless the Authority rectifies the Authority Default within twenty Business Days of receipt of the Contractor's Termination Notice.

131.3.2 The provisions of Clause 137 (Compensation on Termination by the Contractor or Voluntary Termination by the Authority) shall apply.

132 TERMINATION BY THE AUTHORITY

- 132.1 The Authority may terminate this Contract at any time on or before the Expiry Date:

132.1.1 voluntarily, pursuant to the provisions of Clauses 132.2 (Termination Notice prior to Authority's Voluntary Termination) and 132.3 (Termination Date and Compensation on Authority's Voluntary Termination); or

132.1.2 on Contractor Default, pursuant to the provisions of Clauses 132.4 (Termination Notice prior to Termination for Contractor Default) and 132.5 (Termination Date and Compensation on Termination for Contractor Default); or

132.1.3 on Persistent Breach by the Contractor, pursuant to the provisions of Clauses 132.6 (Termination Notice Prior to Termination for Persistent Breach) and 132.7 (Termination Date and Compensation for Termination on Persistent Breach); or

132.1.4 on the Contractor's wilful breach of the refinancing obligations, pursuant to the provisions of Clause 132.8 (Termination Notice Prior to Termination for Breach of the Refinancing Provisions); or

132.1.5 on a Prohibited Act, pursuant to the provisions of Clauses 132.10 (Termination Notice prior to Termination for Prohibited Acts) and 132.11 (Termination Date and Compensation on Termination for Prohibited Acts); or

132.1.6 on a Relief Event (if the Authority cannot take the Required Action on step-in without incurring Capital Expenditure greater than £[insert figure] in accordance with the provisions of Clause 80.4), pursuant to the provisions of Clauses 132.12 (Termination Notice Prior to Termination on Relief Event) and 132.13 (Termination Date and Compensation on Termination for Relief Events); or

132.1.7 on a Force Majeure Event or Uninsurable risk, pursuant to the provisions of Clauses 133.1 (Termination Notice Prior to Termination for a Force Majeure Event or on Uninsurability) and 133.2 (Termination Date and Compensation on Termination for Force Majeure or on Uninsurability).

132.2 Termination Notice prior to Authority's Voluntary Termination

132.2.1 If the Authority wishes to terminate this Contract voluntarily, it must serve a Termination Notice on the Contractor's Representative stating that:

- (a) the Authority is terminating this Contract voluntarily; and
- (b) this Contract shall terminate on the date specified in the Termination Notice which must be a minimum of twenty Business Days after the date of receipt of the Termination Notice.

132.3 Termination Date and Compensation on Authority's Voluntary Termination

132.3.1 This Contract shall terminate on the date specified in the Termination Notice which must be a minimum of twenty Business Days after the date of receipt of the Termination Notice referred to in Clause 132.2.1 (Termination Notice prior to Authority's Voluntary Termination).

132.3.2 The provisions of Clause 137 (Compensation on Termination by the Contractor or Authority's Voluntary Termination) shall apply.

132.4 Termination Notice for Termination for Contractor Default

132.4.1 If a Contractor Default other than a Persistent Breach has occurred and the Authority wishes to terminate this Contract pursuant to Clause 132.1.2, it must serve a Termination Notice on the Contractor's Representative stating:

- (a) that the Authority is terminating this Contract for Contractor Default; and
- (b) the type and nature of Contractor Default that has occurred, giving reasonable details; and
- (c) that in the case of any Contractor Default falling within the limbs (a), (g), (h) or (n) of the definition of Contractor Default this Contract shall terminate on the day falling forty Business Days after the date the Contractor received the Termination Notice, unless:

- (i) in the case of a breach under limb (a) of the definition of Contractor Default the Contractor puts forward an acceptable rectification programme within twenty Business Days after the date the Contractor receives the Termination Notice (and implements such programme in accordance with its terms and rectifies the Contractor Default in accordance with the programme); or
- (ii) in the case of any Contractor Default falling within the limbs (a), (g), (h) or (n) of the definition of Contractor Default, the Contractor rectifies the Contractor Default within forty Business Days after the date the Contractor receives the Termination Notice; or
- (d) that in the case of any other Contractor Default (not being limbs (a) or (c)(i)) and not including Persistent Breach to which Clauses 132.6 and 132.7 apply, this Contract shall terminate on the date falling forty Business Days after the Contractor receives the Termination Notice; or
- (e) the provisions of the Direct Agreement apply to prevent Termination.

132.5 Termination Date and Compensation for Termination for Contractor Default

132.5.1 If the Contractor either rectifies the Contractor Default within the time period specified in the Termination Notice, or implements the accepted rectification programme, if applicable, in accordance with its terms, the Termination Notice shall be deemed to be revoked and this Contract shall continue.

132.5.2 If:

- (a) in the case of a Contractor Default within limb (a) of the definition of that term no acceptable rectification programme has been put forward pursuant to Clause 132.4.1(c)(i) and the Contractor fails to rectify within the time period specified in the Termination Notice; or
- (b) in the case of a Contractor Default falling within the limbs (g), (h) or (n) of the definition of Contractor Default, the Contractor fails to rectify the Contractor Default within the time period specified in the Termination Notice,

the Authority may give notice stating that this Contract will, subject to the terms of the Direct Agreement, terminate on the date falling **five** Business Days after the date of receipt of such notice.

132.5.3 If the Contractor fails to implement any rectification programme in accordance with its terms, this Contract will, subject to the terms of the Direct Agreement, terminate on the date falling **five** Business Days after the date of notification by the Authority to the Contractor of such failure to implement the rectification programme in accordance with its terms.

132.5.4 The provisions of Clause 140 (Compensation on Termination for Contractor Default) shall apply.

132.6 **Termination Notices prior to Termination for Persistent Breach by the Contractor**

132.6.1 If a particular breach (other than a breach for which Unavailability Deductions or Service Performance Deductions have or could have been made) has continued for more than [insert details] Business Days or occurred more than [insert details] times in any [insert details] month period, then the Authority's Representative may serve a notice on the Contractor's Representative:

- (a) specifying that it is a formal warning notice; and
- (b) giving reasonable details of the breach; and
- (c) stating that the breach is a breach which, if it recurs frequently or continues, may result in a termination of this Contract.

132.6.2 If, following service of such a warning notice the breach specified has continued beyond thirty days or recurred in [insert details] or more months within the six month period after the date of service, then the Authority's Representative may serve another notice (a "**Final Warning Notice**") on the Contractor's Representative:

- (a) specifying that it is a Final Warning Notice; and
- (b) stating that the breach specified has been the subject of a warning notice served within the six month period prior to the date of service of the Final Warning Notice; and
- (c) stating that if such breach continues for more than [insert details] days or recurs in [insert details] or more months within the six month period after the date of service of the Final Warning Notice, this Contract may be terminated.

132.6.3 A warning notice may not be served in respect of any incident of breach which has previously been counted in the award of a separate warning notice.

132.7 **Termination Date on Termination for Persistent Breach by the Contractor**

132.7.1 If the breach continues or recurs [insert number] or more times within the six month period after the date of service of the Final Warning Notice (a "**Persistent Breach**"), the Authority's Representative may, by notice to the Contractor's Representative, terminate this Contract on the date falling twenty Business Days after receipt of such notice.

132.8 **Termination Notice prior to Termination for Breach of Refinancing Provisions**

132.8.1 If the Authority wishes to terminate this Contract for breach of the refinancing provisions pursuant to PART 15 (Refinancing), the Authority's Representative shall serve notice on the Contractor's Representative stating that:

- (a) the Authority is terminating the Contract for breach of the refinancing provisions; and
- (b) this Contract shall terminate on the date falling twenty Business Days after the date of receipt of the notice.

132.9 Termination Date and Compensation for Termination on Breach of Refinancing Provisions

132.9.1 This Contract shall terminate on the date falling **twenty** Business Days after the date of receipt of the notice referred to in Clause 132.8 (Termination Notice Prior to Termination for Breach of Refinancing Provisions).

132.9.2 The provisions of Clause 139 (Compensation on Termination for Refinancing Breaches and Prohibited Acts) shall apply.

132.10 Termination Notice prior to Termination for Prohibited Acts

132.10.1 For the purposes of Clauses 132.10 and 132.11 (Termination Date and Compensation on Termination for Prohibited Acts), if the Prohibited Act is a Breach of Security, "**Sub-contractor**" shall mean a sub-contractor to the Contractor, a sub-contractor of a sub-contractor to the Contractor, and any other sub-contractor of whatever tier involved in Asset Provision and/or Service Provision.

132.10.2 If the Authority wishes to terminate this Contract because the Contractor or any Sub-contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or Shareholders commits any Prohibited Act, the Authority's Representative must serve a Termination Notice on the Contractor's Representative stating:

- (a) the nature of the Prohibited Act unless, in the case of a Breach of Security, a Senior Civil Servant in its absolute discretion considers that disclosure of the nature of the Breach of Security is not in the interests of national security; and
- (b) the identity of the party whom the Authority believes has committed the Prohibited Act; and
- (c) the date on which this Contract shall terminate, in accordance with the applicable provision of Clause 132.11 (Termination Date and Compensation on Termination for Prohibited Acts).

132.11 Termination Date and Compensation on Termination for Prohibited Acts

132.11.1 In this Clause 132.11, the expression "not acting independently of" (when used in relation to the Contractor or a Sub-contractor) means and shall be construed as acting with the authority of or knowledge of any one or more of the directors of the Contractor or the Sub-contractor (as the case may be).

132.11.2 Notwithstanding Clauses 132.11.3 to 132.11.5, if a Prohibited Act is committed by the Contractor or by an employee of the Contractor not acting independently of the Contractor, then the Authority may terminate the Contract by the Authority's Representative giving notice to the Contractor.

132.11.3 If the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, then the Authority may notify the Contractor's Representative of termination and this Contract shall terminate, unless within **twenty** Business Days of receipt of such notice the Contractor terminates the employee's employment and (if necessary) procures the performance of such part of Asset Provision and/or Service Provision by another person.

132.11.4 If the Prohibited Act is committed by a Sub-contractor or by an employee of such person not acting independently of that Sub-contractor, then the Authority's Representative may notify the Contractor of termination and this Contract shall terminate, unless within **twenty** Business Days of receipt of such notice the Contractor terminates the relevant Ancillary Document and procures the performance of such part of Asset Provision and/or Service Provision by another person.

132.11.5 If the Prohibited Act is committed by an employee of a Sub-contractor acting independently of that person, then the Authority may notify the Contractor of termination and this Contract shall terminate, unless within **twenty** Business Days of receipt of such notice the Sub-contractor terminates the employee's employment and (if necessary) procures the performance of such part of Asset Provision and/or Service Provision by another person.

132.11.6 If the Prohibited Act is committed by any other persons not specified in Clauses 132.11.2 to 132.11.5, then the Authority's Representative may notify the Contractor's Representative of termination and this Contract shall terminate, unless within twenty Business Days of receipt of such notice the Contractor procures the termination of such person's employment and of the appointment of their employer (where not employed by the Contractor or the Sub-contractors) and (if necessary) procures the performance of such part of the Services by another person.

132.11.7 The provisions of Clause 139 (Compensation on Termination for Refinancing Breaches and Prohibited Acts) shall apply.

132.12 Termination Notice Prior to Termination for a Relief Event

132.12.1 If the Authority wishes to terminate this Contract on a Relief Event pursuant to Clause 80.4 (Effect of Step-in on a Relief Event), the Authority's Representative must serve a Termination Notice on the Contractor's Representative as soon as reasonably practical and in any event within thirty Business Days from the service of its written notice under Clause 80.2 (Procedure for Authority Step-In) stating that:

(a) the Authority is terminating this Contract for such Relief Event;
and

(b) this Contract shall terminate on the date falling twenty Business Days after the date of receipt of the notice.

132.13 Termination Date and Compensation on Termination for Relief Event

132.13.1 This Contract shall terminate **twenty** Business Days after the Authority's notice to the Contractor pursuant to Clause 132.12.1 (Termination Date and Compensation on Termination for Relief Event).

132.13.2 The Contractor shall be deemed to be unable pursuant to Clause 123 (Reinstatement on an Insured Event) to adopt a Reinstatement Plan pursuant to Clause 123 (Reinstatement on an Insured Event). Accordingly the Contractor shall not be obliged to reinstate in such circumstances and subject to Clause 132.13.3 shall be entitled to retain the insurance proceeds.

132.13.3 Clause 141 (Compensation on Termination for Force Majeure or on Uninsurability) shall apply save that:

- (a) if the insurance proceeds received by the Contractor pursuant to Clause 121 (Joint Insurance Account) whether or not paid into the Joint Insurance Account pursuant to Clause 121 (Joint Insurance Account) are greater than or equal to the cost of the Reinstatement Works (as defined in Clause 123.1 (Reinstatement on an Insured Event)), then the Authority shall deduct from the Force Majeure Termination Sum a sum equal to such insurance proceeds; or
- (b) if the aggregate of the insurance proceeds received by the Contractor pursuant to Clause 121 (Joint Insurance Account) whether or not paid into the Joint Insurance Account pursuant to Clause 121 (Joint Insurance Account) and the sum paid by the Authority pursuant to Clause 80.5 (Other Consequences of Step-In Following a Relief Event) are less than the cost of the Reinstatement Works (as defined in Clause 123.1 (Reinstatement on an Insured Event)), then the Authority shall deduct from Force Majeure Termination Sum a sum equal to such insurance proceeds and the difference between the aggregate of the insurance proceeds and the cost of the Reinstatement Works.

132.14 Termination on an Authority Break Point Date⁵⁷

132.14.1 Without prejudice to its rights under Clause 132 (Termination by the Authority), the Authority may terminate the Contract on any of the Authority Break Point Dates by complying with its obligations under Clauses 132.14.2 to 132.14.4.

132.14.2 If the Authority wishes to terminate the Contract under this Clause 132.14, it must serve a Termination Notice to the Contractor stating:

- (a) that the Authority is terminating the Contract under this Clause 132.14;
- (b) that the Contract will terminate on the specified Authority Break Point Date; which must be a minimum of thirty days after the date of receipt of the Termination Notice; and
- (c) whether the Authority has chosen to exercise its option under Clause 132.14.3.

132.14.3 On termination, the Authority shall have the option to require the Contractor to transfer its right, title and interest in and to the Assets to the Authority or as directed by the Authority.

132.14.4 Provided the Termination Notice has been provided in accordance with Clause 132.14.2, the Contract will terminate on the specified Authority Break Point Date.

⁵⁷ If this wording is included, then this Clause should be cross referred to in Clause 143.6 (Exclusivity of Remedy). See SOPC4 Section 22.7 for required drafting.

133 TERMINATION ON A FORCE MAJEURE EVENT OR ON UNINSURABILITY

133.1 Termination Notice Prior to Termination for a Force Majeure Event or on Uninsurability

133.1.1 If no terms pursuant to Clause 77.3 (Effect of a Force Majeure Event) are agreed on or before the date falling **eighty** Business Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Contract for a period of more than **one hundred and twenty** Business Days, then, subject to Clause 133.1.2, either Party may terminate this Contract by giving **twenty** Business Days' written notice to the other Party's Representative.

133.1.2 If the Contractor gives notice to the Authority's Representative under Clause 133.1.2 (Termination Notice Prior to Termination for a Force Majeure Event or on Uninsurability) that it wishes to terminate this Contract, then the Authority has the option either to accept such notice or to respond in writing on or before the date falling ten Business Days after the date of its receipt stating that it requires this Contract to continue. If the Authority gives the Contractor such notice of continuance, then:

- (a) the Authority shall pay to the Contractor the Unitary Charge from the day after the date on which this Contract would have terminated under Clause 133.1.1 as if the Services were being fully provided; and
- (b) this Contract shall not terminate until expiry of written notice (of at least **twenty** Business Days) from the Authority to the Contractor that it wishes this Contract to terminate.

133.1.3 If a risk becomes Uninsurable and the Authority wishes to terminate this Contract pursuant to Clauses 119.2.2(a) and/or 119.2.2(b) (Uninsurability), the Authority may terminate this Contract forthwith.

133.2 Termination Date and Compensation on Termination for Force Majeure or on Uninsurability

133.2.1 This Contract shall terminate **twenty** Business Days after the Authority's notice to the Contractor pursuant to Clause 133.1.1 or forthwith on the Authority's notice to the Contractor pursuant to Clause 133.1.3.

133.2.2 If this Contract is terminated under this Clause 133 compensation shall be payable by the Authority in accordance with Clause 141 (Compensation on Termination for Force Majeure or on Uninsurability) plus (in relation to termination pursuant to Clause 133.1.3 and in respect of Third Party Liability insurance only) the amount of insurance proceeds that would have been payable to the Contractor.

134 SURVEYS ON TERMINATION AND RETENTION FUND

134.1 Final Survey

134.1.1 No later than the date **eighteen** months prior to the Expiry Date, the Authority shall be entitled to carry out or procure the carrying out of a final survey of all or any Assets to assess whether they have been and are being maintained by the Contractor in accordance with its

obligations under Clause 17 (Condition of the Assets and Delivery of the Services).

134.1.2 The Authority's Representative shall notify the Contractor's Representative a minimum of five Business Days in advance of the date it wishes to carry out or procure the carrying out of the final survey. The Authority's Representative shall consider in good faith any reasonable request by the Contractor for the final survey to be carried out on a different date if such request is made at least two Business Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the final survey on the notified date would materially prejudice the Contractor's ability to provide the Services.

134.1.3 Where the Authority carries out the final survey, the Authority shall use reasonable endeavours to minimise any disruption caused to Service Provision by the Contractor. The Contractor shall afford the Authority or any person carrying out the survey (free of charge) any reasonable assistance required by the Authority during the carrying out of the final survey.

134.2 Results of Survey

134.2.1 If the final survey shows that the Contractor has not complied with or is not complying with its obligations under Clause 17 (Condition of the Assets and Delivery of the Services) then the Authority's Representative shall:

- (a) notify the Contractor of the rectification and/or maintenance work which is required to bring the condition of the Assets to the standard they would have been in if the Contractor had complied or was complying with its obligations under Clause 17 (Condition of the Assets and Delivery of the Services) and to achieve the Handback Standard; and
- (b) specify a reasonable period within which the Contractor must carry out such rectification and/or maintenance work.

134.2.2 If the final survey shows:

- (a) that the Contractor has not complied with or is not complying with its obligations under Clause 17 (Condition of the Assets and Delivery of the Services) in respect of less than or equal to [insert number] percent of the Assets then the Authority may recover a proportion of the cost of the survey equivalent to the percentage of the Assets which are shown not to comply with the Contractor's obligations under Clause 17 (Condition of the Assets and Delivery of the Services); or
- (b) that the Contractor has not complied with or is not complying with its obligations under Clause 17 (Condition of the Assets and Delivery of the Services) in respect of greater than [insert number] percent of the Assets then the Authority may recover the full cost of the survey from the Contractor,

by means of a withdrawal from the Retention Fund Account⁵⁸ or deduction from the next payment of the Unitary Charge.

134.3 Outstanding Work on Handback

134.3.1 The Contractor shall carry out such rectification and/or maintenance work notified pursuant to this Clause 134.3 ("**Outstanding Work on Handback**") in order to reach the Handback Standard within the period specified and any costs it incurs in carrying out the Outstanding Work on Handback shall be at its own expense.

134.3.2 If and to the extent that the Contractor carries out the Outstanding Work on Handback, the Authority, to the extent that then or subsequently there are funds standing to the credit of the Retention Fund Account, shall reimburse the Contractor's costs of so doing by withdrawing amounts from the Retention Fund Account and paying these to the Contractor. If the aggregate of the amounts from time to time paid into the Retention Fund Account are insufficient to cover the Contractor's costs the Contractor shall bear the balance of such costs itself.

134.3.3 If and to the extent that the Contractor fails to carry out the Outstanding Work on Handback, the Authority shall be entitled to carry out itself, or procure, such rectification and/or maintenance work at the Contractor's expense and shall make withdrawals from the Retention Fund Account or, where there is insufficient funds in the Retention Fund Account, subject to Clause 69 (Rights of Set-off) make deductions from the Unitary Charge to pay for such rectification and/or maintenance work or recover such amounts from the Contractor as a debt.

134.4 Retention Fund

134.4.1 If the Contractor has been notified under Clause 134.2 (Results of Survey) that rectification and/or maintenance work is required, then twelve months prior to the Expiry Date the Authority shall deduct the costs of that work as quantified by the survey referred to in Clause 134.1 (Final Survey) from the next following instalment (or, if the amount of such instalment is insufficient, the next instalments as necessary) of the Unitary Charge and pay such amount into an interest bearing account (the "**Retention Fund Account**") until this Contract has expired or terminated.

134.5 Balance of Fund

134.5.1 If:

- (a) all the rectification and/or maintenance work identified by the Authority or the person the Authority procures to carry out the final survey has been carried out to the Handback Standard; and
- (b) all such rectification and/or maintenance work has been paid for by the Contractor; and

⁵⁸ Following issue of the ITN, Acquisition teams should consider allowing or requiring the Contractor to offer a bond to cover the Outstanding Work on Handback if the Retention Fund Account is unlikely to have a sufficient balance to carry out the Outstanding Work on Handback.

- (c) no Termination Notice given in accordance with this Contract is outstanding,

on the later of the Expiry Date and the expiry of the period notified pursuant to Clause 134.2 (Results of Survey), then the Authority shall pay any credit balance on the Retention Fund Account to the Contractor as soon as practicable. If the rectification and/or maintenance work identified by the Authority has not all been carried out to reach the Handback Standard or paid for by the Contractor, then the provisions of Clause 134.3.3 shall apply.

135 TRANSITION TO ANOTHER CONTRACTOR⁵⁹

135.1 Duty to Co-operate

135.1.1 On or before a date falling no later than **eighteen** months before the Expiry Date or during the period of any Termination Notice and in either case for a reasonable period thereafter, the Authority's Representative shall notify the Contractor as to whether the Authority's Representative wishes:

- (a) to retender Asset Provision and/or Service Provision; or
- (b) the Contractor to transfer the Assets to the Authority pursuant to Clause 44 (Title to the Assets on Termination or Expiry of this Contract).

135.1.2 During the final **six** months before the Expiry Date or during the period of any Termination Notice, the Contractor shall co-operate fully with the transfer of responsibility for Asset Provision and/or Service Provision (or part of Asset Provision and/or Service Provision) from the Contractor to any person ("**Follow-on Contractor**") or to the Authority, and for the purposes of this Clause 135 the meaning of the term "co-operate" shall include:

- (a) liaising with the Authority and/or any Follow-on Contractor, and providing reasonable assistance and advice concerning Asset Provision and/or Service Provision and their transfer to the Authority or to such Follow-on Contractor; and
- (b) allowing any such Follow-on Contractor access (at reasonable times and on reasonable notice) to the Assets but not so as to interfere with or impede Asset Provision and/or Service Provision; and
- (c) without prejudice to the obligations of the Contractor pursuant to Clause 116 (Contractor's Information, Documents and Records) providing to the Authority's Representative and/or to any Follow-on Contractor all and any information concerning the Authority Sites and Asset Provision and/or Service Provision which is reasonably required for the efficient transfer of responsibility for their performance but excluding any information which is commercially sensitive to the Contractor (and for the purpose of this Clause 135.1.2(c), commercially sensitive shall mean information which would if disclosed to a competitor of the Contractor give that competitor a competitive

⁵⁹ This is to ensure continued service provision beyond expiry or termination.

advantage over the Contractor and thereby prejudice the business of the Contractor but shall not include any information referred to in PART 21 (TUPE, CONDO and Sponsored Reserves)); and

- (d) if the Authority has not required the Contractor to transfer the Assets to the Authority pursuant to Clause 44 (Title to the Assets on Termination or Expiry of this Contract), transferring its rights, title and interest in and to the Assets to the Follow-on Contractor with effect on and from the Termination Date or Expiry Date.

135.2 Transfer of Responsibility

135.2.1 The Contractor shall use all reasonable endeavours so as to facilitate the smooth transfer of responsibility for Asset Provision and/or Service Provision to a Follow-on Contractor or to the Authority, as the case may be, and the Contractor shall take no action at any time during the Contract Period or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer.

135.3 Costs of Retendering

135.3.1 The Authority shall bear all costs of retendering this Contract on expiry.

136 CONTINUING OBLIGATIONS

136.1 Save as otherwise expressly provided in this Contract or as already taken into account in the calculation of any Termination Sum or other payment of compensation on termination pursuant to this Contract, and notwithstanding the provisions of Clause 143.6 (Exclusivity of Remedy):

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

136.1.2 termination of this Contract shall not affect the continuing rights and obligations of the Contractor and the Authority under PART 1 (Preliminary Provisions), PART 15 (Refinancing), PART 16 (Supervening Events), PART 18 (Changes and Change in Law), PART 19 (People and Sub-contractors), PART 20 (Security), PART 21 (TUPE, CONDO and Sponsored Reserves), PART 22 (Intellectual Property, Information and Disclosure), PART 23 (Insurance), PART 24 (Damage to the Specified Assets, Indemnities and Contractual Claims), PART 25 (Termination), PART 26 (Compensation on Termination), PART 27 (Dispute Resolution) and PART 28 (General) or under any other provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

PART 26 – COMPENSATION ON TERMINATION (CORE CLAUSES)

137 COMPENSATION ON TERMINATION BY THE CONTRACTOR OR AUTHORITY'S VOLUNTARY TERMINATION

137.1 On termination of this Contract pursuant to Clauses 131 (Termination by the Contractor) or 132.3 (Termination Date and Compensation on Authority's Voluntary Termination) the Authority shall pay the Contractor the Authority Default Termination Sum in accordance with Clauses 142 (Miscellaneous Compensation Provisions) on the Termination Date. Subject to Clauses 137.1.2 to 137.2 (Compensation on Termination by the Contractor or Authority's Voluntary Termination), the Authority Default Termination Sum shall be an amount equal to the aggregate of:

137.1.1 the Base Senior Debt Termination Amount; and

137.1.2 redundancy payments for employees of the Contractor that have been or shall be reasonably incurred by the Contractor as a direct result of termination of this Contract and any Sub-contractor Breakage Costs; and⁶⁰

137.1.3 either:

(a) an amount which when taken together with:

(i) dividends (or other distributions) paid by the Contractor on its share capital on or before the Termination Date; and

(ii) interest paid and principal repaid by the Contractor under the Subordinated Financing Agreements on or before the Termination Date,

taking account of the actual timing of all such payments, gives a real internal rate of return on the share capital subscribed and amounts advanced under the Subordinated Financing Agreements equal to the Base Case Equity IRR; or

(b) the aggregate amount for which the share capital of the Contractor and the amounts outstanding under the Subordinated Financing Agreements could have been sold on an open market basis based on the Relevant Assumptions; or

(c) all amounts shown in the Base Case as payable by the Contractor from the Termination Date, either in dividends or other distributions on the share capital of the Contractor or as payments of interest or repayments of principal made by the Contractor under the Subordinated Financing Agreements, each amount discounted back at the Base Case Equity IRR from the date on which it is shown to be payable in the Base Case to the Termination Date.

137.2 If the aggregate of the amounts referred to in Clauses 137.1.1 Clause 137.1.3(a) or 137.1.3(b) or 137.1.3(c) is less than the Revised Senior Debt Termination Amount, then the Authority Default Termination Sum shall be increased so that it

⁶⁰ Bidders to nominate which one of the options should apply.

is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in Clause 137.1.2 provided always that:

137.2.1 the amount referred to in Clause 137.1.2 shall only be paid to the extent that the Contractor has demonstrated to the reasonable satisfaction of the Authority that the amount shall not be paid in payment (in whole or in part) of any Distribution; and

137.2.2 if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-contractor Breakage Costs shall be paid in respect of any Sub-contract in circumstances where there is an event of default under such Sub-contract which would entitle the Contractor to terminate such Sub-contract.

137.3 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the Contractor has wilfully, or through gross negligence, failed to comply with its obligations under paragraph [insert details] of the Direct Agreement then in addition to the deduction of the Distribution referred to in paragraph (e) of the definition of Revised Senior Debt Termination Amount, the Authority shall be entitled to set-off the value of that Distribution a second time against the Authority Default Termination Sum, provided that the amount of the Authority Default Termination Sum shall never be less than the Revised Senior Debt Termination Amount.

137.4 If the Contractor has wilfully or through gross negligence failed to comply with its obligations under paragraph [insert details] of the Direct Agreement and there has been an overstatement of the cash balances by the Contractor as at that date which has caused the Authority to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this Clause 137, then the Authority Default Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Authority Default Termination Sum shall never be less than the Revised Senior Debt Termination Amount.

138 COMPENSATION ON TERMINATION ON AN AUTHORITY BREAK POINT DATE

138.1 On termination of this Contract pursuant to Clause 132.14 (Termination on an Authority Break Point Date), the Authority shall pay the Contractor, an amount equal to the amount payable under Clause 137 (Compensation on Termination by the Contractor or Authority's Voluntary Termination), save that in calculating such amount, the amount specified in Clause 137 (Compensation on Termination by the Contractor or Authority's Voluntary Termination) shall be substituted by:

138.1.1 in the case of termination on the first Authority Break Point Date, £[insert amount]; or

138.1.2 in the case of termination on the second Authority Break Point Date, £[insert amount];

139 COMPENSATION ON TERMINATION FOR REFINANCING BREACHES AND PROHIBITED ACTS

139.1 On termination of this Contract in accordance with Clauses 132.9 (Termination Date and Compensation for Termination on Breach of Refinancing Provisions) or 132.11 (Termination Date and Compensation on Termination for Prohibited Acts) the Authority shall pay the Contractor an amount equal to the Revised Senior Debt Termination Amount.

139.2 Such amount shall be determined and paid in accordance with Clauses 142 (Miscellaneous Compensation Provisions) and 143 (Time for Payment of the Termination Sum).

140 COMPENSATION ON TERMINATION FOR CONTRACTOR DEFAULT

140.1 Retendering Election

140.1.1 Subject to Clause 140.1.2 (Retendering Election), the Authority shall be entitled to either:

- (a) retender the provision of the Project in accordance with Clause 140.2 (Retendering Procedure); or
- (b) require an expert determination in accordance with Clause 140.4 (No Retendering Procedure).

140.1.2 The Authority shall be entitled to elect to retender the provision of the Project in accordance with Clause 140.2 (Retendering Procedure) if:

- (a) the Authority notifies the Contractor on or before the date falling twenty Business Days after the Termination Date that it intends to retender; and
- (b) there is a Liquid Market; and either:
 - (i) the Senior Lenders have not exercised their rights to step-in under paragraph [insert details] (Representative) of the Direct Agreement; or
 - (ii) the Contractor or the Senior Lenders have not procured the transfer of the Contractor's rights and liabilities under this Contract to a Suitable Substitute Contractor and have failed to use all reasonable efforts to do so,

but otherwise the Authority shall not be entitled to re-tender the provision of the Project and Clause 140.4 (No Retendering Procedure) shall apply.

140.2 Retendering Procedure

140.2.1 If the Authority elects to retender the provision of the Project under Clause 140.1 (Retendering Election), then the following provisions shall apply:

- (a) the objective of the retendering procedure shall be to establish and pay to the Contractor the Adjusted Highest Compliant Tender Price, as a result of the Tender Process; and
- (b) the Authority shall (subject to any legal requirements preventing it from doing so) use its reasonable endeavours to complete the Tender Process as soon as practicable; and
- (c) the Authority shall notify the Contractor of the qualification criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process, but shall act reasonably in setting such requirements and terms; and

- (d) the Contractor authorises the release of any information by the Authority under the Tender Process which would otherwise be prevented under Clause 113 (Confidentiality) that is reasonably required as part of the Tender Process; and
- (e) the Contractor may, at its own cost, appoint a person (the "**Tender Process Monitor**") to monitor the Tender Process for the purpose of monitoring and reporting to the Contractor and the Senior Lenders on the Authority's compliance with the Tender Process and making representations to the Authority. The Tender Process Monitor shall not disclose any confidential information to the Contractor or any other person (and shall provide an undertaking to the Authority to such effect as a condition of its appointment) but shall be entitled to advise the Contractor as to whether it considers that the Authority has acted in accordance with the Tender Process, and correctly determined the Adjusted Highest Compliant Tender Price; and
- (f) the Tender Process Monitor shall enter into a confidentiality agreement with the Authority in a form acceptable to the Authority and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of the tender documentation and bids and shall be required to make written representations to the Authority regarding compliance with the Tender Process. All representations shall be made by the Tender Process Monitor in a timely manner as the Tender Process proceeds. The Authority shall not be bound to consider or act upon such representations but acknowledges that such representations may be referred to by the Contractor if the Contractor refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with Clause 144 (Disputes); and
- (g) the Authority shall require bidders to bid on the basis that they shall receive the benefit of any outstanding claims under material damage insurance policies and amounts (if any) standing to the credit of the Joint Insurance Account on the date that the New Contract is entered into.

140.2.2 As soon as practicable after tenders have been received, the Authority shall (acting reasonably) determine the Compliant Tenders and shall notify the Contractor of the Adjusted Highest Compliant Tender Price.

140.2.3 The Authority may elect at any time prior to the receipt of a Compliant Tender to follow the no retendering procedure under Clause 140.4 (No Retendering Procedure) by giving written notice to the Contractor that this election has been made.

140.3 Compensation to the Contractor if the Authority Elects to use the Retendering Procedure

140.3.1 For all or any part of a month, falling within the period from the Termination Date to the Compensation Date, the Authority shall pay to the Contractor:

- (a) the Post Termination Service Amount for that month, on or before the date falling ten Business Days after the end of that month; and

- (b) the Post Termination Service Amount for the period ending on the Compensation Date, on or before the date falling twenty Business Days after the Compensation Date.

140.3.2 If any Post Termination Service Amount is less than zero, then it shall be carried forward and shall be set-off against any future positive Post Termination Service Amounts. If any such Post Termination Service Amount has not been set-off on or before the Compensation Date then it shall be taken into account in the calculation of the Adjusted Highest Compliant Tender Price.

140.3.3 If the Contractor refers a dispute relating to the Adjusted Highest Compliant Tender Price to the Dispute Resolution Procedure, the Authority shall be entitled to enter into a New Contract. The Authority shall pay to the Contractor the Adjusted Highest Compliant Tender Price on or before the date falling **twenty** Business Days after it has been determined under Clause 144 (Disputes) and the Authority shall pay interest to the Contractor at the Senior Debt Rate on any amount of Adjusted Highest Compliant Tender Price which has been withheld from the date specified in Clause 140.3.4 until the date specified in this Clause 140.3.3. Where there is an agreed amount and a disputed amount in respect of the Adjusted Highest Compliant Tender Price the Authority shall (where it is agreed that the Adjusted Highest Compliant Tender Price is a positive number) pay to the Contractor the agreed amount no later than the date specified in Clause 140.3.4, with the disputed amount being dealt with in accordance with this Clause 140.3.3.

140.3.4 Subject to Clauses 140.3.3 and 140.3.7, the Authority shall pay to the Contractor an amount equal to the Adjusted Highest Compliant Tender Price no later than the date falling **twenty** Business Days after the date of the New Contract.

140.3.5 The discharge by the Authority of its payment obligation in Clauses 140.3.3 and/or 140.3.4 shall be in full and final settlement of all the Contractor's claims and rights against the Authority for breaches and/or termination of this Contract and the Project Documents whether under contract, tort, restitution or otherwise, save for any liability of the Authority which arose prior to the Termination Date that has not already been taken into account in determining the Adjusted Highest Compliant Tender Price.

140.3.6 Subject to Clauses 140.3.7 and 140.3.9, if the Authority has not paid an amount equal to the Adjusted Highest Compliant Tender Price to the Contractor on or before the date falling two years after the Termination Date then the provisions of Clause 140.2 (Retendering Procedure) shall not apply to that termination and the provisions of Clause 140.4 (No Retendering Procedure) shall apply instead.

140.3.7 If the Adjusted Highest Compliant Tender Price is zero or a negative number then the Authority shall have no obligation to make any payment to the Contractor and with effect from the time that the Authority gives notice of that event to the Contractor, the Authority shall be released from all liability to the Contractor for breaches and/or termination of this Contract and any other Project Document whether under contract, tort, restitution or otherwise save for any antecedent liability of the Authority which arose prior to the Termination Date (but

not from the termination itself) that has not already been taken into account in determining the Adjusted Highest Compliant Tender Price.

140.3.8 If the Adjusted Highest Compliant Tender Price is less than zero then an amount equal to the Adjusted Highest Compliant Tender Price shall be due and payable by the Contractor to the Authority on the date of the New Contract.

140.3.9 If the Authority has received all bids from bidders under the Tender Process and has received a Compliant Tender but decides not to complete the Tender Process, it shall notify the Contractor of this decision and pay to the Contractor an amount equal to the Adjusted Highest Compliant Tender Price within **twenty** Business Days of such notification.

140.4 **No Retendering Procedure**

140.4.1 If either the Authority is not entitled to retender the provision of the Project under Clause 140.1 (Retendering Election) or the Authority elects to require an expert determination in accordance with this Clause 140.4 (No Retendering Procedure), then the following procedure shall apply:

- (a) subject to Clause 140.4.1(b), the Contractor shall not be entitled to receive any Post Termination Service Amount.
- (b) if the Authority elects to require an expert determination in accordance with this Clause 140.4.1(b) after it has elected to follow the procedure under Clause 140.2 (Retendering Procedure), then the Authority shall continue to pay to the Contractor each Post Termination Service Amount until the Compensation Date, in accordance with Clause 140.2 (Retendering Procedure).
- (c) in agreeing or determining the Estimated Fair Value of the Contract, the Parties shall be obliged to follow the principles set out below:
 - (i) all forecast amounts shall be calculated in nominal terms at current prices, recognising the adjustment for indexation in respect of forecast inflation between the date of calculation and the forecast payment date(s) as set out in this Contract; and
 - (ii) the total of all future payments of the full Unitary Charge (without deductions) forecast to be made shall be calculated and discounted to the Termination Date at the Termination Date Discount Rate; and
 - (iii) the total of all costs forecast to be incurred by the Authority as a result of termination shall be calculated and discounted at the Termination Date Discount Rate and deducted from the payment calculated pursuant to Clause 140.4.1(b), such costs to include (without double counting):
 - (1) a reasonable risk assessment of any cost overruns that shall arise, whether or not forecast in the relevant base case; and

- (2) the costs of the Services forecast to be incurred by the Authority in providing the Project to the standard required; and
- (3) any rectification costs required to deliver the Project to the standard required (including any costs forecast to be incurred by the Authority to complete construction or development work and additional operating costs required to restore operating services standards),

in each case such costs to be forecast at a level that shall deliver the full Unitary Charge referred to in Clause 140.4.1(b).

140.4.2 If the Parties cannot agree pursuant to Schedule 19 (Project Management) on the Adjusted Estimated Fair Value of the Contract on or before the date falling twenty Business Days after the date on which the Authority elected to require an expert determination in accordance with this Clause 140.4.2, then the Adjusted Estimated Fair Value of the Contract shall be a Dispute to be determined in accordance with Clause 144 (Disputes) provided that, notwithstanding Clause 144.2 (Alternative Dispute Resolution) a Dispute on the Adjusted Estimated Fair Value of the Contract shall be referred for adjudication pursuant to Clause 144.3 (Adjudication).

140.5 Subject to Clause 143 (Time for Payment of the Termination Sum), the Authority shall pay to the Contractor an amount equal to the Adjusted Estimated Fair Value of the Contract on the date falling forty Business Days after the date on which the Adjusted Estimated Fair Value of the Contract has been agreed or determined in accordance with this Clause 140.4 (No Retendering Procedure).

140.6 The discharge by the Authority of its obligation in Clause 140.5 is in full and final settlement of all the Contractor's claims and rights against the Authority for breaches and/or termination of this Contract or other Project Document whether in contract, tort, restitution or otherwise, save for any liability that arose prior to the Termination Date (but not from the termination itself) that has not been taken into account in determining the Adjusted Estimated Fair Value of the Contract.

140.7 To the extent that the Adjusted Estimated Fair Value of the Contract is less than zero, then an amount equal to the Adjusted Estimated Fair Value of the Contract shall be due and payable by the Contractor to the Authority on the Compensation Date.

141 **COMPENSATION ON TERMINATION FOR FORCE MAJEURE OR ON UNINSURABILITY**

141.1 **Amount**

141.1.1 On termination of this Contract under Clause 133 (Termination on a Force Majeure Event or on Uninsurability), the Authority shall pay to the Contractor the Force Majeure Termination Sum in accordance with Clauses 142 (Miscellaneous Compensation Provisions) and 143 (Time for Payment of the Termination Sum). Subject to Clauses 141.1.3 to 141.1.5 the Force Majeure Termination Sum shall be the amount equal to the aggregate of:

- (a) the Base Senior Debt Termination Amount; and
- (b) the Junior Debt less an amount equal to the aggregate of payments of interest made by the Contractor under the Subordinated Financing Agreements;⁶¹
- (c) all amounts paid to the Contractor by way of subscription for shares in the capital of the Contractor less dividends and other distributions paid to the shareholders of the Contractor (save to the extent deducted under Clause 141.1.1(b)); and
- (d) redundancy payments for employees of the Contractor that have been or shall be reasonably incurred by the Contractor as a direct result of termination of this Contract and any Sub-contractor Breakage Costs.

141.1.2 If the amounts referred to in Clauses 141.1.1(b) and/or 141.1.1(c) are less than zero, then, for the purposes of the calculation in Clause 141.1.1 they shall be deemed to be zero.

141.1.3 If the aggregate of the amounts referred to in Clauses 141.1.1(a), 141.1.1(b) and 141.1.1(c) is less than the Revised Senior Debt Termination Amount, then the Force Majeure Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in Clause 141.1.1(d) provided always that:

- (a) the amount referred to in Clause 141.1.1(d) shall only be paid to the extent that the Contractor has demonstrated to the reasonable satisfaction of the Authority that the amount shall not be paid in repayment (in whole or in part) of any Distribution; and
- (b) if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-contractor Breakage Costs shall be paid in respect of any Sub-contract in circumstances where there is an event of default under such Sub-contract which would entitle the Contractor to terminate such Sub-contract.

141.1.4 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the Contractor has wilfully, or through gross negligence, failed to comply with its obligations under paragraph [insert details] of the Direct Agreement then in addition to the deduction of the Distribution referred to in paragraph (v) of the definition of Revised Senior Debt Termination Amount, the Authority shall be entitled to set-off the value of that Distribution a second time against the Force Majeure Termination Sum, provided that the amount of the Force Majeure Termination Sum shall never be less than the Revised Senior Debt Termination Amount.

141.1.5 If the Contractor has wilfully or through gross negligence failed to comply with its obligations under paragraph [insert details] of the Direct Agreement and there has been an overstatement of the cash balances by the Contractor as at that date which has caused the Authority to reasonably believe that it would be required to pay a lesser sum at the

⁶¹ This excludes interest accrued but unpaid but the Junior Debt documentation should, of course, be checked to ensure this is the way it works. Repayment of principal is caught through the definition of Junior Debt.

Termination Date than it actually is required to pay under the terms of this Clause 141, then the Force Majeure Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Force Majeure Termination Sum shall never be less than the Revised Senior Debt Termination Amount.

141.2 **Payment**

141.2.1 The Force Majeure Termination Sum payable pursuant to this Clause 141 shall be determined and paid in accordance with Clauses 142 (Miscellaneous Compensation Provisions) and 143 (Time for Payment of the Termination Sum).

142 **MISCELLANEOUS COMPENSATION PROVISIONS**

142.1 **Gross Up of Termination Payments**

142.1.1 If any amount of compensation payable by the Authority under PART 26 (Compensation on Termination) other than Clause 140 (Compensation on Termination for Contractor Default) is subject to Tax payable to a Relevant Authority in the United Kingdom, then the Authority shall pay to the Contractor such additional amount as shall put the Contractor in the same after Tax position as it would have been in had the payment not been subject to Tax taking account of any relief, allowances deduction, setting off or credit in respect of Tax (whether available by choice or not) which may be available to the Contractor to reduce the Tax to which the payment is subject.

142.2 **Set-off on Termination**

Except where expressly stated otherwise, the Authority is not entitled to set-off any amount against any payment of termination compensation (whether payable as a lump sum or in instalments) under Clause 141 (Compensation on Termination for Force Majeure or on Uninsurability), Clause 139 (Compensation on Termination for Refinancing Breaches and Prohibited Acts)[, (Compensation on Termination on an Authority Break Point Date)] and Clause 137 (Compensation on Termination by the Contractor or on Authority's Voluntary Termination), save to the extent that after such an amount has been set-off, the termination payment made would be an amount greater than or equal to the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount as the case may be at that time.

143 **TIME FOR PAYMENT OF THE TERMINATION SUM**

143.1 The Authority shall pay the Contractor the Termination Sum, together with interest on any Base Senior Debt Termination Amount or Revised Senior Debt Termination Amount element of the Termination Sum at the Senior Debt Rate on or before the date falling sixty days after the Notice Date provided that it may elect to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum in accordance with this Clause 143.

143.2 The Authority may, other than on an Authority Default, elect to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum:

143.2.1 in instalments as follows:

- (a) where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) is greater than or equal to the Outstanding Principal:
 - (i) in respect of that element of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) representing the Outstanding Principal (where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) is greater than or equal to the Outstanding Principal) on the dates (the "**Instalment Dates**") and in the amounts that the Contractor would have been required to pay principal to the Senior Lenders under the terms of the Senior Credit Agreement (disregarding any changes to such amounts or dates that have not been approved by the Authority other than changes giving rise to an Additional Permitted Borrowing) had the Termination Date not occurred; and
 - (ii) in respect of the sum (if any) remaining after deducting the Outstanding Principal from the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) in equal instalments on the Instalment Dates;
- (b) where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) is less than the Outstanding Principal, on the Instalment Dates pro rata to the amounts that the Contractor would have been required to pay as principal to the Senior Lenders on each Instalment Date under the terms of the Senior Credit Agreement (disregarding any changes to such amounts or dates that have not been approved by the Authority other than changes giving rise to an Additional Permitted Borrowing) had the Termination Date not occurred; or
- (c) as the Parties may otherwise agree pursuant to Schedule 19 (Project Management).

143.3 If the Authority elects to pay the Adjusted Estimated Fair Value of this Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum in instalments pursuant to Clause 143.2, from the Notice Date until the date of payment, interest shall accrue on any unpaid element of the Termination Sum at the Senior Debt Rate and be payable on the next occurring Instalment Date.

143.4 If the Authority has elected to pay in accordance with Clause 143.2 it may (on twenty Business Days' prior written notice to the Contractor) elect to pay any outstanding element of the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) in full on any Instalment Date.

143.5 Authority Default in Payment

143.5.1 If the Authority:

- (a) fails to make a payment to the Contractor in accordance with this Clause 143 (Time for Payment of the Termination Sum); or
- (b) breaches Clause 147 (Transfer of this Contract by the Authority),

the Contractor may issue a notice to the Authority declaring any unpaid and outstanding element of (as applicable) the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) together with any accrued but unpaid interest pursuant to Clause 143.3 to be immediately due and payable.⁶²

143.6 Exclusivity of Remedy

143.6.1 Any payment of compensation pursuant to this PART 26 (Compensation on Termination) shall be in full satisfaction of any claim which can be made against the Authority by the Contractor in relation to termination of this Contract or any Project Document. The compensation payable under Clauses 137 (Compensation on Termination by the Contractor or Authority's Voluntary Termination), 139 (Compensation on Termination for Refinancing Breaches and Prohibited Acts) or 141 (Compensation on Termination for Force Majeure or on Uninsurability), shall be the sole remedy of the Contractor against the Authority in respect of termination of this Contract.

143.6.2 The Authority shall be entitled to rely on the certificate of the Agent as conclusive as to the amount of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount outstanding at any relevant time. The receipt by the Agent of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (or elements thereof as relevant) shall discharge the Authority's obligations to pay such sums to the Contractor.

⁶²Break costs arising should also be payable.

PART 27 – DISPUTE RESOLUTION (CORE CLAUSES)

144 DISPUTES

144.1 Any dispute arising in relation to any aspect of this Contract shall be resolved in accordance with this Clause 144.

144.2 Alternative Dispute Resolution

144.2.1 If a dispute arises out of or in relation to any aspect of this Contract, the Contractor and the Authority shall attempt in good faith to resolve such dispute through negotiations between their respective representatives having authority to settle the matter. Such attempts may include the use of any alternative dispute resolution procedure on which the Parties may agree.

144.3 Adjudication⁶³

144.3.1 Without prejudice to Clause 144.2 (Alternative Dispute Resolution) above, in respect of Asset Provision Disputes and Service Provision Disputes either Party may give the other notice of intention to refer the dispute to non-binding adjudication and the adjudicator shall be selected in accordance with Clause 144.3.2.

144.3.2 The adjudicator nominated to consider the dispute (the "**Adjudicator**") shall be selected on a strictly rotational basis from the relevant panel of experts appointed in accordance with the following:

- (a) there shall be two panels of experts, one in respect of Asset Provision Disputes (the "**Asset Provision Panel**") and one in respect of Service Provision Disputes (the "**Service Provision Panel**"). All the experts on each panel shall be wholly independent of the Contractor, the Authority, the relevant Sub-contractor and any of the major competitors of the Contractor or relevant Sub-contractor; and
- (b) when appointing experts the Parties shall also agree the order in which they shall be appointed (if required) as Adjudicator;
- (c) the Asset Provision Panel shall be comprised of **three** experts who shall be appointed jointly by the Contractor and the Authority. Such appointments shall take place within **twenty** Business Days of the Commencement Date; and
- (d) the Service Provision Panel⁶⁴ shall be comprised of **three** experts who shall be appointed jointly by the Contractor and the Authority. Such appointments shall take place within **twenty** Business Days of the Commencement Date; and
- (e) if any member of a panel resigns during the term of the Contract or is no longer eligible to be a member of a panel in accordance with the requirements of Clause 144.3.2(a) a

⁶³ Project Teams should consider whether adjudication is appropriate in relation to purely financial disputes (e.g. relating to refinancing, etc. rather than deductions, etc.). If so a financial panel should be incorporated and financial disputes defined. Advice should be sought from MOD PFU in respect of this.

⁶⁴ Project Teams should consider if, given the nature of the services to be provided, a single Service Provision Panel is appropriate or should multiple panels be appointed to adjudicate on different elements of the Services.

replacement expert shall be appointed by the Contractor and the Authority as soon as practicable.

- 144.3.3 Within seven days of selection in relation to a particular dispute, the Adjudicator shall require the Parties to submit in writing their respective arguments. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.
- 144.3.4 In any event, the Adjudicator shall provide to both Parties his written decision on the dispute, within **twenty eight** days of selection to consider the dispute (or such other period as the Parties may agree after the reference). Unless the Parties otherwise agree, the Adjudicator shall give reasons for his decision.
- 144.3.5 The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, if not specified, equally by the Parties. Each Party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.
- 144.3.6 The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.
- 144.3.7 The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any certificate, instruction, determination or decision of whatever nature given or made under this Contract with the exception of opinions, certificates, instructions, determinations or decisions of the Authority or the Authority's Representative which are described as being at the Authority's or Authority's Representative's discretion, including those made further to Clauses 41.3 (Failure to Novate Novating Contracts and Non-novating Contracts) 46.1 (Release/Resumption of Non-Core Units), 56.2.1 (Early Resumption), 74.5.4 (Authority's Right to Request Refinancing), 78.4.1 (Effect of Implementation of Measures in a Crisis), 78.5.1 (Authority's Overriding Rights), 84.9.6 (Calculating the Estimated Change in Project Costs and/or Capital Expenditure – Higher Value Change (Major Changes), 84.14.1 (Changes Proposed by the Contractor), 88.1 (Implementation of Urgent Changes) 94.6.3 (Approval of Sub-contractors and Terms of Sub-contracts), 105.1 (Breach of Security), 108.3 (Licence of Authority Background IPR and Authority Foreground IPR), 108.4.1 (Sub-licence of Third Party IPR provided by the Authority), 114.3 (Freedom of Information) and 132.10 (Termination Notice prior to Termination for Prohibited Acts), which the Arbitrator shall not be entitled to open up, review or revise.
- 144.3.8 All information, data or documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator's work.

144.3.9 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

144.4 Arbitration

144.4.1 If:

- (a) the dispute is not resolved further to Clause 144.2.1 (Alternative Dispute Resolution); or
- (b) either Party is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with Clause 144.4.4; or
- (c) there is any dispute in respect of matters referred to in PART 18 (Changes and Change in Law), PART 14 (Value for Money) or PART 26 (Compensation on Termination); or
- (d) either party wishes to refer the dispute directly to arbitration,

then either Party may notify the other Party in writing of its intention to refer the dispute to arbitration. Such notification shall invite the other Party to concur in the appointment of a sole arbitrator who shall be a solicitor, barrister or arbitrator recognised by the Chartered Institute of Arbitrators of not less than ten years' standing (the "**Arbitrator**"). The arbitration shall take place in London and shall be governed by the provisions of the Arbitration Act 1996

144.4.2 The Arbitrator shall have the power to:

- (a) open up, review and revise any certificate, instruction, determination or decision of whatever nature given or made under this Contract with the exception of opinions, certificates, instructions, determinations or decisions of the Authority or the Authority's Representative which are described as being at the Authority's or Authority's Representative's discretion, including those made further to Clauses 41.3 (Failure to Novate Novating Contracts and Non-novating Contracts) 46.1 (Release/Resumption of Non-Core Units), 56.2.1 (Early Resumption), 74.5.4 (Authority's Right to Request Refinancing), 78.4.1 (Implementation of Measures in a Crisis), 78.5.1 (Authority's Overriding Rights), 84.9.6 (Calculating the Estimated Change in Project Costs and/or Capital Expenditure – Higher Value Change (Major Changes), 84.14.1 (Changes Proposed by the Contractor), 88.1 (Implementation of Urgent Changes) 94.6.3 (Approval of Sub-contractors and Terms of Sub-contracts), 105.1 (Breach of Security), 108.3 (Licence of Authority Background IPR and Authority Foreground IPR), 108.4.1 (Sub-licence of Third Party IPR provided by the Authority), 114.3 (Freedom of Information) and 132.10 (Termination Notice prior to Termination for Prohibited Acts), which the Arbitrator shall not be entitled to open up, review or revise; and
- (b) to vary or cancel the decision of the Adjudicator; and

- (c) where appropriate, to order financial compensation to be paid by one Party to the other; and
- (d) to make provisional awards as provided for in Section 39 of the Arbitration Act 1996.

144.4.3 The Arbitrator shall in his absolute discretion, make such procedural directions as he considers necessary such as ordering the Parties to provide written submissions within such time period as he considers appropriate and/or to attend such hearings as he deems necessary.

144.4.4 The Arbitrator shall deliver his decision on any matter referred to him within twenty-eight days of concluding any hearings which may have been held in connection with the matter and in any event within three months (or such other period as the Parties may agree) of his appointment. The Arbitrator's decision shall be in writing and shall state his reasons for his decision. The decision of the Arbitrator shall be final and binding on both Parties. The costs of the arbitration will be in the discretion of the Arbitrator.

144.5 Continuing compliance with obligations

144.5.1 The Parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this Clause 144 and shall give effect forthwith to every decision of the Arbitrator delivered under this Clause 144 and to those decisions of the Adjudicator that are accepted by the Parties.

144.6 Related Disputes

144.6.1 If any dispute arising under this Contract raises issues which relate to:

- (a) any dispute between the Contractor and the Asset Provider arising under the Asset Provision Contract or otherwise affects the relationship or rights of the Contractor and/or the Asset Provider under the Asset Provision Contract (the "**Asset Provision Contract Related Dispute**"); or
- (b) any dispute between the Contractor and the Service Provider arising under the Service Provision Contract or otherwise affects the relationship or rights of the Contractor and/or the Service Provider under the Service Provision Contract (the "**Service Provision Contract Related Dispute**"),

then the Contractor may include as part of its submissions made to the Adjudicator (where the dispute is referred to adjudication) or to the Arbitrator, where the dispute is referred to arbitration, submissions made by the Asset Provider or by the Service Provider as appropriate.

144.6.2 The Adjudicator or the Arbitrator, as appropriate, shall not have jurisdiction to determine the Asset Provision Contract Related Dispute or the Service Provision Contract Related Dispute but the decision of the Adjudicator or the Arbitrator shall, subject to Clause 144.4 (Arbitration), be binding on the Contractor and the Asset Provider insofar as it determines the issues relating to the Asset Provision Contract Related Dispute and on the Contractor and the Service Provider insofar as it determines the issues relating to the Service Provider Contract Related Dispute.

144.6.3 Any submissions made by the Asset Provider or the Service Provider shall:

- (a) be made within the time limits applicable to the delivery of submissions by the Contractor; and
- (b) concern only those matters which relate to the dispute between the Authority and the Contractor under this Contract.

144.6.4 Where the Asset Provider or the Service Provider makes submissions in any reference before:

- (a) the Adjudicator, the Adjudicator's costs of such reference shall be borne as the Adjudicator shall specify, or in default, one-third by the Authority and two-thirds by the Contractor; and
- (b) the Arbitrator, the costs of the arbitration shall be in the discretion of the Arbitrator.

144.6.5 The Authority shall have no liability to the Asset Provider or the Service Provider arising out of or in connection with any decision of the Adjudicator or Arbitrator or in respect of the costs of the Asset Provider or the Service Provider in participating in the resolution of any dispute under this Contract.

144.6.6 The Contractor shall not allow the Asset Provider or the Service Provider access to any document relevant to the issues in dispute between the Authority and the Contractor save where:

- (a) the document is relevant also to the issues relating to the Asset Provision Contract Related Dispute or the Service Provision Contract Related Dispute as the case may be; and
- (b) the Contractor has first delivered to the Authority a written undertaking from the Asset Provider and/or the Service Provider (as appropriate) addressed to the Authority that they shall not use any such document otherwise than for the purpose of the dispute resolution proceedings under this Contract and that they shall not disclose such documents or any information contained therein to any third Party other than the Adjudicator or Arbitrator or any professional adviser engaged by the Asset Provider or the Service Provider (as appropriate) to advise in connection with the dispute.

PART 28 – GENERAL (CORE CLAUSES)

145 COMMUNICATIONS

145.1 All notices, claims, information, documentation, certificates or written instructions to be provided or submitted under this Contract by one Party ("**Communications**") shall be:

145.1.1 in a form which can be read, copied and recorded; and

145.1.2 authenticated by signature or electronic signature or by such other method as agreed between the Parties; and

145.1.3 marked in a prominent position with the number of this Contract.

145.2 Subject to Clause 145.3, all Communications shall be served by sending the same by first class post, facsimile, electronic mail or by hand, and shall be marked for the attention of the other Party's Representative, to the other Party's address given in Clause 145.4 (Addresses).

145.3 Electronic mail shall not be an acceptable method of serving the following Communications:

145.3.1 Collateral Warranties pursuant to Clause 6.1 (Collateral Warranties); and

145.3.2 Communications pursuant to Clause 6.2 (Compliance with and Changes to Project Documents or Ancillary Documents); and

145.3.3 Communications pursuant to Clause 6.3 (Changes to the Financing Agreements); and

145.3.4 Communications relating to claims for payment pursuant to PART 12 (Payment and Base Case); and⁶⁵

145.3.5 Communications relating to PART 14 (Value for Money); and

145.3.6 Communications relating to PART 15 (Refinancing); and

145.3.7 Communications relating to PART 25 (Termination); and

145.3.8 Communications relating to PART 26 (Compensation on Termination);
and

145.3.9 [insert details of other provisions on a project-specific basis]

145.4 Addresses

Contractor's Representative
[insert name]
[insert address]
[insert fax number]

⁶⁵ This is only relevant if the P2P payment system is not used.

[insert email address]
[insert telephone number]

Authority's Project Manager	Authority's Commercial Officer
[insert name]	[insert name]
[insert address]	[insert address]
[insert fax number]	[insert fax number]
[insert email address]	[insert email address]
[insert telephone number]	[insert telephone number]

145.5 The address of the Authority's Bill Paying Branch pursuant to Clause 66.3.2 (Report and Invoice) is:

Bill Paying Branch
Ministry of Defence
Defence Bills Agency
Mersey House
Drury Lane
Liverpool L2 7PX

145.6 Either Party (and either Representative) may change its nominated address, email address, facsimile number or telephone number by prior written notice to the other Party's Representative.

145.7 **Service of Communications**

145.7.1 Communications given by post shall be effective upon the earlier of actual receipt and five Business Days after mailing.

145.8 **Communications delivered by hand shall be effective upon delivery**

145.8.1 Communications given by facsimile or electronic mail shall be deemed to have been received where (in the case of facsimile) there is confirmation of uninterrupted transmission by a transmission report or (in the case of electronic mail) there has been no electronic notification to the sender from either sender's or the recipient's computer of a delivery failure and (in either case) there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile or electronic mail has not been received in legible form:

- (a) within two hours after sending, if sent on a Business Day between the hours of 9 am and 4 pm; or
- (b) by 11 am on the next following Business Day, if sent after 4 pm on a Business Day but before 9 am on that next following Business Day or on a day other than a Business Day.

146 ASSIGNMENT OF THIS CONTRACT BY THE CONTRACTOR

146.1 Subject to Clause 146.2 and to the provisions of the Direct Agreement, the Contractor shall not sub-contract (except in accordance with Clauses 94 (Sub-contractors) and 95 (Matters to be Included in Sub-contracts)), assign, underlet, charge, sell, bargain or otherwise deal in any way with the benefit of this Contract and/or the assets in whole or in part except with the prior written consent of the Authority's Representative.

146.2 The provisions of Clause 146.1 do not apply to the grant of any security for any loan made to the Contractor under the Financing Agreements or to sub-contracting pursuant to Clauses 94 (Sub-contractors) and 95 (Matters to be Included in Sub-contracts).

147 TRANSFER OF THIS CONTRACT BY THE AUTHORITY

147.1 The rights and obligations of the Authority under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) to any person other than to any public body (being a single entity) **acquiring the whole of the Contract and** having the legal capacity, power and authority to become a Party to and to perform the obligations of the Authority under this Contract being:

147.1.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975; or

147.1.2 any other public body whose obligations under this Contract and the Direct Agreement are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Contract and the Direct Agreement.

148 NO RECOURSE TO PUBLIC FUNDS

148.1 The Contractor shall at all times perform its obligations under this Contract and the other Project Documents at its own risk and without recourse to Government or other public funds or guarantees now or in the future, save as contemplated by Clause 148.2 or elsewhere in this Contract or with the prior written agreement of the Authority's Representative.

148.2 Subject to Clause 148.1, the Contractor confirms that it has not applied and has no intention (as at the Commencement Date) of applying for any Government or European Union grants or funding or any other public funds or guarantees for the purpose of performing its obligations under this Contract and the other Project Documents. If the Contractor is or becomes entitled to apply for any such grants or funding in relation to the carrying out of any of the Services it shall inform the Authority's Representative and obtain its consent before submitting the relevant application. The Authority's agreement to the Contractor's application will be given on condition that, should the Contractor receive any such grant or funding the payments made by the Authority to the Contractor in

accordance with this Contract and the other Project Documents will be reduced by the amount of the grant or funding.

- 148.3 The provisions of Clause 148.2 shall not apply to any grants or funding which may be or become available in relation to land or buildings.

149 WORK SUB-CONTRACTED TO GOVERNMENT

- 149.1 If the Contractor enters into any other contract with the Crown relating in any way to the Services, then no breach by the Crown of that other contract nor any other act or omission nor any written or oral statement nor any representation whatsoever of or by the Crown, its servants or agents or other contractors relating to or connected with any other such contract shall, regardless of any negligence on its part or their part:

149.1.1 give the Contractor any right under the Project Documents to a Compensation Event or otherwise, or to additional payment or damages, or to any other relief or remedy whatsoever, against the Authority; or

149.1.2 affect, modify, reduce or extinguish either the obligations of the Contractor or the rights or remedies of the Authority under this Contract; or

149.1.3 to be taken to amend, add to, delete or waive any term or condition of this Contract.

150 CAPACITY OF THE AUTHORITY

- 150.1 Save as otherwise expressly provided, the obligations of the Authority under this Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under this Contract (howsoever arising) on the part of the Authority to the Contractor.

151 NO AGENCY

- 151.1 Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Authority and the Contractor.

151.2 Save as expressly provided otherwise in this Contract, the Contractor shall not be, or be deemed to be, an agent of the Authority and the Contractor shall not hold itself out as having authority or power to bind the Authority in any way.

151.3 Neither Party shall place or cause to be placed any orders with suppliers or otherwise incur liabilities in the name of the other Party or any representative of the other Party.

152 ENTIRE AGREEMENT

- 152.1 Except where expressly provided in this Contract, this Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Contract.

152.2 Each of the Parties acknowledges that:

152.2.1 subject to Clause 11.1 (Authority Disclosed Data) it does not enter into this Contract on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a Party to this Contract or not) except those expressly repeated or referred to in this Contract and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Contract; and

152.2.2 this Clause 152.2 shall not apply to any statement, representation or warranty made fraudulently, or to any provisions of this Contract which was induced by fraud, for which the remedies available shall be all those available under the law governing this Contract.

153 SEVERABILITY

153.1 If any provision of this Contract is held to be invalid, illegal or unenforceable to any extent then:

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

153.1.2 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.

154 WAIVER

154.1 No term or provision of this Contract shall be considered as waived by any Party unless a waiver is given in writing by that Party.

154.2 No waiver under Clause 154.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Contract unless (and then only to the extent) expressly stated in that waiver.

155 COUNTERPARTS

155.1 This Contract may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

156 GOVERNING LAW AND JURISDICTION

156.1 The Contract shall be governed by and construed in all respects in accordance with the laws of England and Wales. Subject to 144 (Disputes), the English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Contract.

IN WITNESS WHEREOF the Parties have executed and delivered this Contract as a Deed on the date first written above.

Executed and delivered as a Deed by

CONTRACTOR LIMITED acting by:

Director⁶⁶

Director/Secretary

Executed and delivered as a Deed by the affixing of the corporate seal of the **SECRETARY OF STATE FOR DEFENCE**

The corporate seal of the **SECRETARY OF STATE FOR DEFENCE** hereunto affixed is hereby authenticated by:

Authorised Signatory

Authorised Signatory

Or use alternative text

IN WITNESS WHEREOF the Parties have executed and delivered this Contract⁶⁷ on the date first written above.

Signed for and on behalf of **CONTRACTOR**

⁶⁶ Project teams should ensure that they have received adequate evidence of Contractor signatories authority to sign the Contract. This would normally take the form of a board minute approving the transaction and authorising the named directors to sign the relevant documents.

⁶⁷ Project teams should consider whether or not the Contract needs to be executed as a Deed or can instead be executed as a simple contract not requiring sealing.

LIMITED acting by:

Director⁶⁸

Director/Secretary

Signed for and on behalf of the
SECRETARY OF STATE FOR DEFENCE

Authorised Signatory

Authorised Signatory

⁶⁸ Project teams should ensure that they have received adequate evidence of Contractor signatories authority to sign the Contract. This would normally take the form of a board minute approving the transaction and authorising the named directors to sign the relevant documents.

SCHEDULE 1 – AUTHORITY’S REQUIREMENTS

Signed for and on behalf of
CONTRACTOR LIMITED acting by:

Director

Director/Secretary

Signed for and on behalf of the
SECRETARY OF STATE FOR DEFENCE

The corporate seal of the
SECRETARY OF STATE FOR DEFENCE
acting by:

Authorised Signatory

Authorised Signatory

PART 0 – INTRODUCTION TO AUTHORITY’S REQUIREMENTS

0. INTRODUCTION

0.1 Definitions

- 0.1.1 For the purposes of this Schedule 1 any terms defined elsewhere in the Contract and used within this Schedule 1 shall have the meaning given to them where defined.
- 0.1.2 In this introduction to Schedule 1 the Authority sets out by way of background information for the assistance of the Contractor and Contractor Related Parties the Authority’s mission statement (paragraph 0.2.3) and the strategic objective of the Project (paragraph 0.2.4). In this paragraph these statements of mission and strategic objective are together called "the Statements". The Authority acknowledges that the Statements have not been drafted to, nor do they create any contractual obligations upon either the Contractor nor any Contractor Related Parties, including the Independent Certifier in performing his certification obligations in the Contract.

0.2 Purpose

- 0.2.1 [insert project specific statement of purpose]
- 0.2.2 The Contractor shall design, develop, construct, operate, maintain, modify and administer the Services which fully meets all the requirements detailed in this Schedule 1. This Schedule 1 is a statement of the Authority’s overall requirement for the Project. Nothing in this Schedule 1 is to be read or understood as in any way waiving, diminishing, or detracting from the Contractor’s duties, responsibilities, obligations and liabilities set out elsewhere in this Contract.
- 0.2.3 The Authority’s overarching requirement is for a set of delivered facilities and services supporting the operational effectiveness of the Authority in general and [insert project specific] in particular. The [insert project name] mission statement is: "insert project specific statement".
- 0.2.4 The strategic objective of the Project is to provide: "insert project specific statement".
- 0.2.5 The Project requirement is for the Contractor to provide a [insert project specific statement] and the Contractor agrees to provide the Authority’s requirement in accordance with the terms of this Contract.

0.3 Document Structure

- 0.3.1 This Schedule 1 consists of 6 Parts as follows:

Part 0 – Introduction, background and guide to structure and content.

Part 1 – Core table detailing the Service Levels and associated requirements for each.

Part 2 – Specified Assets.

Part 3 – Service Provision Requirements:

Section 1 – Details the service requirements in the Full Operational Phase.

Section 2 – Details the service requirements prior to the Full Operational Phase.

Section 3 - Details the transition service.

Section 4 – Details the Critical Equipment Categories.

Section 5 – Details the Functional Standards.

Part 4 – Security Requirements.

Part 5 – Constraints.

0.4 Precedence

0.4.1 The precedence of different parts of this Contract is set out in Clause 2.3.1 (Precedence of Documentation) of this Contract.

0.5 Liaison

0.5.1 All liaison with the Authority, including all instances of working or developing in conjunction with, in close collaboration with, or assistance, comment, advice, review, monitoring, check, test, approval, agreement or recommendation (or absence or omission of the foregoing) from the Authority shall be in accordance with PARTs 3 (Quality and Performance Standards), 4 (Design Obligations) and 7 (Testing, Commissioning and Service Availability) and Schedule 19 (Project Management) of the Contract.

0.5.2 All such liaison with the Authority is for the purpose of giving the Authority good visibility of project progress, and giving the Authority the opportunity to offer its views on what is made known. No liaison with or advice or assistance from or comment, review, consent, monitoring, check, test, approval, report, recommendation or the like by the Authority or by any person on the Authority’s behalf (or absence or omission of the foregoing) shall in any way waive, diminish or detract from the Contractor’s obligations, duties, responsibilities or liabilities under the Contract.

0.6 Operational Periods, Performance Categories, Rectification Periods for Unavailability Events and Availability Criteria

0.6.1 The Contractor shall comply with the following tables which state the operational periods, performance categories, rectification periods for unavailability events, availability categories and availability criteria in accordance with Part 3 of this Schedule 1 for the Services.

Table 1 - Operational Periods

Operational Period Category	Period of Measurement	Day	Remarks
A	24 hours (0000-2359)	365 Days	
B			[insert details to be drafted on a Project-specific basis]

Table 2 - Performance Categories

Performance Category	Rectification and Additional Periods		
	Priority 1	Priority 2	Priority 3
Critical	1 minute	1 hour	4 hours
Major	1 hour	2 hours	8 hours
Medium	4 hours	8 hours	24 hours
Minor	8 hours	24 hours	72 hours
Irritant		1 minute	

Table 3 - Rectification Periods for Unavailability Events

Availability Category	Unavailability Event caused by:	Rectification Period	Remarks
1	a. Access	[10] minutes	Core Unit, Non-core Authority Unit, Kitchen, Bedroom In Use
	c. All other	[20] minutes	
2	All	[30] Minutes	Toilet, Bathroom/WC, Lounge, Dining Room
3	All	[40] Minutes	[insert project specific details]
4	All	[120] Minutes	Bedroom Not In Use, Utility Room, Study, Garage

Table 4 – Availability Criteria

Area	Condition
<p>4.1 Accommodation</p> <p>to classify as Available, the Area must, in accordance with Parts 3 and 4 of this Schedule 1:</p>	<p>4.1.1 exist;</p> <p>4.1.2 be of the standard stated in Section 4 Part 5 of this Schedule 1 in order to enable the delivery of the Authority's services in the Area.</p> <p>4.1.3 be accessible by means appropriate to its function (including by lifts where applicable), with access being safe and free from obstruction;</p> <p>4.1.4 have fire alarm systems, fire prevention systems in the Area or emergency exits from the Area that are operational or satisfactory alternatives exist in the Area;</p> <p>4.1.5 not demonstrate failure of or damage to its finish, which adversely affects use of the Area;</p> <p>4.1.6 be maintained at a temperature between 17°C and 28°C inclusive and will not exceed 28 °C for more than 1% of the occupied hours in a year when set against CIBSE Test Reference Year weather data for Swindon relating to the base date</p>

Area	Condition
	<p>applicable in 2005. The occupied hours are defined as 11 hours a day, 250 days a year: 1% equating to 27.5 hours a year;</p> <p>4.1.7 be capable of illumination at Lux levels above the minimum levels required and specified in the Area Data Sheets for that Area (with at least 75% of the lighting infrastructure (including but without limitation fitting) in that Area being operational);</p> <p>4.1.8 have a sufficient and safe electrical supply as required and specified in the Area Data Sheets;</p> <p>4.1.9 maintain the level of ventilation as required and specified in the Area Data Sheets;</p> <p>4.1.10 have a sufficient, constant and safe hot and cold water (including potable) supply required and specified in the Area Data Sheets;</p> <p>4.1.11 be compliant with all relevant Legislation, including health and safety, fire, environmental and security legislation;</p> <p>4.1.12 have permanent structural elements and building fabric present and in sufficiently good order to enable the delivery of the Authority's services in the Area;</p> <p>4.1.13 be free from flood, weather penetration and damp affecting the structure of the building to the extent that precludes the safe occupation of the Area;</p> <p>4.1.14 be free from infestation of vermin or pests which affects the safe occupation of the Area;</p> <p>4.1.15 be served by an operational security system required and specified in the Area Data Sheets (as applicable);</p> <p>4.1.16 be served by an operational emergency communication system (as applicable);</p> <p>4.1.17 be clear from detritus and material amounts of litter, with a safe and constant sewage and drainage system required and specified in the Area Data Sheets;</p> <p>4.1.18 have constant and safe supply of gas where required and specified in the Area Data Sheets (as applicable);</p> <p>4.1.19 be maintained within the range of noise levels required and specified in the Area Data Sheets;</p>

Area	Condition
	<p>4.1.20 possess the correct furniture, fixtures and equipment required and specified in column "d" of the relevant table in Parts 4 of this Schedule 1, which is necessary for the use of that Area. Such furniture, fixtures and equipment, shall be present and in a safe and functional condition (save where the same have been removed by the Authority and it is not part of the Service to replace them).</p> <p>4.1.21 have a safe and adequate passive information technology communication infrastructure supply where required and specified in the Area Data Sheets;</p> <p>4.1.22 have access to drinking water required and specified in the Area Data Sheets.</p>
<p>4.2 Outdoor Areas</p> <p>to classify as Available, the Area must, in accordance with Parts 3 and 4 of this Schedule 1:</p>	<p>4.2.1 exist;</p> <p>4.2.2 be of the standard stated in Part 4 Section 5 of this Schedule 1 in order to enable the delivery of the Authority's services in the Area. Off site pitch facility to be capped at twenty times per annum.</p> <p>4.2.3 be surfaced in accordance with the requirements;</p> <p>4.2.4 have a functional drainage system (where applicable);</p> <p>4.2.5 have appropriate visible markings and signage (where applicable);</p> <p>4.2.6 include equipment in accordance with the requirements and specified in the relevant Area Data Sheet and which is necessary for the use of that Area;</p> <p>4.2.7 comply with all relevant Legislation; and</p> <p>4.2.8 be accessible and satisfy the relevant Authority's Requirements.</p>
	<p>[insert details to be drafted on a Project-specific basis]</p>

Table 5 – Core Units / Non Core Units

Column 1	Column 2	
Unit Year	Number of Core Units	Number of Non-Core Units
[1-9]		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

PART 1 – CORE TABLE⁶⁹

	A	B	C	D	E	F
Service Level⁷⁰	Services	Service Availability Requirements	Parts of Service Provision Requirements to be complied with	Service Provision Proposals to be complied with	Planned Service Commencement Date	Long Stop Date
0	Pre-Operational Phase ⁷¹	None	The following requirements of Part 4 of this Schedule 1: ▪ [insert relevant details]	Schedule 2 (Contractor's Proposals) ▪ [insert relevant details]	Commencement Date	None
1	Interim Operational Phase ⁷²	The following requirements of Part 4 of this Schedule 1: ▪ [insert relevant details]	All of the Service Availability Requirements for this Service Level 1 and the following requirements of Part 4 of this Schedule 1:	Schedule 2 (Contractor's Proposals) ▪ [insert relevant details]	[insert date]	None

⁶⁹ Completion of the Core Table highlighted in yellow is for the purposes of illustration only.

⁷⁰ This table is intended to allow for phased service commencement using either one or multiple assets at either one or multiple sites. Service Level 1 might typically be a mobilisation phase at all or any site; Service Level 2 might typically be an interim service provision based on the use of existing assets; Service Level 3 might typically be full service using newly provided asset. A service description should be inserted into the cells in column a. For example this might be in relation to a particular asset or from a particular site or by reference to a particular part of the service provision proposals. Columns b and c should contain the appropriate cross references to paragraphs within the Service Provision Requirements and Service Provision Proposals. For example, Service Level 1 might be paragraphs 1 to 10 of each document and Service Level 2 might be paragraphs 11 to 20 of each document. Alternatively, Service Level 2 might be cumulative, where the appropriate references could be paragraphs 1 to 20 of each document. Long stop dates should be inserted in column e and specified by reference to the date planned for the commencement of the relevant service at the relevant service level specified in column d. Typically there might be six months between the planned date and the long stop date. However, this is not mandatory and should be considered on a project by project basis.

⁷¹ Service Level 0 assumes no availability services are required immediately following contract signature, but some management related services (e.g. provision of plans etc) might be required.

⁷² Service Level 1 assumes an initial level of operational capability, possibly following a TUPE transfer 3-4 months into the Contract and using some existing assets transferred to the Contractor. Some services using new Specified Assets may therefore require Independent Certifier certification whilst others using old Specified Assets may not. This example allows both scenarios to co-exist.

	A	B	C	D	E	F
Service Level ⁷⁰	Services	Service Availability Requirements	Parts of Service Provision Requirements to be complied with	Service Provision Proposals to be complied with	Planned Service Commencement Date	Long Stop Date
		<p>but excluding:</p> <ul style="list-style-type: none"> ▪ [insert relevant details as required depending on solution] <p>For the avoidance of doubt, none of the Specified Assets used by the Contractor to comply with the Service Availability Requirements listed above under this Service Level 1 shall be certified by the Independent Certifier in accordance with Schedule 8, and all of the Specified Assets used by the Contractor to comply with the Service Availability Requirements listed below under this Service Level 1 shall be certified by the Independent Certifier in accordance with Schedule 8.</p>	<ul style="list-style-type: none"> ▪ [insert relevant details] 			

	A	B	C	D	E	F
Service Level ⁷⁰	Services	Service Availability Requirements	Parts of Service Provision Requirements to be complied with	Service Provision Proposals to be complied with	Planned Service Commencement Date	Long Stop Date
		In addition, the following requirements of Part 4 of this Schedule 1, shall also be complied with: <ul style="list-style-type: none"> [insert relevant details as required depending on solution] 				
2	[insert additional Service Levels as required]					
3						
4						
5	Full Operational Phase ⁷³	The following requirements of Part 4 of this Schedule 1: <ul style="list-style-type: none"> [insert relevant details] but excluding: <ul style="list-style-type: none"> [insert relevant details as required] 	All of the Service Availability Requirements for this Service Level 5 and the following requirements of Part 4 of this Schedule 1: <ul style="list-style-type: none"> [insert relevant details] 	Schedule 2 (Contractor's Proposals) <ul style="list-style-type: none"> [insert relevant details] 	[insert date]	[insert date]

⁷³ Service Level 5 assumes the requirement requires deliver of the full steady state service. Independent Certifier certification of Specified Assets is only required for Specified Assets that have not previously been certified.

	A	B	C	D	E	F
Service Level ⁷⁰	Services	Service Availability Requirements	Parts of Service Provision Requirements to be complied with	Service Provision Proposals to be complied with	Planned Service Commencement Date	Long Stop Date
		<p>depending on solution]</p> <p>For the avoidance of doubt, all of the Specified Assets used by the Contractor to comply with the Service Availability Requirements listed above under this Service Level 5, not previously certified for Service Levels [1] to [4], shall be certified by the Independent Certifier in accordance with Schedule 8. None of the Specified Assets used by the Contractor to comply with the Service Availability Requirements listed below under this Service Level 5 shall be certified by the Independent Certifier in accordance with Schedule 8.</p> <p>In addition, the following</p>				

	A	B	C	D	E	F
Service Level ⁷⁰	Services	Service Availability Requirements	Parts of Service Provision Requirements to be complied with	Service Provision Proposals to be complied with	Planned Service Commencement Date	Long Stop Date
		<p>requirements of Part 4 of this Schedule 1, shall also be complied with:</p> <ul style="list-style-type: none"> ▪ [insert relevant details as required depending on solution] 				

PART 2 – SPECIFIED ASSETS⁷⁴

[insert details of:

- List of assets which we take ownership of in Termination
- Project Specific assets which are critical to the running of the contact]

⁷⁴ Please see section on Specified Assets in the Guidance Notes which accompany the Contract which outlines the nature of Specified Assets.

PART 3 –SERVICE PROVISION REQUIREMENTS

3.1 Section 1 – Details the service requirements in the Full Operational Phase.

3.1.1 Families Quarters

The Contractor shall provide [insert qty or cross reference to Table 5 Part 0] houses for use by Authority Staff and Authority Related Parties for purposes of [insert project specific statement] in accordance with the requirements of this Schedule 1 ("Families Quarters"). This requirement does not include any accommodation required by the Contractor or Contractor Related Parties. Such provision by the Contractor to the Authority shall comprise:

- (a) the Area in column a;
- (b) the quantity of units specified in column b;
- (c) compliance with the requirements in column c;
- (d) provision of the Critical Equipment identified by the Critical Equipment Category in column d;
- (e) meeting the Availability Criteria set out in column e;
- (f) carrying the Availability Category column f and for the Operational Period in column g of Table 4.1.1.

Table 3.1.1

Serial No	Accommodation	Quantity	In accordance with	Critical Equipment Category (Section 4, Part 4 of this Schedule 1 (Authority's Requirements))	Availability Criteria (Table 4, Section 0 of this Schedule 1 (Authority's Requirements))	Availability Category (Table 3, Section 0 of this Schedule 1 (Authority's Requirements))	Operational Period (Table 1, Section 0 of this Schedule 1 (Authority's Requirements))
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
1	Porch or Lobby	To design	JSP 315 and Legislation, Guidance, Good Industry Practice and the constraints in Part 6 of Schedule 1 (Authority's Requirements).	[insert number]	[Eg: Area 4.1]	[E.g.: 4]	[E.g.: A]
2	Hall and Pram Space with coat cupboard	To be provided from Net Space (coat cupboard from General Storage Space)	JSP 315 and Legislation, Guidance, Good Industry Practice and the constraints in Part 6 of this Schedule 1 (Authority's Requirements).				
3	Lavatory, WC and Basin	To be provided from Net Space	JSP 315 and Legislation, Guidance, Good Industry Practice and the constraints in Part				

Serial No	Accommodation	Quantity	In accordance with	Critical Equipment Category (Section 4, Part 4 of this Schedule 1 (Authority's Requirements))	Availability Criteria (Table 4, Section 0 of this Schedule 1 (Authority's Requirements))	Availability Category (Table 3, Section 0 of this Schedule 1 (Authority's Requirements))	Operational Period (Table 1, Section 0 of this Schedule 1 (Authority's Requirements))
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
			6 of this Schedule 1 (Authority's Requirements).				
4	Sitting Room with adjoining Dining Room. Each to seat	One of 35.0m ²	JSP 315 and Legislation, Guidance, Good Industry Practice and the constraints in Part 6 of this Schedule 1 (Authority's Requirements).				
5	Study	One of 9.0m ²	JSP 315 and Legislation, Guidance, Good Industry Practice and the constraints in Part 6 of this Schedule 1 (Authority's Requirements).				
6	Kitchen	One of 12.5m ²	JSP 315 and Legislation, Guidance, Good Industry Practice and the constraints in Part				

Serial No	Accommodation	Quantity	In accordance with	Critical Equipment Category (Section 4, Part 4 of this Schedule 1 (Authority's Requirements))	Availability Criteria (Table 4, Section 0 of this Schedule 1 (Authority's Requirements))	Availability Category (Table 3, Section 0 of this Schedule 1 (Authority's Requirements))	Operational Period (Table 1, Section 0 of this Schedule 1 (Authority's Requirements))
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
			6 of this Schedule 1 (Authority's Requirements).				
7	Utility	One of 5.0m ²	JSP 315 and Legislation, Guidance, Good Industry Practice and the constraints in Part 6 of this Schedule 1 (Authority's Requirements).				
8	Bedroom 1	16.5m ²	JSP 315 and Legislation, Guidance, Good Industry Practice and the constraints in Part 6 of this Schedule 1 (Authority's Requirements).				
9	En-suite Toilet Area	3.75m ² Shower, WC and Vanity unit	JSP 315 and Legislation, Guidance, Good Industry Practice and the constraints in Part				

Serial No	Accommodation	Quantity	In accordance with	Critical Equipment Category (Section 4, Part 4 of this Schedule 1 (Authority's Requirements))	Availability Criteria (Table 4, Section 0 of this Schedule 1 (Authority's Requirements))	Availability Category (Table 3, Section 0 of this Schedule 1 (Authority's Requirements))	Operational Period (Table 1, Section 0 of this Schedule 1 (Authority's Requirements))
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
			6 of this Schedule 1 (Authority's Requirements).				
10	Bedroom 2	15.0m ²	JSP 315 and Legislation, Guidance, Good Industry Practice and the constraints in Part 6 of this Schedule 1 (Authority's Requirements).				
11	Bedroom 3	8.5m ²	JSP 315 and Legislation, Guidance, Good Industry Practice and the constraints in Part 6 of this Schedule 1 (Authority's Requirements).				
12	Bedroom 4	7.5m ²	JSP 315 and Legislation, Guidance, Good Industry Practice and the constraints in Part				

Serial No	Accommodation	Quantity	In accordance with	Critical Equipment Category (Section 4, Part 4 of this Schedule 1 (Authority's Requirements))	Availability Criteria (Table 4, Section 0 of this Schedule 1 (Authority's Requirements))	Availability Category (Table 3, Section 0 of this Schedule 1 (Authority's Requirements))	Operational Period (Table 1, Section 0 of this Schedule 1 (Authority's Requirements))
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
			6 of Schedule 1 (Authority's Requirements).				
13	Separate WC	To be provided from Net Space	JSP 315 and Legislation, Guidance, Good Industry Practice and the constraints in Part 6 of this Schedule 1 (Authority's Requirements).				
14	Linen/Airing Cupboard	To provide 0.6m ³ of clear storage	JSP 315 and Legislation, Guidance, Good Industry Practice and the constraints in Part 6 of this Schedule 1 (Authority's Requirements).				

3.1.2 Estate Management - Plant & Buildings Infrastructure Service

3.1.2.1 The Contractor shall provide plant infrastructure services to support the functions of the Site ("Plant & Buildings Infrastructure Service"). The Contractor shall:

- (a) operate a maintenance services plan for planned, unplanned and reactive maintenance; and
- (b) be responsible for the testing and recording details of all equipment (including portable equipment and all mains-operated information technology and other portable electrical equipment).

3.1.2.2 Such Service Provision by the Contractor to the Authority shall provide a high quality Estate Management Service that ensures the integrity of the building fabric, building services, public health and utility systems, furniture and equipment, which comprises the Facilities in accordance with the Service Availability Requirements. This service shall:

- (a) minimise disruption to the Authority's operation in the delivery of the Estate Management Services;
- (b) provide an efficient, responsive, comprehensive and effective Estate Management Service which is cost effective and is based on sound technical and operational requirements and standards;
- (c) ensure that all plant, equipment, systems, buildings and utility services do not cause or create any hazard to the environment and/or any person on the Authority Sites;
- (d) maintain a safe environment using safe working practices including the use of a recognised risk assessment/management system to ensure that the required standards are maintained;
- (e) confirm response to a critical request for reactive maintenance
- (f) include the following:
 - (i) external replacement programmes;
 - (ii) external repairs;
 - (iii) internal and external painting/redecoration programmes;
 - (iv) internal replacement programmes;
 - (v) gutters and rainwater systems;

- (vi) drainage and sewerage systems;
- (vii) chimneys and lightning conductor systems;
- (viii) water storage, distribution and treatment systems;
- (ix) air conditioning and ventilation systems;
- (x) boilers, calorifier and heat exchanger systems;
- (xi) generating plant and uninterruptible power supply systems (UPS);
- (xii) battery systems;
- (xiii) electrical systems including HV and LV systems;
- (xiv) lifts and lifting equipment;
- (xv) compressors and vacuum plant systems;
- (xvi) heating and domestic hot water systems;
- (xvii) fire prevention, alarm and fire fighting systems;
- (xviii) security and surveillance equipment and systems;
- (xix) medical, general equipment and specialist services;
- (xx) waste disposal systems;
- (xxi) catering equipment;
- (xxii) plant replacement programmes;
- (xxiii) street and security lighting systems;
- (xxiv) medical gas systems;

(xxv) sterilisation equipment.

3.1.2.3 The Contractor shall:

- (a) provide all requisite plant, equipment, apparatus and consumable items required for the proper execution of all work; including scaffolding, crange, tackle, machinery, tools or other appliances and everything else necessary for the work, and shall be responsible for their conveyance, use, subsequent removal, making good and cleaning; and
- (b) provide a comprehensive Planned Preventive Maintenance/Programmed Maintenance (PPM) service at such times and in such a manner that the Facilities, plant and equipment meet Good Industry Practice. The PPM service shall seek to actively reduce the risk of reactive repairs and maintenance work, which may or may not affect the Authority. The Contractor's PPM Service shall include:
 - (i) utility service connections and on-site infrastructure; and
 - (ii) internal and external fabric of the Facilities so that they are properly and safely maintained and remain functional, safe, operationally sound and of good appearance; and
 - (iii) mechanical and electrical services including air conditioning, hot and cold water system, electrical and cabling systems, heating and vent systems and the alarm system, such that they are properly and safely maintained and remain functional, safe and operational; and
 - (iv) specialist services so that they are properly and safely maintained to remain fully functional, safe and operational; and
 - (v) maintain the quality and safety of medical gases, vacuum and anaesthetic scavenging systems; and
 - (vi) all equipment; and
- (g) produce a 5 five year rolling PPM for the Facilities, including life-cycle maintenance, planned improvement and replacement programmes, and a report for the Facilities, on every anniversary of the Contract, from the Commencement Date, in a format to be agreed between the Authority and the Contractor; and
- (h) provide detailed PPM Programmes for every 12-month period. The 12-month PPM Programmes shall be submitted to the Authority at least four months in advance of the Commencement Date or subsequent anniversary. The PPM Programmes shall include but not be limited to information relating to any implications arising from carrying out the work content of the report and its effects, if any, on Authority operations while work is in progress; and

- (i) provide a comprehensive reactive repairs and maintenance service, including a service giving immediate technical and managerial support and advice, on a Critical, Urgent and Routine Service Request basis. The Contractor shall respond by an appropriately qualified person taking control of the management of the incident, informing the Authority accordingly and rectifying within the performance requirements of the table below; and
- (j) be responsive to the changing requirement of the Authority; and
- (k) advise the Authority in writing of all statutory and regulatory tests which may be required to be carried out; attend upon and undertake where appropriate insurance, statutory and regulatory tests which may be required by Legislation, insurers or the Health and Safety Executive, in liaison with the Authority; and
- (l) maintain Authority Sites and building plans to include infrastructure, services and layout.

3.1.2.4 Such Service Provision by the Contractor to the Authority shall comprise:

- (a) the service requirement in column a; and
- (b) meeting the Deadline in column b; and
- (c) achieving the Performance Category in column c; and
- (d) observing the Operational Period in column d; and
- (e) complying with the Rectification Period in column e.

3.1.2.5 It shall be the responsibility of the owner of the equipment to act on any portable appliance test (PAT) failures.

Table 3.1.2

Serial No	Service	Deadline	Performance Category (Table 2, Section 0 of this Schedule 1 (Authority's Requirements))	Operational Period (Table 1, Section 0 of this Schedule 1 (Authority's Requirements))	Rectification Period (Table 2, Section 0 of this Schedule 1 (Authority's Requirements))	Additional Period (Table 2, Section 0 of this Schedule 1 (Authority's Requirements))
	(a)	(b)	(c)	(d)	(e)	(f)
1	Effect planned maintenance in accordance with paragraph 3.1.2.3 (b) of this Schedule 1, the PPM Programme, Service Availability Requirements, Legislation, Good Industry Practice	As per PPM	Minor Priority 3	A	Minor Priority 3	Minor Priority 3
3	Effect portable appliance testing in accordance with Legislation in accordance with paragraphs 3.1.2.1 (b) of this Schedule 1	prior to use of equipment and at re-certification	Irritant	G	Minor Priority 3	Minor Priority 3
4	Confirm response to Critical request for reactive maintenance in accordance with paragraphs 3.1.2.3 (e) of this Schedule 1 In this case Critical means a critically urgent request by the Authority in its sole opinion to which the Contractor shall respond in accordance with the requirements of the Contract.	15 Minutes from request	Critical Priority 1	A	Critical Priority 1	30 Minutes
5	Confirm response to Urgent request for reactive maintenance in accordance with paragraph 3.1.2.3 (e) of this Schedule 1	2 hours from request	Major Priority 2	B	Nil	Major Priority 1

Serial No	Service	Deadline	Performance Category (Table 2, Section 0 of this Schedule 1 (Authority's Requirements))	Operational Period (Table 1, Section 0 of this Schedule 1 (Authority's Requirements))	Rectification Period (Table 2, Section 0 of this Schedule 1 (Authority's Requirements))	Additional Period (Table 2, Section 0 of this Schedule 1 (Authority's Requirements))
	In this case Urgent means an urgent request by the Authority in its sole opinion to which the Contractor shall respond in accordance with the requirements of the Contract.					
6	Confirm response to Routine request for reactive maintenance in accordance with paragraph 3.1.2.3 (e) of this Schedule 1 In this case Routine means a routine request by the Authority in its sole opinion to which the Contractor shall respond in accordance with the requirements of the Contract.	48 hours from request	Medium Priority 3	G	Nil	Medium Priority 1
7	Effect reactive maintenance for a Critical request within the Deadline and in accordance with the Service Availability Requirements, Legislation, and Good Industry Practice in accordance with paragraphs 3.1.2.3 (e) of this Schedule 1 In this case Critical means	4 hours	Major Priority 2	A	Nil	Major Priority 1

Serial No	Service	Deadline	Performance Category (Table 2, Section 0 of this Schedule 1 (Authority's Requirements))	Operational Period (Table 1, Section 0 of this Schedule 1 (Authority's Requirements))	Rectification Period (Table 2, Section 0 of this Schedule 1 (Authority's Requirements))	Additional Period (Table 2, Section 0 of this Schedule 1 (Authority's Requirements))
	a critically urgent request by the Authority in its sole opinion to which the Contractor shall respond in accordance with the requirements of the Contract.					
8	Effect reactive maintenance for an Urgent request within the Deadline and in accordance with the Service Availability Requirements, Legislation, and Good Industry Practice in accordance with paragraphs 3.1.2.3 (e) of this Schedule 1 In this case Urgent means an urgent request by the Authority in its sole opinion to which the Contractor shall respond in accordance with the requirements of the Contract.	24 hours	Major Priority 2	B	Nil	Major Priority 1
9	Effect reactive maintenance for an Routine request within the Deadline and in accordance with the Service Availability Requirements, Legislation, and Good Industry Practice in	48 hours	Medium Priority 3	G	Nil	Medium Priority 1

Serial No	Service	Deadline	Performance Category (Table 2, Section 0 of this Schedule 1 (Authority's Requirements))	Operational Period (Table 1, Section 0 of this Schedule 1 (Authority's Requirements))	Rectification Period (Table 2, Section 0 of this Schedule 1 (Authority's Requirements))	Additional Period (Table 2, Section 0 of this Schedule 1 (Authority's Requirements))
	accordance with paragraphs 3.1.2.3 (e) of this Schedule 1 In this case Routine means a routine request by the Authority in its sole opinion to which the Contractor shall respond in accordance with the requirements of the Contract.					
10	Produce a rolling 5 year PPM plan for the facilities on every anniversary of the Contract from the commencement date in accordance with paragraphs 3.1.2.3 (c) of this Schedule 1	anniversary of the Contract from the Commencement Date	Medium Priority 1	G	Nil	Medium Priority 1
11	Produce detailed PPM Programmes for every 12 month period in accordance with 3.1.2.3 (d) of this Schedule 1	4 months prior to the anniversary of the Contract from the Commencement Date	Medium Priority 1	G	Nil	Medium Priority 1
12	Maintain Authority Sites and building plans in accordance with 3.1.2.3 (h) of this Schedule 1	Ongoing	Medium Priority 1	A	Major Priority 2	Major Priority 2

3.1.3 Business Continuity Plan⁷⁵

- 3.1.3.1 The Contractor shall provide and maintain for the duration of the Contract a business continuity plan, which shall detail the Contractor's business continuity activities, processes, procedures, practices, resources, and organisation structure required to deliver the Service ("**Business Continuity Plan**"). The Business Continuity Plan shall be in accordance with JSP 503, and show how the interfaces between the Authority and the Contractor will operate so that business continuity of the Authority can be assured in the event of a serious incident or emergency. Particular attention shall be paid to the key operational facilities which are made known to the Contractor that maintain a continuous service to defence. In the event of an emergency, the Contractor shall liaise with the [tba team] who shall provide priorities for action and rectification.
- 3.1.3.2 The Contractor shall deliver one hard copy and one soft copy of the Business Continuity Plan to the Authority for review, comment and agreement in accordance with the provisions of Annex A of Section 3 of this Schedule 1 (Authority's Requirements).
- 3.1.3.3 The Contractor shall review and update the Business Continuity Plan at least annually, delivering a draft copy, with changes highlighted, to the Authority for review, comment and agreement in accordance with the provisions of Annex A of Section 3 of this Schedule 1.
- 3.1.3.4 The Contractor shall participate and assist with the review of the Authority's business continuity plan. This includes planning, exercising and execution of the Authority's business continuity plan.
- 3.1.3.5 Such Service Provision by the Contractor to the Authority shall comprise:
- (a) the service requirement in column a; and
 - (b) meeting the Deadline in column b; and
 - (c) achieving the Performance Category in column c; and
 - (d) observing the Operational Period in column d; and
 - (e) complying with the Rectification Period in column e.

⁷⁵ Projects to insert any additional management related plans required. Standard drafting can be provided if required.

Table 3.1.3

Serial No	Service	Deadline	Performance Category (Table 2, Section 0 of this Schedule 1 (Authority's Requirements))	Operational Period (Table 1, Section 0 of this Schedule 1 (Authority's Requirements))	Rectification Period (Table 2, Section 0 of this Schedule 1 (Authority's Requirements))	Additional Period (Table 2, Section 0 of this Schedule 1 (Authority's Requirements))
	(a)	(b)	(c)	(d)	(e)	(f)
1	Draft Business Continuity Plan in accordance with paragraphs 3.1.8.1, 2 & 3 of this Schedule 1	4 weeks prior to Vesting Date and each anniversary thereafter	Minor Priority 3	G	Minor Priority 3	Minor Priority 3
2	Agreed Business Continuity Plan in accordance with paragraphs 3.1.8.1, 2 & 3 of this Schedule 1	Vesting Date and each anniversary thereafter	Minor Priority 3	G	Minor Priority 3	Minor Priority 3
3	Participation with the Authority during planning & exercises to execute the Business Continuity Plan in accordance with paragraph 3.1.8.4 of this Schedule 1	In accordance with the Authority business continuity timetable	Minor Priority 3	G	Minor Priority 3	Minor Priority 3

3.1.4 Management Information Service

3.1.4.1 The Contractor shall provide a management information service to the Authority to ensure a reasonable level of transparency and accountability to the Authority, and inform the Authority of all requests for information in accordance with Clause 116 (Contractor's Information, Documents and Records) ("**Management Information Service**"). The Management Information

Service shall provide accurate and timely management information and statistics, in a format to be agreed with the Authority, on the following:

- (a) contract performance monitoring clearly showing all events; and
- (b) [insert details as required]; and
- (c) All hard FM services; and
- (d) Accident Incident Rates (across all construction projects on which the Contractor has a duty of responsibility); and
- (e) Asset Condition status (buildings) utilising Defence Estates' Condition Survey Methodology (as amended or replaced).

3.1.4.2 The Contractor shall provide to the Authority a read only facility, acceptable to the Authority, with the ability to interrogate the management information.

3.1.4.3 Such Service Provision by the Contractor to the Authority shall comprise:

- (a) the service requirement in column a; and
- (b) meeting the Deadline in column b; and
- (c) achieving the Performance Category in column c; and
- (d) observing the Operational Period in column d; and
- (e) complying with the Rectification Period in column e.

Table 3.1.4

Serial No	Service	Deadline	Performance Category (Table 2, Section 0 of this Schedule 1 (Authority's Requirements))	Operational Period (Table 1, Section 0 of this Schedule 1 (Authority's Requirements))	Rectification Period (Table 2, Section 0 of this Schedule 1 (Authority's Requirements))	Additional Period (Table 2, Section 0 of this Schedule 1 (Authority's Requirements))
	(a)	(b)	(c)	(d)	(e)	(f)
1	<p>Effect ad-Hoc request by Authority authorised personnel- Urgent in accordance with paragraph 3.1.14.1 of this Schedule 1</p> <p>In this case Urgent means an urgent request by the Authority in its sole opinion to which the Contractor shall respond in accordance with the requirements of the Contract.</p> <p>The Authority will use reasonable endeavours to limit the number of these requests to less than 5% of all ad-hoc requests on a rolling 12 month basis.-</p>	within 2 hours of request	Major A Priority 2	G	within 2 hours of request	within 2 hours of request
2	Effect ad-Hoc request by Authority authorised personnel – Routine in accordance with paragraph 3.1.14.1 of this Schedule 1	within 3 days of request	Minor Priority 2	G	Minor Priority 3	Minor Priority 3
3	Provide read only facility to Authority authorised personnel in accordance with paragraph 3.1.14.2 of this Schedule 1	Immediately upon request	Major A Priority 2	G	Major A Priority 2	Major A Priority 2

3.1.5 Move in Move Out Service

[Insert project specific requirements]

3.1.6 Help Desk Service

- 3.1.6.1 The Contractor shall provide a welcoming, courteous and polite central help desk service that provides a single point of contact with the Authority to ensure advice, assistance and resources are made available to meet Contract requirements, and to facilitate reporting of Service Performance Failures and Unavailability Events ("**Help Desk Service**"). The Help Desk Service shall be accessible to the Authority, Service Users and Authority Related Parties by telephone (automated response acceptable), e-mail, facsimile, and in person. This service shall include clear instructions to the Authority on the use of the Help Desk Service. The Contractor shall also provide a Non Core Working Hours' service for situation assistance to the Authority, Service Users and Authority Related Parties, and for incidents and emergencies requiring action.
- 3.1.6.2 The Contractor shall log all requests made and events reported, recording all relevant details, including the following information:
- (a) caller's name;
 - (b) date and time;
 - (c) location or Area;
 - (d) nature of the request or event;
 - (e) service required;
 - (f) categorisation (priority);
 - (g) service response/Deadline and rectification times;
 - (h) unique request reference;
 - (i) service provider and contact name to which the request was passed;
 - (j) date and time request passed to the relevant Service Provider;
 - (k) action taken;
 - (l) actual response time and rectification time achieved.
- 3.1.6.3 The Help Desk Service shall interface and work collaboratively (and in interfacing and working collaboratively the Contractor shall use reasonable endeavours to enter into non-contractually binding operational service agreements with the Authority and each relevant Authority Related Party in a format and content to be agreed between the Authority, Contractor and Authority Related Party, which does not include any provisions or obligations on the Contractor to act in any way to breach

or to alter any of its obligations in the Contract) with all other Authority and Authority Related Parties' service desks for other Project related services, including:

- (a) Customer Assured Service Centre (CASC) Defence Fixed Networks (DFN), the focal point for all voice, wide area network and video teleconferencing services provided by the Authority.
- (b) Single Point of Contact (SPOC) Defence Information Infrastructure (DII) for the focal point for all information technology and information system services provided by the Authority.

3.1.6.4 The Contractor shall prepare for the possibility of an Emergency arising. To that end the Contractor shall establish a 24 hour a day call out system, the details of which must be notified to the Authority and certain other responsible persons (to be advised by the Contractor). The Contractor shall liaise with the Authority to agree the operating procedures of the call out system. In considering the response service the Contractor shall include provision for making mechanical and electrical systems safe, emergency repairs, making systems re-usable, liaising with the Authority Related Parties on the Authority Sites, and the emergency services including police, fire, ambulance, mines rescue & utility services including gas, electricity, water and waste water, communication services.

3.1.6.5 Help Desk Service provision by the Contractor to the Authority shall comprise:

- (a) the service requirement in column a;
- (b) meeting the Deadline in column b;
- (c) achieving the Performance Category in column c;
- (d) observing the Operational Period in column d; and
- (e) complying with the Rectification Period in column e.

Table 3.1.6

Serial No	Service	Deadline	Performance Category (Table 2, Section 1 of this SRD)	Operational Period (Table 1, Section 1 of this SRD)	Rectification Period (Table 2, Section 1 of this SRD)	Additional Period (Table 2, Section 1 of this SRD)
	(a)	(b)	(c)	(d)	(e)	(f)
1	Help Desk Service response (telephone and in person) in accordance with paragraphs 3.1.6.1 to 3.1.6.3 of this Schedule 1 Part 3.	1 minute of request	Major Priority 1	B	Critical Priority 1	30 Minutes
2	Help Desk Service response (e-mail and facsimile) in accordance with paragraphs 3.1.6.1 to 3.1.6.3 of this Schedule 1 Part 3.	2 hours of request	Minor Priority 3	B	Major Priority 1	Major Priority 1
3	Response and initiation of action to an Emergency in accordance with paragraphs 3.1.6.1 and 3.1.6.4 of this Schedule 1 Part 3.	15 minutes of request	Major Priority 1	A	Nil	Major Priority 1

3.2 Section 2 – Details the service requirements prior to the Full Operational Phase.

[Insert project specific requirements]

3.3 Section 3 - Details the transition service.

[Insert project specific requirements]

3.4 Section 4 – Details the Critical Equipment Categories

Critical Equipment Category	Area title	Critical equipment or furniture	Purpose
1	Porch or Lobby	1 light point. Electric door bell.	
2	Hall and Pram Space with coat cupboard	1 light point } per 1 double socket outlet } storey Power source for smoke detectors. Heating - 16.0°C.	
3	Lavatory, WC and basin	1 light point. Heating - 16.0°C.	
4	Sitting Room with adjoining Dining Room. Each to seat 8	Sitting Room: 2 light points 4 double sockets Dining Room: 1 light point 2 double sockets Heating - 18.0°C. TV aerial socket.	
5	Study	1 light point. 2 double sockets. Heating - 18.0°C.	
6	Kitchen	1 fluorescent light point. 6 double sockets (1 switched for fridge/freezer & 1 permanently wired for dishwasher). Extractor fan (hood type or wall/window	

Critical Equipment Category	Area title	Critical equipment or furniture	Purpose
		mounted).	
7	Utility	1 light point. 2 double sockets (1 permanently wired for washing machine & 1 for tumble drier with sockets below work surface, and switch with indicator above). Heating - 16.0°C.	
8	Bedroom 1	2 light points 3 double sockets. Heating - 18.0°C. TV aerial socket	
9	En -suite Toilet area	Illumination -125 lux Supplementary lighting over mirror with shaver socket. Heating - 21.0°C.	
10	Bedroom 2	2 light points 3 double socket outlets. Heating - 18.0°C. TV aerial socket	
11	Bedroom 3	1 light point. 2 double sockets. Heating - 18.0°C. TV aerial socket.	
12	Bedroom 4	1 light point. 2 double sockets.	

Critical Equipment Category	Area title	Critical equipment or furniture	Purpose
		Heating - 18.0°C. TV aerial socket.	
13	Bathroom	1 light point. 1 shaver point. High level electric fan heater if required Heating - 21.0°C.	
14	Separate WC	1 light point. Heating - 16.0°C.	
15	Linen/Airing Cupboard	Heating by means of insulated HW cylinder	

3.5 Section 5 – Details the Functional Standards⁷⁶

Element	Standard
Building Fabric External including: <ul style="list-style-type: none"> ▪ external walls ▪ roof ▪ fire escapes, ▪ walkways, ▪ safety barriers ▪ balconies ▪ eaves ▪ rendering 	<ul style="list-style-type: none"> ▪ All elements of building fabric, finishes, furniture and equipment or a services system component shall be functional, operational and satisfy the relevant Authority's Requirements, sound secure and weatherproof where appropriate ▪ Free from damp penetration or spalling. ▪ Claddings, copings and parapets are structurally sound and secure. ▪ free from areas capable of harbouring vermin and/or pests. ▪ chimney stacks/flues are structurally sound and secure and flue is free from blockages/excess soot.

⁷⁶ Explain to align DIO measurement process for accommodation standards with paymech availability definitions.

Element	Standard
<ul style="list-style-type: none"> ▪ foundations/structures ▪ rain water goods ▪ woodwork ▪ car parks 	<ul style="list-style-type: none"> ▪ Free from debris and moss growth.
<p>Building Fabric Internal including:</p> <ul style="list-style-type: none"> ▪ internal walls ▪ partitions ▪ ceilings 	<ul style="list-style-type: none"> ▪ All elements of building fabric, finishes, furniture and equipment or a services system component shall be functional, operational and satisfy the relevant Authority's Requirements. ▪ free from structural cracks and/or deflection. ▪ free from damp and vermin. ▪ free from undue damage and of reasonable appearance for location. ▪ free from unsealed asbestos.
<p>Fixtures and Fittings including:</p> <ul style="list-style-type: none"> ▪ doors and trim (external, internal and fire) ▪ windows and sills ▪ hatches ▪ vents ▪ ironmongery ▪ shelving ▪ cupboards ▪ railings ▪ racking ▪ notice boards ▪ mirrors ▪ balustrades ▪ magnetic door holders ▪ flag poles ▪ targets ▪ external sports equipment ▪ specialist floor finishes 	<ul style="list-style-type: none"> ▪ operate as intended, in a safe way, without making undue noise and without including observable stains on hinges, locks, catches and handles, without binding, rubbing or catching in any way and satisfy the relevant Authority's Requirements; ▪ shall function as intended, and shall be free from all but minor surface blemishes and wear and tear ▪ luminescent strips, signs, notices, warning signs where appropriate are intact, legible and illuminated where appropriate; ▪ free from corrosion.

Element	Standard
Floor and Floor Coverings	<ul style="list-style-type: none"> ▪ The floor covering is complete, according to their specification ▪ The floor covering is fully fixed to the floor so as not to cause a health and safety hazard; ▪ The floor/floor covering is free from tears, scoring, cracks or any other damage that is unsightly and/or could cause a health and safety hazard; ▪ Floor coverings/surfaces shall be maintained in such a way as to provide a suitable uniform surface ▪ Allow adequate drainage where necessary; ▪ free from pests
Internal and external Decorative Finishes (including paintwork, fabric and special finishes applied to walls, ceilings, woodwork, metalwork, pipe work and other visible elements)	<ul style="list-style-type: none"> ▪ Decorative finishes are complete according to their specification, ▪ Free from all but minor surface blemishes or undue wear and tear; ▪ Free from cracks, or any other surface degradation inconsistent with a building maintained in accordance with Good Industry Practice;
Street Furniture (including seating/signage (including electronic)/lighting/bollards/posts & railings/ barriers/litter, smoking, dog waste recycling bins/tree protection/ planters)	<ul style="list-style-type: none"> ▪ Functional, operational & satisfy the relevant Authority's Requirements. ▪ Sound, secure and weatherproof where appropriate
External Areas including : <ul style="list-style-type: none"> ▪ landscaping ▪ paths/ roads/curbs/gutters ▪ access & ventilation shafts ▪ security & privacy fencing ▪ woodland/hedgerows/grass/borders/ flower beds/walls 	<ul style="list-style-type: none"> ▪ Functional, operational & satisfy the relevant Authority's Requirements.

Element	Requirement
Infrastructure Services	
<p>Emergency power supply</p> <p>Generators/fuel supply & tanks</p> <p>Uninterruptible power supply</p> <p>Batteries/chargers</p> <p>Switching gear</p>	<ul style="list-style-type: none"> ▪ Standby power source shall be operational, secure and tested regularly ▪ Emergency lighting units shall comply with BS5299, be free from dust, operational and fully charged ▪ Batteries and Battery rooms shall be adequately ventilated, free from acid leakage; batteries shall be topped up and fully charged ▪ Static inverters shall be in working order and not overheat during normal operational loading
<p>HV Distribution System including:</p> <p>distribution equipment and protective devices fuse switches, isolators, distribution boards, fuses, MCBs, ACB, ELCBs and RCD's, exposed distribution cables</p>	<ul style="list-style-type: none"> ▪ Ratings shall be clearly marked ▪ Fuse elements or circuit breaker mechanisms in working order ▪ Contacts and connections clean and mechanically tight ▪ No overheating during normal operating loads ▪ Secure to authorised access only ▪ Recording instruments operational where necessary ▪ Cable joint boxes free from compound leaks ▪ Marker and covering notices where necessary
<p>HV Distribution Systems</p> <p>Including:</p> <ul style="list-style-type: none"> ▪ distribution equipment, protective devices, isolators, distribution units, OCBs, ACBs and ELCBs ▪ Sub stations ▪ conductors ▪ switches ▪ transformers 	<ul style="list-style-type: none"> ▪ Ratings shall be clearly marked ▪ Fuse elements or circuit breaker mechanisms in working order ▪ Contacts and connections clean and mechanically tight ▪ No overheating during normal operating loads ▪ Secure to authorised access only ▪ Recording instruments operational where necessary ▪ Transformers are free from oil leaks ▪ Protective coatings are intact

Element	Requirement
	<ul style="list-style-type: none"> ▪ Electric strength of oil satisfactory ▪ Cable joint boxes free from compound leaks ▪ Marker and covering notices where necessary
<p>Hot & Cold Water Systems including:</p> <ul style="list-style-type: none"> ▪ drinking water ▪ ablutions ▪ showers ▪ pumps ▪ water heaters ▪ water storage tanks ▪ reservoirs ▪ water treatment ▪ distribution ▪ condensate return 	<ul style="list-style-type: none"> ▪ Deliver water at the temperatures and flow rates to good design practice without undue noise and vibration; ▪ Taps, valves and other related fittings and fixtures function as intended; ▪ Pipe work and fittings shall be fastened securely to their intended points of anchorage; ▪ There shall be no drips or leaks of water from pipe work, taps, valves and/or fittings.
<p>Heating, Air Conditioning and Mechanical ventilation Systems including:</p> <ul style="list-style-type: none"> ▪ boilers ▪ fume cupboards ▪ humidifiers ▪ heaters ▪ ductwork and accessories ▪ mixing boxes and dampers ▪ coolers ▪ inlet/outlet grilles ▪ refrigeration plant ▪ cooling towers ▪ and other local ventilation systems LEV's). 	<ul style="list-style-type: none"> ▪ All ventilation systems shall function as intended without undue noise or vibration; ▪ air changes and ventilation levels as required to achieve the Availability Criteria; ▪ Ductwork, fittings and pipe work shall be securely fastened to their intended points of anchorage; ▪ There shall be no leaks of water (or other heating/cooling medium) or air from ventilation systems ▪ Secure to authorised access only ▪ Free from corrosion, erosion and organic growth

Element	Requirement
<p>Specialist Services including:</p> <ul style="list-style-type: none"> ▪ PA System ▪ security (IDS/CCTV/access control) ▪ compressed air & other gas systems ▪ presentation systems ▪ medical & dental equipment, PAYD and ▪ any other automated service (cash) 	<ul style="list-style-type: none"> ▪ All Specialist Services shall function as intended, at the correct temperatures, quality and standards and flow rates as befits good design practice without undue noise or vibration; ▪ All pipe work and fittings shall be fastened securely to their intended points of anchorage. There shall be no leaks of piped gases and/or liquids and/or solids
<p>Electrical Power and other Cabled Systems including:</p> <ul style="list-style-type: none"> ▪ lighting (internal & external) ▪ communications, ▪ safety and ▪ alarm systems ▪ building transformers & switches ▪ interior wiring & circuit breakers ▪ energy management controls ▪ aerial sockets ▪ satellite equipment ▪ CIS infrastructure 	<ul style="list-style-type: none"> ▪ All electrical installations to comply with BS7671 or equivalent. ▪ Weatherproof where appropriate ▪ Function as intended without undue noise or vibration; ▪ Wiring, fittings, fixtures, controls and safety devices shall be properly housed and fastened securely to their intended point of anchorage and labelled. ▪ Lighting conductor should be complete, isolated and comply with BS6651 or equivalent ▪ MICC cable protective coatings intact ▪ Light emittance within design Lux levels
<p>Public health and other drainage systems (including all sanitary ware and associated fittings)</p> <ul style="list-style-type: none"> ▪ drainage ditches ▪ manholes & covers ▪ culverts ▪ fuel interceptors 	<ul style="list-style-type: none"> ▪ Shall function as intended, without undue noise and vibration, ▪ Provide a safe and comfortable environment; ▪ All pipe work and fittings fastened securely to their intended points of anchorage; ▪ There shall be no leakage of waste and/or foul water and/or rainwater.

Element	Requirement
<p>Fire Fighting Equipment including:</p> <ul style="list-style-type: none"> ▪ fire alarms ▪ fire detectors ▪ break glass points ▪ pumps ▪ fire hoses ▪ fire suppression systems ▪ stand pipes 	<ul style="list-style-type: none"> ▪ Fire extinguishers and other fire fighting equipment shall be maintained in accordance with BS 5306 Part 3 Code of Practice or equivalent ▪ Sound, secure and fixed to their intended point of anchorage ▪ Fully operational within manufacturer's recommendations ▪ Hydrants, sprinklers and hoses shall be at correct operating pressure and capacity; ▪ Pipe work shall be free from corrosion, leaks and drips ▪ Be of suitable type and quantity for the hazards present within their vicinity
<p>Lifts including:</p> <ul style="list-style-type: none"> ▪ hoists ▪ cranes ▪ lifting equipment ▪ motors 	<ul style="list-style-type: none"> ▪ Shall function as intended without undue noise or vibration ▪ Shall have a fully functioning control panel and phone ▪ Certification of in service date
<p>Kitchen Equipment white goods including but limited to:</p> <ul style="list-style-type: none"> ▪ microwave ▪ fridges ▪ hot plates ▪ extractors ▪ washing machines ▪ tumble driers ▪ dishwashers ▪ ovens ▪ water heaters 	<ul style="list-style-type: none"> ▪ Shall function as intended and be fully operational in accordance with the manufacturers instructions ▪ Wiring, fixtures, fittings, controls and safety devices shall be properly housed and fastened securely to their intended point of anchorage and labelled ▪ Shall be functional as intended without undue noise or vibration
<p>Fitness Equipment Current equipment including:</p> <ul style="list-style-type: none"> ▪ rowing ▪ running ▪ cycle ▪ cross trainers 	<ul style="list-style-type: none"> ▪ Shall function as intended and be fully operational in accordance with the manufacturers instructions ▪ Wiring, fixtures, fittings, controls and safety devices shall be properly housed and fastened securely to their intended point of anchorage and labelled ▪ Shall be functional as intended without undue noise or vibration

Element	Requirement
<ul style="list-style-type: none">▪ stepping machines▪ multi gym▪ free standing weights	

PART 4 - SECURITY REQUIREMENTS

4.1 SECURITY REQUIREMENTS⁷⁷

4.1.1 Physical Security

4.1.1.1 The Contractor shall:

- (a) comply with the requirements of the Defence Manual of Security JSP 440; and
- (b) use the 'Minimum Baseline Measures Matrix' concept to ensure that an appropriate level of physical security is provided in accordance with JSP 440; and
- (c) ensure the minimum security clearance level for unescorted access within the Authority Sites (excluding the Development Site) is the Baseline Personnel Security Standard (BPSS) or, where required, either Security Cleared (SC) or Developed Vetting (DV) security clearance in accordance with JSP 440; and
- (d) ensure all contractor staff and Contractor Related Parties are security cleared to a level appropriate to their work or the Areas to which they will have access, in accordance with JSP 440; and
- (e) appoint a Contract security liaison officer who shall:
 - (i) be the Contractor's point of contact for the Authority on all security-related matters; and
 - (ii) be responsible for the implementation of security procedures and controls within the Contract; and
 - (iii) attend all security working group meetings as requested by the Authority; and
- (f) provide security of access to the Development Site once they have been isolated from the Authority Sites by an appropriate physical barrier and any other security requirements in accordance with JSP 440; and
- (g) ensure that its staff and the staff of any Contractor Related Parties are aware that their employment requires them to comply with appropriate Authority Sites standing orders and other Authority security procedures including compliance with the terms of Clause 14.2 of the Contract; and
- (h) at least twenty Business Days before the date on which the Contractor first carries out Asset Provision and Service Provision provide the Authority with a written list of the Named Employees or other persons who it expects may require admission to the Authority Sites (excluding the Development Site) in connection with the carrying out of Asset Provision and/or Service Provision, specifying the capacities in which those employees or other persons are concerned with Asset Provision and/or Service Provision and giving such other particulars as the Authority may require. The Contractor shall update this information as

⁷⁷ Insert details to be drafted on a Project-specific basis. Include a copy of the security aspects letter.

and when any such individuals are replaced or complemented by others, not less than twenty Business Days before their attendance on the Authority Sites (excluding the Development Site); and

- (i) ensure that Authority representatives, have the right of direct communication with all contractor staff for security related issues in accordance with the provisions of Clause 104 (Co-operation for Security Investigation); and
- (j) ensure that access to areas processing data classified as confidential or above, is restricted to those contractor staff that require access for the performance of their duties and are appropriately cleared; and
- (k) advise the Authority security staff of any special access requirements to the Authority for example, cranes and large vehicles; and
- (l) provide an appropriate Class 2 physical barrier, to assure the perimeter of the Authority Sites and any security enclave; and
- (m) provide a voice warning system throughout the Authority Sites, which can be operated from the crisis management centre and at any other appropriate operating points, as agreed with the Authority; and
- (n) ensure that its staff are aware that it is Authority policy that anyone on the Authority Sites is subject to search and the Authority requires the Contractor, Sub-Contractors and their staff giving written consent for their person being searched.

4.2.1 System Security

4.2.1.1 The Contractor shall:

- (a) produce a Community Security Policy and System Security Policy in accordance with Appendix C to CESG Electronic Information Systems Security Memorandum No 5 and Infosec Standard 1 for approval by the Authority; and
- (b) produce a set of Security Operating Procedures and a System Interconnection Security Policy (if appropriate), in accordance with JSP 440 Volume 3, for approval by the Authority; and
- (c) deliver drafts of the documents detailed above, to the Authority within 60 Business Days of the Commencement Date; and
- (d) ensure that all systems for processing or storing protectively marked data are accredited by the Authority before being used; and
- (e) comply with the UK Infosec Standards No 1 and CESG Memorandum No 8 (Password Control); and
- (f) ensure that any computer systems used by the Contractor which access the Authority Systems are compliant and accredited by the Authority; and
- (g) ensure that all breaches of system security are reported to the Authority immediately during Core Working Hours (07:30-18:30) and that all breaches of system security during Non Core Working Hours (18:30-07:30) are reported to the Authority on commencement of Core Working Hours.

PART 5 - CONSTRAINTS

5.1 CONSTRAINTS⁷⁸

5.1.1 Health & Safety

5.1.1.1 The Contractor shall ensure that the Service, Contractor and Contractor Related Parties, comply with Clause [tba] of this Contract, and the Authority's 'Health and Safety' policies, including:

- (a) the Authority Sites 'Health and Safety at Work' policy; and
- (b) Health and Safety at Work Notices to Contractors; and
- (c) working practices; and
- (d) Authority Sites standing orders; and
- (e) permits to work; and
- (f) emergency and evacuation procedures; and
- (g) Crown and Authority Fire regulations, and all Authority Fire Officer requirements where they are more onerous than building regulations.

5.2.1 Building Design Constraints

5.2.1.1 The Contractor shall procure an independent Building Research Establishment Evaluation Assessment Method (BREEAM) assessment, and achieve certification at the following ratings:

- (a) all new buildings achieve a rating of 'Excellent'; and
- (b) all refurbished buildings achieve a rating of 'Very Good'.

5.3.1 Common Minimum Standards

5.3.1.1 In order to comply with the Office of Government Commerce (OGC) "Common Minimum Standards" (CMS) and other OGC initiatives in the Public Sector" the Contractor shall comply with the requirements of the OGC/DEFRA "Quick Wins" specifications for product types included in these specifications.

⁷⁸ Insert details to be drafted on a project-specific basis. MOD Commercial policy and guidance on Sustainable Procurement (available via the Acquisition Operating System) should be complied with, e.g. complying with mandatory Government standards (e.g. Buy Sustainable – Quick Wins); Defence Estates instructions must be followed for procurements that have an estate and/or construction elements (e.g. Defence Related Environmental Assessment Methodology (DREAM)); and all new equipment projects must comply with Project Oriented Environmental Management Systems (POEMS) and Project Oriented Safety Management Systems (POSMS).

SCHEDULE 2 – CONTRACTOR’S PROPOSALS

Part 1 - Asset Provision Proposals

[insert as separate document to be drafted on a Project specific basis. Include details of all Specified Assets]

Part 2 - Service Provision Proposals

[insert as separate document to be drafted on a Project specific basis]

Part 3 – Security Proposals

[insert as separate document to be drafted on a Project specific basis. Should include, inter alia, requirements for security training on a continuous basis for Contractor personnel including Sub-contractor personnel as appropriate.]

**SCHEDULE 3 – DOCUMENTS AND DATA REFERRED TO IN PART 1
(PRELIMINARY PROVISIONS)**

Part 1– Conditions Precedent

Condition Precedent	Date to be satisfied
Delivery by the Authority's Representative to the Contractor of a copy certified by the Authority's Representative as being a true copy, of: the GFA/EA Defects Survey; the Asbestos Survey	Commencement Date
Execution of the Independent Certifier's Deed of Appointment by all parties to such agreement	Commencement Date
Obtaining all relevant planning consents	[insert date]
[insert details of other conditions precedent]	[insert details]

Part 2 – Collateral Warranty

See Schedule 20

Part 3– Project Documents

Document	Parties
[insert details]	[insert details]

Part 4 – Ancillary Documents

Document	Parties
[insert details]	[insert details]

Part 5– Initial Financing Agreements

Document	Parties
[insert details]	[insert details]

Part 6– Senior Financing Agreements

Document	Parties
[insert details]	[insert details]

Part 7– Subordinated Financing Agreements

Document	Parties
[insert details]	[insert details]

Part 8 – Authority Disclosed Data

[insert details to be drafted on a Project specific basis]

Part 9– Contractor Warranted Data

Registered Name of Contractor:

[insert details]

Registered Office of Contractor:

[insert details]

Company Registration Number of Contractor:

[insert details]

Directors of Contractor:

[insert details]

Shareholders of Contractor (with respective shareholdings):

[insert details]

Registered Name of Contractor's Holding Company:

[insert details]

Registered Office of Contractor's Holding Company:

[insert details]

Company Registration Number of Contractor's Holding Company:

[insert details]

Directors of Contractor's Holding Company:

[insert details]

Shareholders of Contractor's Holding Company (with respective shareholdings):

[insert details]

**SCHEDULE 4 – DOCUMENTS AND DATA REFERRED TO IN PART 2
(SITE ISSUES)**

Part 1– Authority's Sites

Title number/ Unregistered land identifier	Location	Evidence of Title	Remarks
[insert details]	[insert details]	[Office Copy Entry dated [insert date]/insert details of title deeds]	[insert details]

Part 2– Authority Site Plans

[insert as separate documents showing the areas of the Authority Sites on which Asset provision and/or Service Provision will be performed]

SCHEDULE 5 - DOCUMENTS REFERRED TO IN PART 3 (QUALITY AND PERFORMANCE STANDARDS)

Part 1 – Handback Standard

[insert details to be drafted on a Project specific basis]

Part 2 – Authority's Policies

Regulation	Content/Subject	Date	Remarks
[insert details]	[insert details]	[insert details]	[insert details]

SCHEDULE 6 – DESIGN REVIEW PROCEDURE REFERRED TO IN PART 4 (DESIGN OBLIGATIONS)

1. DEFINITIONS

1.1 In this Schedule 6, unless the context otherwise requires:

"**Reviewable Design Data**" means the plans, drawings, documents and information relating to Asset Provision listed in the Table below:

ITEM	REVIEWABLE DESIGN DATA	FORMAT OF DATA
[insert details]	[insert details]	[insert details]

together with such other data as the Parties agree should be Reviewable Design Data.

2. CONTRACTOR'S SUBMISSIONS AND DESIGN DATABASE

2.1 In accordance with the Design Review Programme or as otherwise required by this Schedule 6, the Contractor shall submit to the Authority's Representative two copies of the documents to be reviewed as part of Reviewable Design Data and Design Data together with a cover page and, if appropriate, index, clearly identifying the relevant data or a statement of the proposed course of action (the entire contents of a submission being referred to in this Schedule 6 as a "**Submitted Item**").

2.2 The Contractor shall compile and maintain a register of:

2.2.1 the date and contents of the submission of all Submitted Items; and

2.2.2 the date of receipt and content of all Submitted Items that are returned or deemed to be returned by the Authority's Representative.

2.3 Design Database

2.3.1 The Contractor shall procure that the Asset Provider establishes and maintains a computerised design database which the Contractor's Representative and the Authority's Representative may access remotely by computer to view drawings comprised within Reviewable Design Data and electronically store and print copies of such Reviewable Design Data. If the Authority's Representative is unable to access that design database, the Contractor shall procure that the database is made available as soon as reasonably practicable for access and/or use by the Authority's Representative or any person authorised by the Authority's Representative.

2.4 Re-submission of a Submitted Item

2.4.1 If, on receiving a Submitted Item, the Authority's Representative reasonably considers that such Submitted Item is not in compliance with paragraph 2.1 and/or that he requires further items or other information to evaluate such Submitted Item in accordance with the grounds in paragraph 3.2 (Grounds Upon Which the Authority may Comment on Submitted Items), the Authority's Representative shall instruct the

Contractor to resubmit the Submitted Item in accordance with paragraph 3.1.1 together with (if applicable) such further items or other information required by the Authority's Representative, and such resubmitted Submitted Item shall be substituted for the original Submitted Item for the purposes of this Schedule 6.

3. AUTHORITY'S APPROVAL AND COMMENTS

3.1 Authority Response

3.1.1 As soon as reasonably possible, and within thirty Business Days of the date of receipt of a submission of a Submitted Item (or re-submission, as the case may be) to the Authority's Representative in accordance with paragraphs 2.4.1 or 3.1.1 (or such other period as the Parties may agree), the Authority's Representative shall:

(a) return one copy of the Submitted Item to the Contractor endorsed "Level A – no comment", agree that the Submitted Item is an Approved RDD Item; or

(b) return one copy of the Submitted Item to the Contractor endorsed "Level B – proceed subject to amendment as noted", together with the Authority's Representative's comments in accordance with paragraph 3.2 (Grounds Upon Which the Authority may Comment on Submitted Items); or

(c) return one copy of the Submitted Item to the Contractor endorsed "Level C – subject to amendment as noted" together with the Authority's Representative's comments in accordance with paragraph 3.2 (Grounds Upon Which the Authority may Comment on Submitted Items).

3.1.2 If the Authority's Representative fails to return the Submitted Item to the Contractor pursuant to paragraph 3.1.1, then the Authority's Representative shall be deemed to have returned the Submitted Item to the Contractor endorsed "Level A – no comment".

3.1.3 If the Authority's Representative raises comments on any Submitted Item, he shall state the grounds upon which such comments are based in accordance with paragraph 3.2 (Grounds Upon Which the Authority may Comment on Submitted Items) and the evidence or other information necessary to substantiate that ground.

3.2 Grounds Upon Which the Authority May Comment on Submitted Items

3.2.1 The expression "raise comments" shall be construed to mean "raise comments or make objections" unless the contrary appears from the context. The Authority's Representative may raise comments in relation to any Submitted Item on the grounds that:

(a) the Submitted Item would (on the balance of probabilities) breach any Legislation or not be in accordance with any Necessary Consent; and/or

(b) the Contractor's ability to perform its obligations under this Contract would (on the balance of probabilities) be adversely affected by the proposed course of action; and/or

- (c) the Authority's ability to carry out any of its legal duties or other functions would (on the balance of probabilities) be adversely affected by the proposed course of action; and/or
- (d) the proposed course of action would be likely to result in a material increase to the Authority's liabilities or potential or contingent liabilities under this Contract; and/or
- (e) the proposed course of action would adversely affect any right of the Authority under this Contract or its ability to enforce any such right; and/or
- (f) the Submitted Item is not in accordance with the Asset Provision Requirements; and/or
- (g) the Submitted Item is not in accordance with the Asset Provision Proposals.

3.3 Effect of Authority's Representative's Comments

3.3.1 No approval or comment or any failure to give or make an approval or comment under this Schedule 6 shall operate to exclude or limit the Contractor's obligations or liabilities under this Contract (or the Authority's rights under this Contract) and /or shall constitute a Change proposed by the Authority except as set out in paragraph 3.2 (Grounds Upon Which the Authority may Comment on Submitted Items).

3.3.2 If, having received comments from the Authority's Representative, the Contractor considers that compliance with those comments would amount to a Change, the Contractor shall, before complying with the comments, notify the Authority's Representative of the same and, if it is agreed by the Parties or determined pursuant to the Dispute Resolution Procedure that a Change would arise if the comments were complied with the Authority shall be deemed to have issued a Notice of Change and the provisions of PART 18 (Changes and Change in Law) shall apply. Any failure by the Contractor to notify the Authority's Representative that it considers compliance with any comments of the Authority's Representative would amount to a Change shall constitute an irrevocable acceptance by the Contractor that any compliance with the Authority's comments shall be without cost to the Authority and not entitle the Contractor to any extension of time.

3.3.3 No alteration or modification to the design, quality or quantity of the Specified Assets arising from the development of detailed design of or from the co-ordination of the design of a Submitted Item shall be construed as a Change proposed by the Authority.

4. PROCEEDING WITH CONSTRUCTION OR MANUFACTURE OF THE SPECIFIED ASSETS

4.1 If the Submitted Item is returned to the Contractor endorsed:

4.1.1 "Level A", the Contractor may proceed to the next level of design or commence or permit the commencement of the construction or manufacture of the part or parts of the Specified Assets to which such Submitted Item relates; or

4.1.2 "Level B", the Contractor may, subject to paragraph 4.2, proceed to the next level of design or commence or permit the commencement of the

construction or manufacture of the part or parts of the Specified Assets to which such Submitted Item relates provided that it takes into account any amendments required by the Authority's Representative in his comments, which amended Submitted Item shall be deemed to have been incorporated as part of the Contractor's Proposals; or

4.1.3 "Level C", the Contractor shall, subject to paragraph 4.2, not act upon the Submitted Item and shall amend the Submitted Item in accordance with the Authority's Representative's comments and re-submit the Submitted Item to the Authority's Representative in accordance with paragraph 3.1.1.

4.2 If the Submitted Item is returned to the Contractor endorsed "Level B" or "Level C":

4.2.1 the Contractor may at its own risk, proceed to the next level of design or commence or permit the commencement of the construction or manufacture of the part or parts of the Specified Assets to which such Submitted Item relates, disregarding the Authority's Representative's comments; or

4.2.2 if the Contractor does not agree with the comments made by the Authority's Representative in relation to a Submitted Item, the Parties shall, pursuant to Schedule 19 (Project Management), meet to discuss and agree such comments and if the Parties cannot agree at any meeting pursuant to Schedule 19 (Project Management), either Party may resolve the matter in accordance with Clause 144 (Disputes).

4.3 If the Contractor proceeds at its own risk in relation to a Submitted Item pursuant to paragraph 4.2 and it is subsequently agreed or determined that the Authority's Representative's comments on such Submitted Item were in accordance with paragraph 3.2 (Grounds Upon Which the Authority may Comment on Submitted Items), then immediately following such agreement or determination, the Contractor shall forthwith, at its own cost:

4.3.1 resubmit the Submitted Item pursuant to paragraph 3.1.1; and

4.3.2 undo, remove from the Authority Site(s) and replace (in a manner complying with this Contract) any parts of the Specified Assets which it has been determined the Contractor was not entitled to construct.⁷⁹

4.4 If the Contractor does not proceed at its own risk in relation to a Submitted Item pursuant to paragraph 4.2 and it is subsequently agreed or determined that the Authority's Representative's comments on such Submitted Item were not in accordance with paragraph 3.2 (Grounds Upon Which the Authority May Comment), then this shall be a Compensation Event.

⁷⁹ If Acquisition teams consider that it may be impossible for the Contractor to undo or remove works which have been constructed at the Contractor's risk, consideration can be given to reducing the Unitary Change to take account of any loss in value to MOD as a result of defective design. However, specific advice should always be taken on this issue from the PFU as it may affect the risk balance and accounting treatment of the Project.

SCHEDULE 7 – DOCUMENTS AND DATA REFERRED TO IN PART 6 (TIME AND PROGRAMMES)

Part 1 – Asset Provision Programme

[insert as separate document to be drafted on a Project specific basis. To include details of all Commissioning Tests and Joint Commissioning]

Part 2 – Planned Maintenance Programme

[insert as separate document for equipment projects only]

Part 3– Service Availability Requirements

[insert as separate document to be drafted on a Project specific basis using the Service Levels identified in the Core Table in Schedule 1 (Authority's Requirements)]

Part 4 – Liquidated Damages for Delay in Service Commencement

[insert details to be drafted on a Project specific basis using the Service Levels identified in the Core Table in Schedule 1 (Authority's Requirement)]

SCHEDULE 8 – INDEPENDENT CERTIFIER'S DEED OF APPOINTMENT

THIS DEED is made on [insert date]

BETWEEN

THE SECRETARY OF STATE FOR DEFENCE (the "**Authority**"); and

CONTRACTOR LIMITED (company registered number [insert number]) whose registered office is at [insert address] (the "**Contractor**"); and

INDEPENDENT CERTIFIER [LIMITED] (company registered number [insert number]) whose registered/principal office is at [insert address] (the "**Independent Certifier**"); and

[insert details] (the "**Security Trustee**" for the Senior Lenders) on behalf of itself and the Senior Lenders

BACKGROUND

[insert recitals (including definition of the Contract by reference to parties, date and title)]

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless set out below or the context otherwise requires, words and expressions defined in the Contract have the same meanings in this Deed as in the Contract.

"**Named Employees**" means any of the Independent Certifier's employees, staff, directors or officers performing the Services;

"**Independent Certifier's Services**" are as defined in paragraph 2.1;

"**PI Insurance**" is as defined in paragraph 8.1;

"**Varied Independent Certifier's Services**" are as defined in paragraph 5.2.2.

1.2 Interpretation

In this Deed except where the context otherwise requires:

1.2.1 the masculine includes the feminine and vice-versa; and

1.2.2 the singular includes the plural and vice versa; and

1.2.3 a reference in this Deed to any paragraph is, except where expressly stated to the contrary, a reference to such paragraph to this Deed; and

1.2.4 any reference to this Deed or to any other document shall include any permitted variation, amendment or supplement to such document; and

1.2.5 any reference to any enactment, order, regulation or other similar instrument shall be instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted; and

1.2.6 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees; and

1.2.7 headings are for convenience of reference only; and

1.2.8 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words.

2. THE SERVICES

2.1 The Contractor and the Authority jointly engage the Independent Certifier to perform the obligations and tasks which are ascribed to the Independent Certifier under the Contract which are summarised in Schedule A and all such other services which are reasonably incidental thereto (the "**Independent Certifier's Services**") upon the terms and conditions set out below.

2.2 The Independent Certifier shall provide the Independent Certifier's Services and the Varied Independent Certifier's Services:

2.2.1 taking account of and in accordance with the Contract (including any changes) and any other relevant documentation or information referred to in the Contract, and the Independent Certifier shall be deemed to have full knowledge of the provisions of and to have taken full account of all the undertakings and warranties, both express and implied, on the part of the Contractor and the Authority in the Contract; and

2.2.2 independently, fairly and impartially to and as between the Contractor and the Authority; and

2.2.3 having regard to the interest of the Senior Lenders in relation to the Contract, and

2.2.4 with the reasonable care, skill, diligence, prudence, foresight and operating practice to be reasonably and ordinarily expected of a properly qualified and competent professional adviser who has held itself out as competent and experienced in rendering such services for projects of a similar size, nature, scope and complexity to the Project; and

2.2.5 in accordance with all applicable Legislation and all relevant Authority's Policies; and

2.2.6 at such times and at such locations as the parties shall agree from time to time.

2.3 Whilst the Independent Certifier may take account of any representations made by the Contractor and/or the Authority it shall not be bound to comply with any such representations in connection with any matter on which it is required to exercise his professional judgement.

2.4 The parties to this Deed acknowledge that, notwithstanding any of the provisions of this Deed, it remains the responsibility of the Contractor to perform its obligations under the Contract and nothing in this Deed shall relieve the Contractor of its obligations under the Contract.

2.5 The Contractor shall provide to the Authority a copy of any notices given by the Contractor to the Independent Certifier under paragraphs 6.2.5 or 6.2.6 of this Deed.

3. CO-OPERATION

3.1 The Authority and the Contractor agree to co-operate with and provide reasonable assistance to the Independent Certifier to familiarise the Independent Certifier with all necessary aspects of the Project to enable the Independent Certifier to carry out its obligations under this Deed.

4. INDEPENDENT CERTIFIER'S AUTHORITY

4.1 The Independent Certifier shall not:

4.1.1 make or purport to make any alteration or addition to or omission from the design of the Specified Assets (including the setting of performance standards); or

4.1.2 issue any instruction or direction to any Sub-contractor; or

4.1.3 (unless both the Contractor and the Authority consent in writing) consent or agree to any waiver or release of any obligation of the Contractor or the Authority under the Contract; or

4.1.4 express an opinion on or interfere with or give any advice, opinion or make any representation in relation to any matters which are beyond its role and responsibilities under this Deed.

5. INSTRUCTIONS

5.1 All instructions to the Independent Certifier must be given signed and given jointly by the Authority's Representative and the Contractor's Representative.

5.2 The Independent Certifier shall:

5.2.1 comply with all reasonable instructions given to it by the Contractor and the Authority except and to the extent that the Independent Certifier reasonably considers that any such instructions vary or might vary its authority or responsibilities under this Deed or prejudices or might prejudice the exercise by the Independent Certifier of its obligations in accordance with paragraph 2.2; and

5.2.2 if it considers that such instructions will require it to provide services other than the Services ("**Varied Independent Certifier's Services**") or will or could reasonably be expected to increase the fee payable to the Independent Certifier under this Deed, before acting on the same provide both the Authority's Representative and the Contractor's Representative with as detailed an estimate as is reasonably practicable of the Varied Services and of the increase to the fee for such Varied Services (taking into account any reduction in work or other expense which might also occur as a result of the circumstances giving rise to the instruction).

5.3 Subject to paragraph 5.2.2, the Independent Certifier shall promptly comply with any instruction given in accordance with paragraph 5.1 or, if the Independent Certifier considers it has grounds for rejection of an instruction pursuant to paragraph 5.2.1 notify the Contractor's Representative and the Authority's Representative setting out the grounds for rejection.

5.4 Save in relation to instructions in relation to the Varied Independent Certifier's Services the Contractor shall not issue an instruction to the Independent Certifier without such instructions being countersigned by the Authority's Representative provided that where such instruction is submitted to the Authority's

Representative for countersignature the Authority and the Authority's Representative shall not unreasonably refuse or delay such countersignature.

6. FEES AND PAYMENT

6.1 Fee

6.1.1 The Contractor shall pay to the Independent Certifier a fee of [insert amount] for the Independent Certifier's Services provided in relation to the Contract. The fee is exclusive of VAT and inclusive of disbursements.

6.1.2 The additional remuneration payable to the Independent Certifier in respect of the performance of Varied Independent Certifier's Services shall be the amount agreed by the parties prior to the commencement of such Varied Independent Certifier's Services pursuant to paragraph 5.2.2 or, in the absence of such agreement, on a time charge basis at the rates set out in [insert details]. The obligations of the Contractor and the Authority to pay the Independent Certifier for any Varied Independent Certifier's Services (and for VAT on such Varied Independent Certifier's Services) shall be several and not joint and the Independent Certifier's remuneration for such Varied Independent Certifier's Services shall be paid for equally by the Authority and the Contractor or as otherwise agreed.

6.1.3 No additional remuneration shall be payable to the Independent Certifier to the extent that the Varied Independent Certifier's Services are necessitated, in whole or in part by the Independent Certifier's default, negligence or breach of this Deed.

6.2 Payment

6.2.1 The Independent Certifier shall issue its invoices for fees pursuant to paragraphs 6.1.1 and 6.1.2:

(a) to the Contractor's Representative (and provide a copy to the Authority's Representative at the same time) for claims pursuant to paragraph 6.1.1 and for the Contractor's share of any claim pursuant to paragraph 6.1.2, on a monthly basis together with such supporting documentation as may reasonably be required by the Contractor; and

(b) to the Authority's Representative for the Authority's share of any claim pursuant to paragraph 6.1.2 in the form of the Relevant Form/delivery label⁸⁰ accompanied by details of the grounds for and computation of the amount claimed together with such supporting documentation as may reasonably be required by the Authority.

6.2.2 If the Contractor fails to pay any amounts due in invoices issued to it and such amount has not been subject to a notice from the Contractor's Representative pursuant to paragraphs 6.2.5 and/or 6.2.6, then the Authority shall be entitled to pay any such amounts to the Independent Certifier and recover the costs of doing so from the Contractor as a debt.

⁸⁰ The latter option is appropriate where the P2P system will be used.

6.2.3 The due date for payment:

(a) pursuant to paragraph 6.1.1, shall be thirty Business Days from the date on which the invoice is received by the Contractor; and

(b) pursuant to paragraph 6.1.2, shall be thirty Business Days from the receipt by the Authority of the Relevant Form/delivery label⁸¹ pursuant to paragraph 6.2.1(b) accompanied by details as to the grounds for and computation of the amount claimed.

6.2.4 The final date for payment shall be thirty Business Days after the due date for payment pursuant to paragraphs 6.2.3(a) and/or 6.2.3(b).

6.2.5 Not later than five Business Days after the due date for payment, the Contractor and/or the Authority may notify the Independent Certifier stating the amount which the Contractor and/or the Authority proposes to pay and the basis on which the amount is calculated.

6.2.6 Where the Contractor and/or the Authority intends to withhold payment of any amount stated in the invoice, the Contractor and/or the Authority shall give written notice to the Independent Certifier not later than five Business Days before the final date for payment. The notice shall state the amount to be withheld and the ground or grounds for withholding the payment and if there is more than one ground, the notice shall identify the amount attributable to each ground.

6.2.7 If the Contractor and/or the Authority fails to pay the Independent Certifier any sum payable under this Deed:

(a) which is not the subject of a notice issued by the Contractor and/or the Authority pursuant to paragraphs 6.2.5 and/or 6.2.6; or

(b) if it is the subject of a notice issued by the Contractor and/or the Authority pursuant to paragraphs 6.2.5 and/or 6.2.6 and if it is agreed or determined pursuant to the Dispute Resolution Procedure that the deduction and/or withholding pursuant to paragraphs 6.2.5 and/or 6.2.6 was not correct on the basis of the grounds set out in the relevant notice,

by the final date for payment, such Party shall pay the Independent Certifier simple interest on the sum due from it from the final date for payment until the actual date of payment at the Default Interest rate.

6.2.8 If the Contractor and/or the Authority fails to pay the amounts properly due pursuant to these provisions and no notice to withhold the payment has been given pursuant to paragraph 6.2.6, the Independent Certifier may suspend performance of any or all of the Independent Certifier's Services and/or the Varied Independent Certifier's Services. This right is subject to the Independent Certifier first giving the Contractor's Representative and the Authority's Representative not less than seven Business Days' notice in writing of such intention stating the grounds for suspension. The right to suspend performance shall cease when the Contractor and/or the Authority as appropriate pays the amount properly due.

⁸¹ The latter option is appropriate where the P2P system will be used.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 The copyright in all reports, calculations and other similar documents provided by the Independent Certifier in connection with the Project shall remain vested in the Independent Certifier but the Independent Certifier grants to the Contractor and Authority and their nominees with full title guarantee a non-exclusive irrevocable royalty free licence to copy and use such drawings and other documents and to reproduce the designs contained in them for any purpose related to the Project. Such licence shall include a licence to grant sub-licences and to transfer the same to third parties.

8. PROFESSIONAL INDEMNITY INSURANCE

8.1 The Independent Certifier shall take out and maintain in force a policy of professional indemnity insurance ("**PI Insurance**") with reputable insurers carrying on business in the United Kingdom who are acceptable to the Authority and the Contractor (such acceptance not to be unreasonably withheld or delayed) and with a limit of indemnity of not less than £[insert amount]⁸² for any one occurrence or series of occurrences arising out of one event⁸³ from the Effective Date/Commencement Date until 12 years from the completion of the Services and Varied Services or termination of this Deed, whichever is the earlier provided that such insurance is available in the UK insurance market at commercially reasonable rates. The Independent Certifier shall provide evidence satisfactory to the Authority and the Contractor (as and when reasonably required by their Representatives) of the PI Insurance (such evidence to include details of the cover (including confirmation of territorial limits, indemnity limit, levels of excess, insurers and policy number) and

8.1.1 provide the Authority's and the Contractor's Representatives with:

- (a) copies of all notices under the PI Insurance relative to the Project; and
- (b) notice of any cancellation of the PI Insurance not less than twenty Business Days prior to the relevant cancellation date; and
- (c) notice of any material changes to or suspension of cover relevant to the Project not less than twenty Business Days prior to the relevant change or suspension; and
- (d) notice of any event of which it becomes aware, or of which it could reasonably be expected to become aware, which may vitiate the PI Insurance; and
- (e) notice of any act, omission or event of which it becomes aware, or of which it could reasonably be expected to become aware, which may adversely affect the terms and scope of the PI Insurance relevant to the Independent Certifier's Services and Varied Independent Certifier's Services or render it unenforceable; and

⁸² The minimum limit of indemnity should reflect the subject matter and risk profile of the Project. The Authority's insurance advisers will be able to advise on the appropriate minimum limit of indemnity.

⁸³ Due to market practice the Independent Certifier's PI Insurance may be on an "in any one event and in the annual aggregate" basis. If so the minimum limit of indemnity may need to be higher than would otherwise be the case in order to allow for erosion by other claims unrelated to the Independent Certifier's appointment in respect of the Project.

8.1.2 provide the Authority's and the Contractor's Representatives with such information as they may reasonably require in relation to any claim or circumstance notified to it under the PI Insurance in respect of the Project and any potential breach of the aggregate limit of the PI Insurance Policy

8.1.3 disclose to the relevant insurers any matters which could reasonably be expected to be material in the context of the Independent Certifier's Services and the Varied Independent Certifier's Services; and

8.1.4 include the interests (if any) of the Authority and the Contractor in any claim or circumstances notified under the PI Insurance relative to the Independent Certifier's Services and the Varied Independent Certifier's Services and provide a copy of such notification to the Authority's and the Contractor's Representatives.

9. CONFIDENTIALITY

9.1 The Independent Certifier shall be bound to comply with the obligations on the part of the Contractor contained in Clause 113 (Confidentiality) of the Contract in relation to all information and matters obtained from any other party under or in connection with the Project.

10. SECURITY MATTERS

10.1 The Independent Certifier shall be bound to comply with the obligations on the part of the Contractor contained in the Security Requirements and the Security Proposals and with Clauses 102 (Personnel Security) to 104 (Co-operation for Security Investigation) inclusive of the Contract (with necessary changes to such Clauses to reflect the Independent Certifier's Services and/or the Varied Independent Certifier's Services to be performed under this Deed in place of Asset Provision and/or Service Provision and the Independent Certifier's Named Employees performing the Independent Certifier's Services and/or Varied Independent Certifier's Services under this Deed in place of the Contractor's Named Employees).

10.2 Subject to the Independent Certifier's compliance with paragraph 10.1, the Authority shall issue a pass for the Independent Certifier's Named Employees who are security cleared to an appropriate level for the Authority Site on or before such person is intended to enter onto an Authority Site in order to perform the Independent Certifier's Services and/or the Varied Independent Certifier's Services. Passes shall remain the property of the Authority and shall be surrendered on demand or on termination or expiry of the Contract.

11. TERMINATION

11.1 The Contractor and the Authority may by joint notice in writing (a "Joint Notice") immediately terminate this Deed if the Independent Certifier:

11.1.1 is in breach of any of the terms of this Deed which, in the case of a breach capable of remedy, shall not have been remedied by the Independent Certifier within twenty Business Days of receipt by the Independent Certifier of a Joint Notice specifying the breach and requiring its remedy; or

11.1.2 is incompetent, guilty of gross misconduct and/or any material failure, negligence or delay in the provision of the Services and/or the Varied Services and/or its other duties under this Deed; or

11.1.3 fails to comply with paragraph 2.2; or

11.1.4 fails or refuses after written warning to provide the Services and/or the Varied Services and/or its other duties under this Deed reasonably and as properly required of it; or

11.1.5 is subject to an event analogous to any of the events of limbs (c) to (f) inclusive of Contractor Default.

11.2 If the Contract is rescinded, terminated or repudiated for any reason and, notwithstanding that the validity of such rescission, termination or repudiation may be disputed, this Deed may be terminated by Joint Notice and with immediate effect.

11.3 Following any termination of this Deed, but subject to any set-off or deductions which the Contractor or the Authority may be entitled properly to make as a result of any breach of this Deed by the Independent Certifier, the Independent Certifier shall be entitled to be paid any fees due under paragraph 6 in respect of the Independent Certifier's Services and Varied Independent Certifier's Services carried out in accordance with this Deed prior to the date of termination.

11.4 Termination of this Deed shall be without prejudice to any accrued rights and obligations under this Deed as at the date of termination (including the right of the Contractor and the Authority to recover damages from the Independent Certifier).

11.5 If this Deed is terminated in accordance with this paragraph 11, the Contractor and the Authority shall use reasonable endeavours to engage an alternative Independent Certifier within thirty Business Days, subject to Legislation and public procurement rules. If within such period the Contractor and the Authority are unable to procure the appointment of an alternative Independent Certifier on reasonable commercial terms, the Independent Certifier shall pay to the Contractor and/or the Authority, as the case may be, any reasonable incremental loss, damage or extra costs suffered by each of them.

11.6 Termination of this Deed shall not affect the continuing rights and obligations of the Contractor, the Authority and the Independent Certifier under paragraphs 4 (Independent Certifier's Authority), 8 (Professional Indemnity Insurance), 9 (Confidentiality), 10 (Security Matters), 13 (Disputes) and this paragraph or under any other paragraph which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

12. CUMULATIVE RIGHTS AND ENFORCEMENT

12.1 Any rights and remedies provided for in this Deed whether in favour of the Contractor or the Authority or the Independent Certifier are cumulative and in addition to any further rights or remedies which may otherwise be available to the parties.

12.2 The duties and obligations of the Independent Certifier arising under or in connection with this Deed are owed to the Contractor and the Authority both jointly and severally and the Contractor and the Authority may accordingly enforce the provisions hereof and pursue their respective rights hereunder in their own name, whether separately or with each other.

13. DISPUTES

13.1 All disputes shall be resolved in accordance with terms equivalent (mutatis mutandis) to the Dispute Resolution Procedure set out in the Contract.

13.2 The Contractor, the Authority and the Independent Certifier shall co-operate to facilitate the proper, just, economical and expeditious resolution of any and all such disputes which arise under this Deed.

14. NOTICES CONSENTS AND APPROVALS

14.1 Any consent or approval under this Deed is required to be obtained before the act or event to which it applies is carried out or done and is to be treated as effective only if the consent or approval is given in writing to the persons listed below.

14.2 All notices, information, documentation, certificates or written instructions to be provided or submitted under this Deed shall be in writing and authenticated by signature or by such other method as agreed between the parties and be marked in a prominent position with the number of this Contract and shall be served by sending the same by first class post, facsimile or by hand, and shall be marked for the attention of the relevant person, to the address given in paragraph 14.3 (Addresses).

14.3 Addresses

Contractor	Authority
Contractor's Representative	Authority's Representative
[insert address]	[insert address]
[insert fax number]	[insert fax number]

Independent Certifier
[insert name]
[insert address]
[insert fax number]

Any party may change its nominated address, facsimile number or telephone number by prior written notice to the other parties to this Deed.

14.4 Service of Notices

14.4.1 Notices given by post shall be effective upon the earlier of actual receipt and five Business Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:

- (a) within two hours after sending, if sent on a Business Day between the hours of 9am and 4pm; or
- (b) by 11am on the next following Business Day, if sent after 4pm on a Business Day but before 9am on that next following Business Day.

15. SURVIVORSHIP

15.1 Notwithstanding the provisions of paragraph 10, paragraphs 7, 8 and 9 (inclusive) shall survive termination of this Deed.

16. ENTIRE AGREEMENT

16.1 Except where expressly provided in this Deed, this Deed constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Deed.

16.2 Each of the parties acknowledges that:

16.2.1 it does not enter into this Deed on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a party to this Deed or not) except those expressly repeated or referred to in this Deed and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Deed; and

16.2.2 this paragraph shall not apply to any statement, representation or warranty made fraudulently, or to any provisions of this Deed which was induced by fraud, for which the remedies available shall be all those available under the law governing this Deed.

17. SEVERABILITY

17.1 If any provision of this Deed is held to be invalid, illegal or unenforceable to any extent then:

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

17.1.2 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.

18. WAIVER

18.1 No term or provision of this Deed shall be considered as waived by any party unless a waiver is given in writing by that party.

18.2 No waiver under this paragraph shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Deed unless (and then only to the extent) expressly stated in that waiver.

19. COUNTERPARTS

19.1 This Deed may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

20. EXCLUSION OF LEGISLATION

20.1 No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Deed.

21. GOVERNING LAW AND JURISDICTION

21.1 The Deed shall be governed by and construed in all respects in accordance with the laws of England and Wales. Subject to paragraph 13, the English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed.

IN WITNESS WHEREOF the parties have executed and delivered this Deed on the date first written above.

Executed and delivered as a Deed by the affixing of the corporate seal of the **SECRETARY OF STATE FOR DEFENCE**

The corporate seal of the **SECRETARY OF STATE FOR DEFENCE** hereunto affixed is hereby authenticated by:

Authorised Signatory

Authorised Signatory

Executed and delivered as a Deed by **CONTRACTOR LIMITED** acting by:

Director⁸⁴

Director/Secretary

Executed and delivered as a Deed by **INDEPENDENT CERTIFIER LIMITED** acting by:

⁸⁴ Project teams should ensure that they have received adequate evidence of Contractor signatories authority to sign the Contract. This would normally take the form of a board minute approving the transaction and authorising the named directors to sign the relevant documents.

Director⁸⁵

Director/Secretary

Executed and delivered as a Deed by
SECURITY TRUSTEE acting by:

Director⁸⁶

Director/Secretary

⁸⁵ Project teams should ensure that they have received adequate evidence of Independent Certifier signatories authority to sign the Contract. This would normally take the form of a board minute approving the transaction and authorising the named directors to sign the relevant documents.

⁸⁶ Project teams should ensure that they have received adequate evidence of Security Trustee signatories authority to sign the Contract. This would normally take the form of a board minute approving the transaction and authorising the named directors to sign the relevant documents.

SCHEDULE A

SCOPE OF INDEPENDENT CERTIFIER'S SERVICES

The Independent Certifier shall perform the role of Independent Certifier as referred to in Clause 32 (Independent Certifier) of the Contract (including complying with any time limits specified therein), including but not limited to the following scope of services:

1. MONTHLY REPORTING

1.1 The Independent Certifier shall during Asset Provision:

1.1.1 Provide the Authority's Representative and the Contractor's Representative with a written monthly report on the activities carried out by the Independent Certifier, making specific reference to each of the Independent Certifier's obligations;

1.1.2 Attend the monthly site progress meetings to present its report and any other matters relevant to its obligations;

1.1.3 Report monthly on:

(a) any matters reviewed, tests witnessed and/or inspections undertaken by the Independent Certifier pursuant to this Deed of Appointment in the preceding month; and

(b) the Commissioning Tests Schedule as required further to Clause 34 (Commissioning Tests and Joint Commissioning) of the Contract; and

(c) the compliance of Asset Provision with the Contract to the extent identified whilst performing the activities set out in paragraphs 1.1.3(a) and 1.1.3(b) of this Schedule A;

(d) undertake inspections, as necessary, in accordance with the Contract;

(e) the completion status of the Asset Provision, identifying any work that is not complete or is non-compliant with the Contract.

And in order to enable the Independent Certifier to discharge these primary functions which are to be performed independently, fairly and impartially to and as between the Contractor and the Authority, the Independent Certifier shall discharge at least the further duties described below.

2. GENERAL

2.1 The Independent Certifier shall familiarise itself with the Contract and any other relevant documentation or information referred to in the Contract, and the Asset Provision Contracts to the extent necessary to be in a position to carry out the Independent Certifier's Services in accordance with the terms of the Contract, the Asset Provision Contracts and this Deed.

3. INITIAL REVIEW

- 3.1 Liaise with the Authority and the Contractor in respect to requirements, interpretations and intentions relative to the Authority's Requirements and their application.
- 3.2 Any representation or comment made orally or in writing to the Independent Certifier whilst carrying out the service set out in paragraph 2.1 of this Schedule A by the Authority and/or the Contractor shall in no way fetter the independence of the Independent Certifier.

4. DESIGN COMPLIANCE CHECK

- 4.1 The Independent Certifier shall carry out a review of a sample of the Reviewable Design Data in the percentages set out below and comment upon their compliance with Schedule 1 (Authority's Requirements) of the Contract:

4.1.1 100% of drawings identifying floor areas; and

4.1.2 25% of structural engineering drawings; and

4.1.3 25% mechanical and electrical engineering drawings; and

4.1.4 25% architectural drawings.

If in the professional judgment of the Independent Certifier, because of the results of monitoring the samples set out above or other circumstances, more verification work is required, it shall provide a detailed report in respect of that and, if so agreed (acting reasonably) (or determined as between the Contractor and the Authority by the Dispute Resolution Procedure) any change in the work scope in this respect resulting in a change in fees will be borne by the Contractor and the Authority as they shall agree or as determined by the Dispute Resolution Procedure.

- 4.2 In discharging the obligations under paragraph 4.1 of this Schedule A, The Independent Certifier shall take into account any approved design or specification variations for compliance with the overall performance and quality standards of the Contract.

- 4.3 The Independent Certifier shall attend design review meetings with the Contractor as reasonably appropriate and necessary.

- 4.4 The Independent Certifier shall monitor the submission and progress of statutory and mandatory applications including:

4.4.1 Town and County Planning Acts; and

4.4.2 Building Regulations; and

4.4.3 Fire Precautionary / Certificate A; and

4.4.4 Environmental Health; and

4.4.5 Statutory Undertakers; and

4.4.6 Health and Safety; and

4.4.7 Defence Fire Service; and

4.4.8 Security.

4.5 The Independent Certifier shall not by virtue of its obligations under this paragraph 4, be responsible for the carrying out of the design of the Asset Provision or any part of it and the liability for the design of the Asset Provision shall remain with the Contractor or any other Contractor Related Parties. The Independent Certifier shall not be required to approve or consent to the suitability of the design of the Asset Provision.

5. PROCEDURE REVIEW

5.1 The Independent Certifier shall:

5.1.1 Monitor the operation of the quality assurance procedures of the Contractor both before and at regular intervals (maximum three months) during the execution of the Asset Provision.

5.1.2 Review the proposed procedures and programmes for the testing, commissioning and Authority's occupation and report on their adequacy.

5.1.3 Monitor the procedures for the identification, approval and recording of agreed variations to the Asset Provision in accordance with the Contract and report on both the adequacy and implementation of these procedures.

6. CONSTRUCTION REVIEW AND COMPLETION CERTIFICATION

6.1 The Independent Certifier shall:

6.1.1 Visit the Development Site and monitor the Asset Provision for compliance with the Contract. The frequency and timing of the Independent Certifier's visits are dependent on the progress of construction on the Development Site, but shall not be less than monthly in frequency. The Independent Certifier shall agree a programme with the Asset Providers for the inspection of key construction processes and the period of advance notice required prior to these processes being completed. The Contractor shall give the Independent Certifier advance notice of Asset Provision being carried out on the Development Site in accordance with the agreed timings. The Independent Certifier shall identify any aspect of Asset Provision which need to be inspected before being covered over by subsequent activity so that the Independent Certifier may satisfy himself that these have been constructed in accordance with the Contract without the need for opening up. The Independent Certifier shall also agree a programme with the Asset Providers for the inspection of the Asset Provision and the identification of Snagging Items in stages prior to completion of the relevant phases (Service Levels as defined in Schedule 1 (Authority's Requirements) of the Contract) to facilitate the timely completion of Snagging Items prior to completion of such phases (Service Levels as defined in Schedule 1 (Authority's Requirements) of the Contract).

6.1.2 At frequencies and locations to be determined at the discretion of the Independent Certifier, check that the Asset Provision is being undertaken in accordance with the Health and Safety Plan and in a workmanlike manner.

6.1.3 Review the process for, and monitor the progress of, the review of any samples or other information as required by the Contract for selection or

approval by the Authority, and to verify such processes are undertaken in accordance with that agreement.

6.1.4 Take account of any extensions to the time for completion of Asset Provision granted or to be granted in accordance with the Contract insofar as they affect the discharge of the Independent Certifier's obligations.

6.1.5 Witness a sample proportion of the Commissioning Tests and a sample proportion of the other testing and commissioning procedures for the Specified Assets at random the timing, location and frequency of such witnessing to be at the sole discretion of the Independent Certifier, and in total no less than fifty percent (50%) of all tests. The Independent Certifier shall review one hundred percent (100%) of all test results and verify the results are in accordance with the Contract, or in the event of a non-compliance to report any such variances. If in the professional judgment of the Independent Certifier, because of the results of witnessing (or because of other circumstances) a different sampling percentage is appropriate he shall provide a detailed report in respect of that and, if agreed by the Authority, the Contractor and the Asset Provider acting reasonably, any change in the percentage sampling resulting in a change of fees will be borne by the Contractor, the Authority or the Asset Provider, as they shall agree, failing such agreement, as determined by the Dispute Resolution Procedure.

6.1.6 Determine whether any relevant Service Level is finished or complete in accordance with the Contract and advise the Contractor and the Authority of the need for any additional surveys and investigations which may be necessary to demonstrate whether a relevant Service Level of the Project is finished or complete.

6.1.7 In accordance with Clause 33 (Inspection) of the Contract, either:

(a) issue an Acceptance Certificate in respect of the relevant Service Level and, where appropriate, issue any Snagging List for such Service Level within five Business Days of the issue of the relevant Acceptance Certificate pursuant to Clause 35 of the Contract; or

(b) issue a notice stating that the Acceptance Certificate has not been issued and specifying any outstanding matters that must be attended to before an Acceptance Certificate can be issued in respect of the relevant Specified Asset.

6.1.8 Monitor and review rectification of such Snagging Items in accordance with the Snagging List and Clause 35 (Acceptance Certificate, Notice of Non Completion and Snagging List) of the Contract, and report to the Authority's Representative and the Contractor's Representative on the progress and completion of this process.

6.1.9 Where an Asset requires an Acceptance Certificate pursuant to the Contract check and determine that such Assets have received the appropriate Acceptance Certificates and that such Assets have been completed and, if so, issue the appropriate Final Acceptance Certificate.

6.1.10 Review and report to the Authority's Representative and the Contractor's Representative on:

(a) if whilst performing the activities in paragraphs 1.1.3(a) and 1.1.3(b) of this Schedule A the Independent Certifier becomes

aware that the Asset Provision does not comply with the Contract the Independent Certifier shall notify the Authority's Representative and the Contractor's Representative.

(b) any outstanding matters which have previously prevented the Independent Certifier from issuing an Acceptance Certificate.

6.1.11 Monitor the production of the relevant operating manuals, relevant approvals, test results, inspection records and as built drawings. Comment and report on the adequacy of such documents and monitor and report on their timely handover.

7. PARTICIPATION IN DISPUTE

7.1 As and when required by the Contractor's Representative or the Authority's Representative, the Independent Certifier shall participate in the Dispute Resolution Procedure of the Contract (as such term is defined in the Contract) to the extent that a Dispute relates to the Independent Certifier's obligations and tasks as set out in this Deed.

SCHEDULE 9 – DATA REFERRED TO IN PART 8 (GOVERNMENT FURNISHED ASSETS, EXISTING ASSETS AND EXISTING CONTRACTS)

Part 1 – Government Furnished Assets

A	B	C	D	E
Asset	Specification	Location	Date to be made available to Contractor	Period of availability for Contractor's use
[insert details]	[insert details]	[insert details]	[insert details]	[insert details]

Terms and conditions on which the Government Furnished Assets are made available to the Contractor

[insert details]

Maintenance Schedules for the Government Furnished Assets

[insert details]

Documentation to Accompany the Government Furnished Assets

[insert details]

Part 2 – Existing Assets

A	B	C	D	E
Specified Asset	Specification	Location	Date to be made available to Contractor	Date on which title will be transferred
[insert details]	[insert details]	[insert details]	[insert details]	[insert details]

Terms and conditions on which title to the Existing Assets will be transferred to the Contractor

[insert details]

Maintenance Schedules for the Existing Assets

[insert details]

Documentation to Accompany the Existing Assets

[insert details]

Part 3 – Existing Contracts

Contract	Parties	Date
[insert details]	[insert details]	[insert details]

Part 4 – Mess Property

A	B	C	D	E
Specified Asset	Specification	Location	Date to be made available to Contractor	Date on which title will be transferred
[insert details]	[insert details]	[insert details]	[insert details]	[insert details]

Terms and conditions on which on which the Mess Property is made available to the Contractor

[insert details]

Maintenance Schedules for the Mess Property

[insert details]

Documentation to Accompany the Mess Property

[insert details]

**SCHEDULE 10 – TRANSFER OF RESIDUAL VALUE PROVISIONS
REFERRED TO IN PART 9 (TRANSFER OF TITLE IN NON-CORE
UNITS FOR DEFENCE HOUSING PROJECTS)**

[Insert details to be drafted on a Project-specific basis]

SCHEDULE 11 – DOCUMENTS RELATING TO PART 10 (TRANSFER OF TITLE IN NON-CORE UNITS FOR DEFENCE HOUSING PROJECTS) (OPTIONAL CLAUSES)

Part 1 – Table 1 (Units)

Column 1	Column 2		Column 3
Unit Year	Number of Core Units	Number of Non-Core Units	
[1-9]			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

Part 2 – Lease

[insert as a separate document]

Part 3 – Release Amendment

[insert as a separate document]

Part 4 – SAA Lease

[insert as a separate document]

Part 5 – Sites

[insert details]

SCHEDULE 12 – PERMITTED USE REFERRED TO IN PART 11 (THIRD PARTY USE OF ASSETS)

[insert details to be drafted on a Project specific basis]

SCHEDULE 13 – PAYMENT MECHANISM

CONTENTS

PART 1	DEFINITIONS
PART 2	MONTHLY UNITARY PAYMENT
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PART 6	OTHER DEDUCTIONS
PART 7	LIMITATIONS ON DEDUCTIONS
PART 8	REPORTING
PART 9	ENERGY AND UTILITIES ADJUSTMENT
PART 10	AUTHORITY ESCALATION MEASURES
PART 11	RATCHETS
PART 12	SERVICE CREDITS

Note:

This template Paymech for MOD PFI PAV2 is designed to be as flexible as possible through the use of colour coded text (as explained in the associated Guidance Note). In addition it can also be used for projects which do not involve training service provision (by deleting the provisions with grey shading)

PART 1 - DEFINITIONS

1. DEFINITIONS

1.1 In this Schedule 13 any reference to any paragraph, Schedule, Part or Table is, except where it is expressly stated to the contrary, a reference to such paragraph, Schedule, Part or Table of this Schedule 13 and, unless the context otherwise requires, the following words and expressions shall have the following meanings:

"Additional Period" is as defined in paragraph 4.4.3 (Commencement and Duration of Unavailability) or paragraph 5.3.3 (Commencement of Service Performance Failure Deductions) as applicable;

"Adjoining Area" means an Area which adjoins an Area which is Unavailable and access to which is required to assess or attempt to Rectify the Unavailability of such Area;

"Aggregate Deductions" means, in respect of a given Payment Period, the aggregate of all Deductions made in that Performance Period;

"Annual Unitary Charge" or **"AUC"** means the annual fee referred to in the second row of the second column of Table 2 (Indexation Factors) at paragraph 3.1.1 (Indexation Calculation) to be indexed for each Payment Year using the Indexation Formula which is used to calculate the Monthly Unitary Charge in accordance with paragraph 2.2.1 (Monthly Unitary Charge);

"Annual Utility Adjustment" is, in relation to a Payment Period and in respect of a Site, as defined in paragraph 9.4 (Annual Utility Adjustment);

"Annual Utility Services Consumption Targets" is as defined in paragraph 9.3.1 (Annual Utility Services Consumption Targets);

"Area" means an area of a type identified in Schedule 1 Part 3 (Service Provision Requirements) and identified specifically in an Area Data Sheet and **"Areas"** shall be construed accordingly;

"Area Data Sheet" means the data sheet relating to a given Area within the Authority Sites as set out in Schedule 2 (Contractor's Proposals) to the Contract;

"Area Unavailability Deduction" means an amount per Unavailability Event for a given Area determined with reference to the relevant Availability Category for an Area as set out in Part 4 (Unavailability Deductions);

"Assessment Specification" means a specification describing the organisation, types of test, marking details, pass/fail criteria for the assessment of Training Objectives and the consequences of failure, and as defined in JSP 822 (The Defence Systems Approach to Training) Part 2 (Glossary of Abbreviations, Terms and Definitions). It provides the practical details required to assess the achievement of the standards specified by an associated Training Objective;

"Assessment Strategy" means the Authority's overarching assessment policy for a Course and the rationale for that policy and includes the consequences of failure of the Course by a Student;

"Authority Party Action" means any negligent act or omission of the Authority or an Authority Related Party which:

- (a) is not covered by the Contractor's Insurances; and
- (b) has a material and adverse effect on the ability of the Contractor to perform its

obligations under this Agreement or causes the Contractor to incur Losses; and

(c) is not Authority Damage or damage caused by fair wear and tear;

"Authority Remedial Measures" is as defined in paragraph 10.3.7 (Authority Remedial Plan);

"Authority Use" means all use of the Services booked by the Authority regardless of whether the user is an employee of the Authority or not;

"Available" means any Area and/or Training Session and/or Course which is not Unavailable and which meets the Availability Criteria as detailed in Schedule 1 (Authority's Requirements) and **"Availability"** shall be construed accordingly;

"Availability Criteria" means, in respect of a given Area, Training Session or Course, the availability criteria as set out in Table 4 (Availability Criteria) of Schedule 1 Part 0 (Introduction to Authority's Requirements) together with any such criteria specific to an Area and/or Training Session and/or Course which shall be identified on the Area Data Sheet and/or Instructional Specification and/or Formal Training Statement and/or Operational Performance Statement and/or Training Authorisation Document for that Area and/or Training Session and/or Course;

"AWE" means the Average Weekly Earnings index for the whole economy seasonally adjusted excluding bonuses contained in [insert relevant table from SIC 2007 AWE Industrial Classification] (Office for National Statistics reference: [insert relevant reference]) published by the Office for National Statistics or failing such publication or in the event of a fundamental change to the index, such other index as the Parties may agree in accordance with paragraph 3.3 (Changes to Indices);

"AWE Publication Date" means the date on which AWE for the February immediately preceding the relevant Indexation Review Date is published;

"Band1Rate" means the annual fee referred to in the third row of the second column of Table 2 (Indexation Factors) at paragraph 3.1.1 (Indexation Calculation) to be indexed for each Payment Year using the Indexation Formula which is used to calculate the Monthly Unitary Charge in accordance with paragraph 2.2.1 (Monthly Unitary Charge);

"Band2Rate" means the annual fee referred to in the third row of the third column of Table 2 (Indexation Factors) at paragraph 3.1.1 (Indexation Calculation) to be indexed for each Payment Year using the Indexation Formula which is used to calculate the Monthly Unitary Charge in accordance with paragraph 2.2.1 (Monthly Unitary Charge);

"Band3Rate" means the annual fee referred to in the third row of the fourth column of Table 2 (Indexation Factors) at paragraph 3.1.1 (Indexation Calculation) to be indexed for each Payment Year using the Indexation Formula which is used to calculate the Monthly Unitary Charge in accordance with paragraph 2.2.1 (Monthly Unitary Charge);

"Band 2 Threshold" means the number of Training Units per annum set out in Schedule 1 Part 3 (Service Provision Requirements);

"Band 3 Threshold" means the number of Training Units per annum set out in Schedule 1 Part 3 (Service Provision Requirements);

"Bathroom" is as specified in Table 3.1.1 in Schedule 1 Part 3 (Service Provision Requirements);

"Bedding-In Period" is as defined in paragraph 7.1 (Bedding-in Period);

"**Bedroom**" is as specified in Table 3.1.1 in Schedule 1 Part 3 (Service Provision Requirements);

"**Bedroom Not In Use**" means a Bedroom that is not, for the whole of the Payment Period in respect of which the Area Unavailability Deduction is being made, in use as a bedroom;

"**Change Protocol Deductions**" means the deductions arising pursuant to paragraph 6.4 (Change Protocol Deductions);

"**Class**" means a group of Students undertaking a Course as specified in the [tba training programme];

"**Consequential Unavailability**" is as defined in paragraphs 4.3.1 and 4.3.2 as applicable and "**Consequentially Unavailable**" shall be construed accordingly;

"**Consequentially Unavailable Area**" is as defined in paragraphs 4.3.1 and 4.3.2 as applicable;

"**Contractor Party**" means any employee of the Contractor employed in the normal course of business on-site at the Authority Sites and nominated by the Contractor for the purposes of notification under paragraphs 4.2 (Notice of Unavailability Event) and 5.2 (Notice of a Service Performance Failure);

"**Correct Figures**" is as defined in paragraph 3.3.2 (Changes to Indices);

"**Course**" means a self-contained formal sequence of Training that can be clearly identified as separate from another Training sequence and as defined in JSP 822 (The Defence Systems Approach to Training) Part 2 (Glossary of Abbreviations, Terms and Definitions);

"**Course Completion Not Carried Out**" or "**CCNCO**" is as set out in Part 12 (Service Credits);

"**Courseware**" means the material used to deliver Training to Students, including instructor guides, lesson plans, presentation slides (hard copy and/or computer based), computer based training software (authorware) and hardware, reference material, internal validation and assessment documentation, and student guides and notes;

"**Deduction**" means any Unavailability Deduction, Unavailable But Used Deduction, Reporting Deduction, Repeated Rectification Deduction, Service Performance Deduction and Change Protocol Deduction made in accordance with this Schedule 13 incurred in the relevant Payment Period;

"**Dining Room**" is as specified in Table 3.1.1 in Schedule 1 Part 3 (Service Provision Requirements);

"**Duty Carried Out with Faults**" or "**DCOF**" is as set out in Part 12 (Service Credits);

"**Duty Not Carried Out**" or "**DNCO**" is as set out in Part 12 (Service Credits);

"**Duty Partially Carried Out**" or "**DPCO**" is as set out in Part 12 (Service Credits);

"**Enabling Objective**" or "**EO**" means a lower level objective of Training, the attainment of a set of which by a Student implies the attainment of the relevant Training Objective;

"**Energy and Utilities Adjustment**" or "**EUA**" is as defined in paragraph 9.1.1 (Energy and Utilities Adjustment);

"En Suite Toilet Area" is as specified in Table 3.1.1 in Schedule 1 Part 3 (Service Provision Requirements);

"Event" means an incident, fault, failure or state of affairs affecting an Area and/or Training Session and/or Course and/or Service which does not meet or comply with the Service Provision Requirements and/or the Service Availability Requirements. Subject to the provisions of this Contract an Event is capable of becoming an Unavailability Event and/or a Service Performance Failure, as appropriate;

"Event Notice" means a notice given in accordance with paragraphs 4.2.1 (Notice of Unavailability Event) or 5.2.1 (Notice of a Service Performance Failure) as applicable;

"Forecast AWE" means the estimated AWE for the month of February immediately preceding the relevant Indexation Review Date, as agreed by the Parties in writing;

"Forecast Period" has the meaning set out in paragraph 3.2.1(b) (Forecast Indices);

"Forecast PPI" means the estimated PPI for the month of February immediately preceding the relevant Indexation Review Date, as agreed by the Parties in writing;

"Forecast RPI" means the estimated RPI for the month of February immediately preceding the relevant Indexation Review Date, as agreed by the Parties in writing;

"Formal Training Statement" or **"FTS"** means a requirement document that describes the totality of training required to satisfy the requirements of an OPS and describes the Training Objectives that must be achieved, where training will be conducted, and is as defined in JSP 822 (The Defence Systems Approach to Training) Part 2 (Glossary of Abbreviations, Terms and Definitions). The Contractor shall not be obliged to comply with the requirements of Section 2 (Workplace Training Statement) and Section 3 (Residual Training Gap Statement) of the FTS;

"Garage" is as specified in Table 3.1.1 in Schedule 1 Part 3 (Service Provision Requirements);

"Guaranteed Usage Units" means the number of Training Units per annum set out in Schedule 1 (Authority's Requirements) which is the guaranteed minimum number of Training Units per annum required by the Authority, above which the Authority is not obliged to require or pay for;

"Help Desk Service" means the help desk service as specified in Schedule 1 Part 3 (Service Provision Requirements);

"Incorrect Figures" is as defined in paragraph 3.3.2 (Changes to Indices);

"Indexation Base Month" means April [insert relevant year];

"Indexation Formula" means the formula set out in paragraph 3.1 (Indexation Calculation);

"Indexation Review Date" shall be 01 April in the next April after the Indexation Base Month, and every 01 April thereafter;

"Instructional Specification" means a requirement document that is produced from the products of training design and development, Assessment Strategy and method, media selection processes as described in JSP 822 (The Defence Systems Approach to Training). Each usually contains the details of an Enabling Objective and associated key learning points, the relevant assessment/test, methods and media selected, time allocated, resource requirements and essential references as defined in JSP 822 (The

Defence Systems Approach to Training) Part 2 (Glossary of Abbreviations, Terms and Definitions);

"**Kitchen**" is as specified in Table 3.1.1 in Schedule 1 Part 3 (Service Provision Requirements);

"**Logged Event Time**" means the time at which an Event Notice was notified to the Help Desk Service in accordance with paragraphs 4.2 (Notice of Unavailability Event) or 5.2 (Notice of a Service Performance Failure) (as appropriate) or, in the case of Training Sessions and/or Causes, is as defined in paragraph 4.4.4 (Commencement and Duration of Unavailability);

"**Logged Rectification Time**" means the time at which the Rectification was notified to the Help Desk Service in accordance with paragraph 4.5.1 (Cessation of Unavailability) (subject to paragraphs 4.5.2 and 4.5.3), or paragraph 5.4.3 (Duration of a Service Performance Failure Deduction) (subject to paragraph 5.4.2 (Duration of a Service Performance Failure Deduction)) as applicable;

"**Monthly Guaranteed Usage Units**" means 1/12th of the Guaranteed Usage Units;

"**Monthly Performance Report**" means the report submitted by the Contractor to the Authority in accordance with Part 6 (Other Deductions);

"**Monthly Performance Report Consideration Period**" means the period defined in paragraph 8.1.3(a);

"**Monthly Performance Report Dispute Notice**" means the notice defined in paragraph 8.1.3(a);

"**Monthly Review Meeting**" means the monthly meeting held between the Authority's Representative or nominated representative and the Contractor's Representative or nominated representative to discuss the Monthly Performance Report;

"**Monthly Unitary Charge**" or "**MUC**" means the payment from the Authority to the Contractor as set out in paragraph 2.2 (Monthly Unitary Charge);

"**Monthly Unitary Payment**" or "**MUP**" means the payment from the Authority to the Contractor as set out in paragraph 2.1 (Calculation of the Monthly Unitary Payment);

"**Notice of Rectification**" is as defined in paragraphs 4.5.1 (Cessation of Unavailability) and 5.4.3 (Duration of a Service Performance Failure Deduction);

"**Operational Performance Statement**" or "**OPS**" means a requirement document derived from the job analysis, which provides a detailed statement of the Training Tasks required to be undertaken by a Student to achieve the operational and/or workplace performance required, and as defined in JSP 822 (The Defence Systems Approach to Training) Part 2 (Glossary of Abbreviations, Terms and Definitions). The Contractor shall not be obliged to comply with the requirements identified in the OPS as training category 5 or 6, as defined in JSP 822 (The Defence Systems Approach to Training) Part 5, Chapter 1 pages 5-1-20 to 5-1-21;

"**Operational Period**" in respect of a Service is as specified in Table 1 of Schedule 1 Part 0 (Introduction to Authority's Requirements);

"**Other Deductions**" has the meaning set out in Part 6 (Other Deductions);

"**Other Payments**" or "**OP**" means the payment from the Authority to the Contractor as set out in paragraph 2.4 (Other Payments);

"Payment Year" means a period of twelve months commencing on 01 April, provided that:

- (a) the first Payment Year shall be the period commencing on the Contract Commencement Date and ending on the immediately following 31 March; and
- (b) the final Payment Year shall be the period commencing on 01 April immediately preceding the last day of the Contract Period and ending on that day;

"Permanent Repair" means Rectification following the agreement of a Temporary Repair;

"Permanent Repair Deadline" means the deadline defined in paragraph 4.11.1(b) (Temporary Repairs);

"PPI" means the Producer Price Index contained in table 3.01 of the Economic and Labour Market Review (Office for National Statistics reference: PLLU) published by the Office for National Statistics or failing such publication or in the event of a fundamental change to the index, such other index as the Parties may agree in accordance with paragraph 3.3;

"PPI Publication Date" means the date on which PPI for the February immediately preceding the relevant Indexation Review Date is published;

"Ratchet" or **"R"** means the multiple applied to Deductions in accordance with paragraphs 4 (Unavailability Deductions) and 5 (Service Performance Deductions);

"Reconciliation Amount" is as defined in paragraph 2.2.2(a) (Monthly Unitary Charge);

"Rectification" means the rectifying of a breach or breaches of the Authority's Requirements in respect of an Area and/or Training Session and/or Course and/or Service (as applicable) such that the affected Area and/or Training Session and/or Course and/or Services (as applicable) meet all relevant Authority's Requirements, and **"Rectified"**, **"Rectifying"** and **"Rectify"** shall be construed accordingly;

"Rectification Period" means the period set out in Table 3 (Rectification Periods for Unavailability Events) in Schedule 1 Part 0 (Introduction to Authority's Requirements) for Areas and/or Training Sessions and/or the period set out in Table 2 (Performance Categories), Schedule 1 Part 0 (Introduction to Authority's Requirements) for Services, which:

- (a) subject to limb (b), for Areas and/or Services and/or Training Sessions and/or Courses elapses from the relevant Logged Event Time; and
- (b) for Training Sessions where the Unavailability Event is caused by reasons other than no access to an Asset and the Training Service Performance Failure Category is DCOF elapses from the end of the planned completion time of the Training Session,

during which the Contractor shall Rectify an Unavailability Event in order to avoid incurring an Unavailability Deduction or shall Rectify a Service Performance Failure in order to avoid a Service Performance Deduction, as appropriate;

"Relocation Date" means the date and time, notified by the Contractor to the Authority in accordance with paragraph 4.10.2 (Temporary Alternative Accommodation), on which it is intended by the Parties that the Authority may resume occupation of the Area(s) for which any Temporary Alternative Accommodation is a replacement;

"**Remedial Plan**" means a plan to be submitted by the Authority to the Contractor in accordance with paragraph 10.3 (Remedial Plan);

"**Renewable Energy Percentage**" means, in respect of each Site, the amount of biofuel gas projected to be used in the relevant Payment Period expressed as a percentage of the aggregate of gas, electricity and biofuel to be used in such Payment Period at such Site;

"**Review Date**" means the first day of the relevant Contract Year;

"**RPI**" means the Retail Prices Index contained in table 4.1⁸⁷ of the Focus on Consumer Price Indices published by the Office for National Statistics or failing such publication or in the event of a fundamental change to the index, such other index as the Parties may agree in accordance with paragraph 3.3 (Changes to Indices);

"**RPI Publication Date**" means the date on which RPI for the February immediately preceding the relevant Indexation Review Date is published;

"**Separate WC**" is as specified in Table 3.1.1 in Schedule 1 Part 3 (Service Provision Requirements);

"**Service Credit**" means the credit which is awarded to the Authority in accordance with paragraph 4.9 (Training Service Availability Deduction) as set out in Table 11 (Service Credits) in Part 12 (Service Credits);

"**Service Performance Category**" means the categories set out in Part 5 (Service Performance Deductions) as applied to the Services in accordance with Part 5 (Service Performance Deductions);

"**Service Performance Deductions**" means the Deduction (if any) made to the Monthly Unitary Charge as a result of Performance Failures in accordance with Part 5 (Service Performance Deductions);

"**Service Performance Failure**" means any failure to meet the Service Provision Requirements;

"**Service Performance Failure Deduction**" means an amount per Service Performance Failure determined by looking up the Service Performance Category for the Service Performance Failure against the amounts set out in paragraph 5.6.1 (Service Performance Deduction), and adjusted in accordance with paragraph 5.6.2 (Indexation of Calculation of Service Performance Deductions);

"**Service User**" means an officer, agent or employee of the Authority acting in the course of his office or employment or a Permitted Occupier but excluding the Contractor or any Contractor Related Party;

"**Sitting Room**" is as specified in Table 3.1.1 in Schedule 1 Part 3 (Service Provision Requirements);

"**Student**" means any person undergoing Training as part of the Project under the auspices of Authority Use, whether an employee of the Authority or not, including any Authority instructors;

"**Study**" is as specified in Table 3.1.1 in Schedule 1 Part 3 (Service Provision Requirements);

⁸⁷ Acquisition teams to consider the most appropriate index to use in relation to their project, e.g. RPI or RPIX (table 4.4).

"Syllabus" means a requirement document derived from the job analysis, which provides a detailed statement of the Training Tasks and Training Objectives required to be undertaken by a Student to achieve the operational and/or workplace performance required, and is an old style format equivalent of an OPS, FTS and TPS;

"Temporary Alternative Accommodation" is as defined in paragraph 4.10.1 (Temporary Alternative Accommodation);

"Temporary Relocation Plan" is as defined in paragraph 4.10.2 (Temporary Alternative Accommodation);

"Temporary Repair" means, in respect of the occurrence of an Event, works of a temporary nature that do not constitute Rectification but satisfy the Availability Criteria as agreed with the Authority and/or substantially make good the relevant Performance Failure for the period until the Permanent Repair can be made;

"Total Deductions" means the sum of all Total Unavailability Deductions, Total Service Performance Deductions and Other Deductions for the relevant Payment Period;

"Total Service Performance Deduction" is as calculated in accordance with paragraph 5.5 (Total Service Performance Deduction);

"Total Unavailability Deductions" is as calculated in accordance with paragraph 4.6.1 (Total Unavailability Deduction);

"Training" means an activity that aims to impart the specific skills, knowledge and/or inculcate appropriate attitudes required by a Student in order to perform adequately a task or job, as defined in JSP 822 (The Defence Systems Approach to Training) Part 2 (Glossary of Abbreviations, Terms and Definitions);

"Training Objective" or **"TO"** means a precise statement of the knowledge, skills, behaviours and attitudes that a Student must be able to acquire after Training by the Contractor, as described in the relevant Operational Performance Statement or Syllabus;

"Training Performance Statement" or **"TPS"** means a requirement document that describes the Training Objectives, in terms of performance, conditions and standards, to be attained by Students in the formal training environment, either under the school and/or establishments direct control or within a school and/or establishment supervised facility, and as defined in JSP 822 (The Defence Systems Approach to Training) Part 2 (Glossary of Abbreviations, Terms and Definitions);

"Training Service Element" means the training service equipment listed in Schedule 2 (Contractor's Proposals);

"Training Service Unavailability Deduction" is as calculated in accordance with paragraph 4.9.1 (Training Service Unavailability Deduction);

"Training Session" means a period of Authority Use of any element of the Service and which constitutes a single training exercise, lesson, test or assessment, provided in accordance with Schedule 1 Part 3 (Service Provision Requirements);

"Training Tasks" means a single component or element of Training for a particular duty or task delivered by the Contractor, in order to meet a particular Training Objective;

"Training Unit" means a period of usage, or a booked or planned period of usage, for the relevant Training Service Element of up to sixty consecutive minutes;

"Transition Factor" means the weighting calculated in accordance with paragraph 2.3 (Transition Factor);

"Unavailability Deductions" means Area Unavailability Deductions, Unavailable But Used Deductions, and Training Service Unavailability Deductions;

"Unavailability Event" means an Event that has not been Rectified within the relevant Rectification Period or an Additional Period and which causes the Area and/or Training Service and/or Course to be Unavailable as detailed in paragraph 4 (Unavailability Deductions);

"Unavailability Period" means in respect of any Unavailability the period commencing as set out in paragraph 4.4 (Commencement and Duration of Unavailability) and ending in accordance with paragraph 4.5 (Cessation of Unavailability);

"Unavailable" means (and **"Unavailability"** shall be construed accordingly) any Area and/or Training Session and/or Course which does not meet or has not met all the applicable Availability Criteria for the Area and/or Training Session and/or Course, or any Area which is Consequentially Unavailable, or is otherwise deemed to be Unavailable by the Authority in accordance with the terms of this Schedule 13 and for the purposes of Part 4 (Unavailability Deductions), references to **"Unavailable"** shall include references to Unavailable But Used and Consequentially Unavailable as appropriate;

"Unavailable But Used" in relation to an Area has the meaning set out in paragraph 4.8 (Training Service Unavailability Deduction);

"Unavailable But Used Deduction" means the Deduction (if any) made to the Monthly Unitary Charge as a result of Areas being Unavailable But Used;

"Utility Room" is as specified in Table 3.1.1 in Schedule 1 Part 3 (Service Provision Requirements);

"Utility Services" means the provision at a charge to the Authority of gas, electricity, biofuel and water to the Sites and removal of waste water from the Sites and **"Utility Service"** shall refer to any one of them;

"Warning Notice" is as defined in paragraph 10.1.1 (Warning Notices);

PART 2 – THE UNITARY PAYMENT

2. UNITARY PAYMENT

2.1 Calculation of the Monthly Unitary Payment

2.1.1 The Monthly Unitary Payment shall commence on the first Services Commencement Date and shall be calculated in accordance with the following formula:

$$MUP_n = MUC_n + OP_{n-1} - D_{n-2} - ATPUS_n + EUA_y$$

where:

MUP_n means the Monthly Unitary Payment for Payment Period "n"

MUC_n means the Monthly Unitary Charge for Payment Period "n"

OP_{n-1} means the Other Payments for the preceding Payment Period "n-1"

D_{n-2} means the aggregate of all Deductions for the pre-preceding Payment Period "n-2", calculated in accordance with the following formula:

$$D_{n-2} = AUD_{n-2} + APD_{n-2} + OD_{n-2}$$

AUD_{n-2} means the Unavailability Deductions for the pre-preceding Payment Period "n-2"

APD_{n-2} means the Service Performance Deductions for the pre-preceding Payment Period "n-2"

OD_{n-2} means the Other Deductions for the pre-preceding Payment Period "n-2"

$ATPUS_n$ means the aggregate of the Third Party Income Share for the Payment Period "n" calculated in accordance with Clause 60 (Third Party Income Share)

EUA_m means the Energy and Utilities Adjustment for the Payment Year

n means the relevant Payment Period

y means the relevant Payment Year

2.1.2 The Monthly Unitary Payment for a Payment Period may be a negative amount. If the Monthly Unitary Payment for a Payment Period is a negative amount then an equal amount may, at the Authority's discretion, be set-off against any other amounts due to the Contractor from the Authority now or in the future or recovered by the Authority from the Contractor as a debt.

2.2 Monthly Unitary Charge⁸⁸

2.2.1 The Monthly Unitary Charge for any Payment Period "n" shall be calculated in accordance with the following formula.

Option A

$$MUC_n = \frac{AUC_y \times TF_n}{12}$$

where:

MUC _n	means the Monthly Unitary Charge for Payment Period "n"
AUC _y	means the Annual Unitary Charge ⁸⁹ for Payment Year "y", which includes the Payment Period in respect of which MUC _n is to be calculated, after indexation (calculated using the Indexation Formula)
TF _n	means the Transition Factor for the Annual Unitary Charge, as calculated in accordance with paragraph 2.3 (Transition Factor)
n	means the relevant Payment Period

Option B

$$MUC_n = \frac{AUC_y \times A_n \times W_n \times TF_n}{12}$$

where:

MUC _n	means the Monthly Unitary Charge for Payment Period "n"
AUC _y	means the Annual Unitary Charge ⁹⁰ for Payment Year "y", which includes the Payment Period in respect of which MUC _n is to be calculated, after indexation (calculated using the Indexation Formula)
A _n	means the total number of Core Units and Non-core Authority Units in the Payment Period
W _n	means the weighted number of Units for the Payment Period calculated in

⁸⁸ This template assumes a single unitary charge calculated using one of three options to be chosen on a project specific basis (e.g. Accommodation, housing or training & simulation) although some projects may require a combination of payment approaches. Projects may amend this to include other payment streams on a project specific basis, e.g. training & simulation projects may have a combination of options A & C or other more complex projects may include incentive fees such as course completion or whole service incentive fees.

⁸⁹ In Option A, the Annual Unitary Charge is the single annual fee for the whole service.

⁹⁰ In Option B, the Annual Unitary Charge is the single annual fee for each element of the service (Authority Unit for houses).

accordance with the following formula:

$$W_n = \frac{X + 0.7 Y}{(X + Y)}$$

where

"X" means the number of Core Units during the Payment Period.

"Y" means the number of Non-core Authority Units during the Payment Period

TF_n means the Transition Factor for the Annual Unitary Charge, as calculated in accordance with paragraph 2.3 (Transition Factor)

n means the relevant Payment Period

Option C⁹¹

$$MUC_n = TF_n \times \left(\sum_{a=0}^q (Band1Rate_y \times MTO P_n) + \left(\sum_{a=0}^q Band2Rate_y \times ATU1_n \right) + \left(\sum_{a=0}^q Band3Rate_y \times ATU2_n \right) \right)$$

where:

MUC_n means the Monthly Unitary Charge for Payment Period "n"

\sum means the aggregate for set "a" of the formula that follows in brackets, for each Training Service Element as set out in Schedule 1 (Authority's Requirements) from the first Training Service Element (a=0) to the last Training Service Element (a=q).

$Band1Rate_y$ means the Band1Rate for Payment Year "y", which includes the Payment Period in respect of which MUC_n is to be calculated, after indexation (calculated using the Indexation Formula)

$Band2Rate_y$ means the Band2Rate for Payment Year "y", which includes the Payment Period in respect of which MUC_n is to be calculated, after indexation (calculated using the Indexation Formula)

$Band3Rate_y$ means the Band3Rate for Payment Year "y", which includes the Payment Period in respect of which MUC_n is to be calculated, after indexation (calculated using the Indexation Formula)

⁹¹ For Option C, the annual unitary charge concept is replaced by an hourly rate per Training Service Element paid monthly using three (or more) payment bands – Band1Rate being the 'take or pay' or guaranteed payment to the Contractor, and subsequent bands being additional usage. This mechanism may be amended on a project specific basis depending on how many Training Service Elements are required.

MTOP_n	means the total number of Monthly Guaranteed Usage Units in the Payment Period ⁹²
ATU1_n	means the additional Training Units used by the Authority in excess of the Monthly Guaranteed Usage Units up to the Band 2 Threshold
ATU2_n	means the additional Training Units used by the Authority in excess of the Band 2 Threshold up to the Band 3 Threshold
TF_n	means the Transition Factor for the Annual Unitary Charge, as calculated in accordance with paragraph 2.3 (Transition Factor)
a	means each Training Service Element commencing with the first Training Service Element as set out in Schedule 1 (Authority's Requirements)
q	means the last Training Service Element as set out in Schedule 1 (Authority's Requirements)
n	means the relevant Payment Period
y	means the relevant Payment Year

2.2.2 The Monthly Unitary Charge in respect of the final Payment Period shall be calculated in accordance with the formula set out at paragraph 2.2.1 of this Part 2, provided that:

- (a) an additional amount (the "**Reconciliation Amount**"), being two times the average Aggregate Deduction applied, pursuant to this Contract, over the six Payment Periods immediately prior to such final Payment Period, is also deducted from the Monthly Unitary Charge in respect of the final Payment Period; and
- (b) as soon as is reasonably practicable after the appropriate Deductions in respect of the final two Payment Periods are agreed or determined in accordance with PART 27 (Dispute Resolution) of this Contract, and any Other Payments are determined, any under or over payment of the Monthly Unitary Charge, shall be made by or to the Contractor (as the case may be) and in any event within ten Business Days of such agreement or determination.

2.3 Transition Factor

2.3.1 The Transition Factor to be incorporated into the formulae for the relevant Payment Period "n" at paragraphs 2.2 (Monthly Unitary Charge), 4.7 (Area Unavailability Deductions), 4.8 (Area Unavailable But Used Deduction), 4.9 (Training Service Unavailability Deduction) and 5.6 (Service Performance Deduction) shall be calculated using the following formula:

⁹² For Training service type contracts, consideration should be given to annual reconciliation of actual usage verses guaranteed usage to ensure the Authority does not over pay the Contractor by virtue of making monthly payments against an annual requirement. MOD PFU should be contacted for suitable drafting.

$$n = \sum_{x=0}^q (PF_x \times SW_x)$$

where:

- TF_n means the weighting to be applied to the relevant fee/amount
- Σ means the aggregate for set 'x' of the formula that follows in brackets, for each Service Level that an Acceptance Certificate has been issued in respect of Clause 36 from the first Service Level (x=0) to the last Service Level (x=q).
- q means the total number of Service Levels as set out in the Core Table in Schedule 1 (Authority's Requirements)
- x means the Service Level being an incremental number, starting at zero
- PF_x means the period factor, representing the proportion of the relevant Payment Period for which the relevant Service Level is provided and which is calculated using the following formula:
- $$PF_x = \frac{AD_x}{CD_n}$$
- SW_x means the relevant service weighting factor for each Service Level as set out in the final column of Table 1 (Service Levels) as applicable
- AD_x means the number of days for which the relevant Service Level is provided in the relevant Payment Period
- CD_n means the total number of days in the relevant Payment Period

Table 1 - Service Levels

Service Level "x"	Services	SW _x
[0]	[Initial Service]	[0.0]
[1]	[Service Level 1]	[0.1]
[2]	[insert project specific service levels as set out in the Core Table in Schedule 1 (Authority's Requirements)]	[0.2]
[3]	[insert project specific service levels as set out in the Core Table in Schedule 1 (Authority's	[0.2]

Service Level "x"	Services	SW _x
	Requirements)]	
[4]	[Full Service]	[0.5]

2.4 Other Payments

2.4.1 The Authority shall pay to the Contractor as part of the Monthly Unitary Payment the Other Payments in accordance with following formula:

$$OP_n = [\text{insert project specific payments}]_n$$

where:

OP_n means the Other Payments for the relevant Payment Period after indexation (calculated using the Indexation Formula)

[tba]_n means [insert project specific payments]⁹³ for Payment Period "n"

2.5 Inapplicability, invalidity, illegality or unenforceability

2.5.1 Without prejudice to any of the Authority's other rights under the Contract, if for any reason any part of this Schedule 13 or any other part of this Contract which provides for the calculation or award to the Authority of any Deductions should be held (by any mediator, adjudicator, court of competent jurisdiction, arbitrator or other judicial authority) inapplicable, invalid, illegal or unenforceable as a penalty in any circumstances with the result that the relevant Deductions which would otherwise have been awarded to the Authority are not so awarded, then the Contractor hereby waives its right to claim any amount of the Monthly Unitary Payment in excess of that which it would have been entitled to receive had the relevant part of this Schedule 13 or other part of this Contract not been held to be inapplicable, invalid, illegal or unenforceable so that the Parties are placed in a position that is no better and no worse than the position they would have been in had the relevant part of this Schedule 13 or other part of this Contract not been held to be inapplicable, invalid, illegal or unenforceable.

2.6 No prejudice

2.6.1 The provisions of this Schedule 13 are without prejudice to the Authority's right to terminate this Contract pursuant to Clause 132 (Termination by the Authority) and the Authority's rights under Clause 78 (Measures in a Crisis) and PART 17 (Authority Step-in).

⁹³ Other Payments to be included on a project specific basis, e.g. could include variable payments in addition to the Monthly Unitary Charge such as non-core hours premium, short notice non-core hours premium and third party cancellation payments used on training and simulation projects.

PART 3 – INDEXATION

3. INDEXATION

3.1 Indexation Calculation

3.1.1 On each Indexation Review Date, the amounts referred to in the second column (headed "Fee₀") of Table 2 (Indexation Factors) shall be adjusted by applying the Indexation Formula to them as follows:

$$Fee_y = Fee_0 \times \left(Fee_Fix + Fee_RPI \times \frac{b}{a} + Fee_AEI \times \frac{d}{c} + Fee_PPI \times \frac{f}{e} \right)$$

where:

$$Fee_Fix + Fee_RPI + Fee_AEI + Fee_PPI = 1.00$$

and:

Fee_y means the relevant annual fee for Payment Year "y", after indexation (calculated using the Indexation Formula)

Fee₀ means the relevant amount set out in the second column of Table 2 (Indexation Factors) that is to be indexed from time to time pursuant to the terms of this Schedule 13

Fee_Fix means the proportion, as set out in the relevant row of the third column of Table 2 (Indexation Factors), of Fee₀ which is not subject to indexation

Fee_RPI means the proportion, as set out in the relevant row of the fourth column of Table 2 (Indexation Factors), of Fee₀ which is subject to indexation using RPI

Fee_AWE means the proportion, as set out in the relevant row of the fifth column of Table 2 (Indexation Factors), of Fee₀ which is subject to indexation using AWE

Fee_PPI means the proportion, as set out in the relevant row of the sixth column of Table 2 (Indexation Factors), of Fee₀ which is subject to indexation using PPI

a means the value of RPI for the month of February⁹⁴ immediately preceding the Indexation Base Month

b means the value of RPI for the month of February immediately preceding the relevant Indexation Review Date

c means the value of AWE for the month of February immediately preceding the Indexation Base Month

d means the value of AWE for the month of February immediately preceding the relevant Indexation Review Date

e means the value of PPI for the month of February immediately preceding the Indexation Base Month

f means the value of PPI for the month of February immediately preceding the relevant Indexation Review Date

y means the relevant Payment Year

⁹⁴ In relation to "a" to "f" if the Project Team considers, having taken appropriate advice, that January would be a preferable reference month then January may be used instead of February.

Table 2 - Indexation factors

Fee_m	Fee_0 (£)	Fee_{Fix}	Fee_{RPI}	Fee_{AEI}	Fee_{PPI}
AUC _m	[x,xxx,xxx]	[x.xx]	[x.xx]	[x.xx]	[x.xx]
Band1Rate _y	[x,xxx,xxx] ⁹⁵	[x.xx]	[x.xx]	[x.xx]	[x.xx]
Band2Rate _y	[x,xxx,xxx]	[x.xx]	[x.xx]	[x.xx]	[x.xx]
Band3Rate _y	[x,xxx,xxx]	[x.xx]	[x.xx]	[x.xx]	[x.xx]

3.2 Forecast Indices

3.2.1 For the purposes of calculating Fee_m pursuant to paragraph 3.1 (Indexation Calculation), where RPI and/or AWE and/or PPI for the month of February immediately preceding the relevant Indexation Review Date has not been published then:

- (a) the Forecast RPI and/or Forecast AWE and/or Forecast PPI shall be used in replacement for RPI and/or AWE and/or PPI; and
- (b) within ten Business Days of the relevant RPI Publication Date and/or AWE Publication Date and/or PPI Publication Date, Fee_m shall be recalculated, using the published RPI and/or AWE and/or PPI rather than the Forecast RPI and/or Forecast AWE and/or Forecast PPI and the fees/amounts which are to be indexed in accordance with paragraph 3.1 (Indexation Calculation) shall be adjusted for the period from the Indexation Review Date to the RPI Publication Date and/or the AWE Publication Date and/or PPI Publication Date (the "Forecast Period"); and
- (c) if the amount of the Monthly Unitary Payment paid by the Authority in accordance with this Schedule 13 in respect of the Forecast Period is either in excess of or less than the amount which would have been paid had the RPI and/or AWE and/or PPI for the month of February immediately preceding the relevant Indexation Review Date been published, then an amount equal to the shortfall or excess shall be added to or deducted from the Monthly Unitary Payment for the Payment Period which follows the relevant RPI Publication Date and/or AWE Publication Date and/or PPI Publication Date.

3.3 Changes to indices

3.3.1 If there is a material change in the nature or basis of any index required for this Schedule 13 or if any index is discontinued, the Parties shall agree upon an alternative index which as closely replicates the discontinued index as is possible, and shall make such consequential changes to the calculations in this Schedule 13 as are necessary to ensure that the alternative index is appropriately incorporated. Any dispute regarding changes to the calculations or alternative index may be referred by either Party to PART 27 (Dispute Resolution).

3.3.2 If any error or mistake shall occur in the publication of the figures for RPI and/or AWE and/or PPI ("Incorrect Figures") which have been used at

⁹⁵ If a sculpted unitary charge is proposed (i.e. one where charges are fixed and vary only by inflation), the Fee_0 figure will need to include a sculpted profile year by year rather than just the year 0 figure.

any time in any calculation in this Schedule which is subsequently duly acknowledged and corrected ("**Correct Figures**") by the Office for National Statistics or the relevant government department with responsibility for the publication of the indices then the Authority and the Contractor agree that any calculations based upon the Incorrect Figures for the adjustments of any of the fees/amounts which are to be indexed in accordance with paragraph 3.1 (Indexation Calculation) shall be recalculated based upon the Correct Figures and any overpayment or underpayment by either Party to the other which has occurred as a result of the Incorrect Figures shall be paid or repaid by the relevant Party to the other within ten Business Days of the recalculation being agreed or determined and any dispute in connection with this paragraph 3.3.2 may be referred by either Party to PART 27 (Dispute Resolution).

PART 4 – UNAVAILABILITY DEDUCTIONS

4. UNAVAILABILITY DEDUCTIONS

4.1 Authority's right to make Deductions

4.1.1 In the event of an Area and/or Training Session and/or Course becoming Unavailable (an "Unavailability Event"), the Authority may make Deductions in accordance with this Schedule 13.

4.2 Notice of Unavailability Event

4.2.1 If the Authority's Representative or a Service User believes that an Area and/or Training Session and/or Course may be or may have been Unavailable, then they may give notice (an "Event Notice") to the Help Desk Service, or to the Contractor Party, which shall contain details of the relevant Event including:

- (a) the Area and/or Training Session and/or Course believed to be Unavailable; and
- (b) the reasons why such Area and/or Training Session and/or Course is believed to be Unavailable.

4.2.2 Where an Event Notice is provided to a Contractor Party, then the Contractor Party shall report the details of the Event Notice as provided under paragraph 4.2.1 to the Help Desk Service within ten minutes of receipt of the Event Notice and the time of such notification to the Help Desk Service shall constitute the Logged Event Time in relation to such Unavailability. Where the Contractor Party fails to notify the Help Desk Service in the required time the Logged Event Time will be deemed to have occurred on the expiry of the allowed notification period.

4.2.3 Subject to paragraph 4.2.7, where the Event Notice is provided directly to the Help Desk Service, then the time of such notification shall constitute the Logged Event Time in relation to such Unavailability. Where the same failure is recorded by the Authority and the Contractor or where either Party has reported the same Event on more than one occasion, the earliest time will constitute the Logged Event Time.

4.2.4 If, prior to the provision of an Event Notice by the Authority in relation to an Area, the Contractor believes that any Area and/or Training Session and/or Course is Unavailable the Contractor shall give notice, containing the information required under paragraph 4.2.1, to the Help Desk Service within ten minutes. Subject to paragraph 4.2.7 the time of such notification will constitute the Logged Event Time in relation to such Unavailability and the Help Desk Service shall notify the Authority's Representative, promptly after its receipt of the details contained within it. Subject to paragraph 4.2.7 where the Contractor Party fails to notify the Help Desk Service in the required time the Logged Event Time will be deemed to have occurred on the expiry of the allowed notification period.

4.2.5 The Event Notice shall be given to the Help Desk Service or, where relevant, the Contactor Party either orally (which shall be recorded and logged in accordance with the requirements set out in Schedule 1 (Authority's Requirements)) or in writing. The Contractor shall, within one hour of the relevant Logged Event Time (and without prejudice to the expiry of the relevant Rectification Period) confirm orally or in writing to the Authority's Representative whether it agrees that such fault has given rise to Unavailability. If the Contractor's Representative agrees then paragraph 4.2.6 shall apply.

4.2.6 The Contractor shall, for so long as such Area and/or Training Session and/or Course remains Unavailable, provide the Authority:

- (a) on a daily basis with an update on the progress made in Rectifying such Unavailability, together with any revised estimate as to when such Unavailability will be made safe and/or Rectified; and
- (b) on a monthly basis with a report of all events of Unavailability reported in the preceding Payment Period together with confirmation of the time between the Logged Event Time and the Logged Rectification Time as part of the Monthly Performance Report.

4.2.7 Where the Event Notice or notification under paragraph 4.2.4 is in relation to a Training Session and/or Course are believed to be Unavailable then the planned start time of Training Session and/or Course shall constitute the Logged Event Time in relation to such Unavailability.

4.3 Consequential Unavailability

4.3.1 Where an Area specified in the second row of Table 3 (Consequential Unavailability) as amended from time to time is or at any time becomes Unavailable any other Area identified in the Area Data Sheet for such Unavailable Area (and summarised in Table 3 (Consequential Unavailability) as amended from time to time) as being Consequentially Unavailable (a "Consequentially Unavailable Area") shall be deemed to be Unavailable (and such deemed Unavailability shall be referred to as "Consequential Unavailability"). The Logged Event Time in respect of the Consequentially Unavailable Area will be deemed to be the same as that for the original Area which is Unavailable that caused the Consequential Unavailability.

4.3.2 Where an Area is or at any time becomes Unavailable, and as a direct consequence of such Unavailability the Authority or Service User is unable (acting reasonably) to access or use or occupy for the purpose set out under this Contract any other Area identified in the Area Data Sheets then this other Area (the "Consequentially Unavailable Area") shall be deemed to be Unavailable (and such deemed Unavailability shall be referred to as "Consequential Unavailability"). The provisions of paragraphs 4.2.1 to 4.2.4 (Notice of Unavailability Event) shall apply to determine the Logged Event Time in respect of such Consequentially Unavailable Area.

4.3.3 Following the classification of an Area as Consequentially Unavailable under 4.3.2, the relevant Area Data Sheets and Table 3 (Consequential Unavailability) shall be amended to include the Areas identified as being Consequentially Unavailable Areas.

Table 3 – Consequential Unavailability

Area Ref. No. of Area which is Unavailable	Consequentially Unavailable Areas
[Insert project specific details]	[Insert project specific details]

4.4 Commencement and Duration of Unavailability

4.4.1 Subject to paragraph 6.3 (Repeated Rectification Deduction), if the Contractor successfully carries out Rectification within the specified Rectification Period then no Deduction shall be made.

- 4.4.2 If Rectification is not successfully carried out by the Contractor within the specified Rectification Period, an Unavailability Event shall occur.
- 4.4.3 For Areas that are Unavailable there shall then be a further period, (an "**Additional Period**") beginning on the expiry of the Rectification Period and of a duration equal to that of the Rectification Period. The Contractor shall ensure that Rectification is successfully carried out prior to the expiry of the Additional Period. If Rectification is not successfully carried out by the Contractor before the expiry of the Additional Period, a further Unavailability Event shall occur and a further Additional Period shall commence. Unless Rectification has been successfully carried out by the Contractor prior to the expiry of the then current Additional Period then a further Unavailability Event shall occur until such time as Rectification shall have been successfully completed.
- 4.4.4 For Training Sessions and/or Courses that are Unavailable, the period of Unavailability shall commence on the planned start time of the Training Session and/or Course (the "**Logged Event Time**") and shall end on the planned completion time of the Training Session and/or Course. If the Contractor fails to Rectify the Event causing the Unavailability Event before the end of the Training Session and/or Course and that failure affects a subsequent Training Session and/or Course, then a new Unavailability Event shall be deemed to have occurred and notified to the Contractor with a deemed Logged Event Time at the planned start time of that Training Session and/or Course.
- 4.4.5 The Rectification Period and Additional Periods shall be temporarily suspended where the Contractor has reasonably demonstrated that its attempts to remedy the relevant Unavailability are frustrated by the Authority failing to grant the Contractor access to an Area which is Unavailable (or Adjoining Area where the Contractor reasonably needs access to an Adjoining Area to remedy the relevant Unavailability). Such suspension of the Rectification Period and Additional Periods shall cease upon the Authority granting access to the relevant Area which is Unavailable or Adjoining Area where the Contractor reasonably needs access to an Area to remedy the relevant Unavailability.

4.5 Cessation of Unavailability

- 4.5.1 The Contractor shall immediately notify the Help Desk Service when it believes that any Unavailability has been Rectified. The time of such notification will, subject to paragraph 4.5.2, constitute the Logged Rectification Time in relation to such Unavailability and the Help Desk Service shall, as soon as is reasonably practicable after such notification by the Contractor, and in any event within 24 hours, notify the Authority's Representative that the relevant Unavailability has been Rectified (the "**Notice of Rectification**").
- 4.5.2 Where such Unavailability has been Rectified, the Authority's Representative and/or any Service User shall be entitled to inspect the Area and/or Training Session and/or Course within 24 hours of receipt of the Notice of Rectification by the Authority from the Contractor. If the Authority and/or any Service User has not inspected the Area and/or Training Session and/or Course within 24 hours of receipt of the Notice of Rectification by the Authority from the Contractor, then the Unavailability will be deemed to be Rectified. If a Service User does not agree that such Unavailability has been Rectified it shall notify the Authority's Representative. If the Authority's Representative acting reasonably does not agree that such Unavailability has been so Rectified then it shall promptly notify the Contractor. The Authority's decision will prevail for the purposes of determining whether the relevant

Unavailability has been Rectified. The Contractor may refer the matter to dispute resolution under PART 27 (Dispute Resolution).

4.5.3 Subject to paragraphs 4.4.1 to 4.4.4 (Commencement and Duration of Unavailability), Unavailability will continue from (and including) the Operational Period during which the Logged Event Time occurs until (and including) the Logged Rectification Time.

4.6 Total Unavailability Deduction

4.6.1 The Total Unavailability Deduction⁹⁶ for each Payment Period shall be calculated in accordance with the following formula:

$$TUD_n = AUD_n + AUBUD_n + TSUD_n$$

where:

TUD_n means the Total Unavailability Deduction

AUD_n means the aggregate of the Area Unavailability Deductions for all Areas for Payment Period "n"

AUBUD_n means the aggregate of the Area Unavailable But Used Deductions for all Areas for Payment Period "n"

TSUD_n means the Training Service Unavailability Deduction for all Training Sessions and/or Courses for Payment Period "n"

n means the relevant Payment Period

4.7 Area Unavailability Deductions

4.7.1 The Area Unavailability Deduction for each Payment Period in respect of each Area which has an Unavailability Event shall be calculated in accordance with the following formula:

$$AUD_a = AUD_y \times UE \times R \times TF_n$$

where:

AUD_a means the Area Unavailability Deduction for the relevant Area "a"

AUD_y means the Area Unavailability Deduction for that Area "a" in accordance with Table 4 (Unavailability Deductions)

UE means the number of Unavailability Events in that Area in that Payment Period

R means the Ratchet, which shall be determined by reference to Table 8 (Availability Deduction Ratchet) in Part 11 (Ratchets) for the relevant Availability Category for Area "a" and the total duration that the Area "a" was Unavailable

TF_n means the Transition Factor for the Annual Unitary Charge, as calculated in accordance with paragraph 2.3 (Transition Factor)

n means the relevant Payment Period

a means the relevant Area

⁹⁶ Other forms of unavailability deduction may be included on a project specific basis. Advice should be sought from the MOD PFU before including any.

y means the relevant Payment Year

Table 4 - Area Unavailability Deduction

Availability Category	Area Types	Area Unavailability Deduction
1	Core Unit, Non-core Authority Unit, Kitchen, Bedroom In Use [or insert project specific details]	£[insert] ⁹⁷
2	Lavatory WC and Basin, Bathroom, Sitting Room, Dining Room [or insert project specific details]	£[insert] ⁹⁸
3	[insert project specific details]	£[insert]
4	Bedroom Not In Use, Utility Room, Study, Hall and Pram Space, Porch or Lobby, Garage [or insert project specific details]	£[insert] ⁹⁹

4.7.2 Indexation of the Area Unavailability Deduction

On each Review Date the Area Unavailability Deductions set out in paragraph 4.7.1 shall be indexed in accordance with the following formula:

$$AUD_y = AUD_0 \times AUC_y / AUC_0$$

where:

AUD_y means the Area Unavailability Deduction for the current Payment Year "y"

AUD₀ means the Area Unavailability Deduction set for each Area for the first Contract Year, as detailed in this Part 4

AUC_y means the Annual Unitary Charge for the current Payment Year "y"

AUC₀ means the Annual Unitary Charge for the first Payment Year

y means the relevant Payment Year

⁹⁷ Would relate to Kitchen and Bedrooms in use calibrated to deduct equivalent of 100% of UC for a single house.

⁹⁸ Would relate to Toilet, Bathrooms etc in use calibrated to deduct equivalent of 50% of UC for a single house.

⁹⁹ Would relate to Utility Room etc in use calibrated to deduct equivalent of 50% of UC for a single house.

4.8 Area Unavailable But Used Deduction

4.8.1 If any Area, including any Temporary Alternative Accommodation accepted by the Authority pursuant to paragraph 4.10 (Temporary Alternative Accommodation), is Unavailable during an Operational Period but is nevertheless used by the Authority during that Operational Period, then the Area will be "**Unavailable But Used**" until the Unavailability is Rectified. The Area Unavailable But Used Deduction for each Unavailability Event for the period in respect of which an Area is Unavailable But Used shall be calculated in accordance with the following formula:

$$AUBUD_a = AUD_y \times UE \times R \times 0.5 \times TF_n$$

where:

- AUBUD_a means the Unavailable But Used Deduction for the relevant Area "a"
- AUD_y means the Area Unavailability Deduction for that Area
- UE means the number of Unavailability Events
- R means the Ratchet, which shall be determined in reference to Table 8 (Availability Deduction Ratchet) in Part 11 (Ratchets) for the relevant Availability Category for Area "a" and the total duration that the Area "a" was Unavailable.
- TF_n means the Transition Factor for the Annual Unitary Charge, as calculated in accordance with paragraph 2.3 (Transition Factor)
- n means the relevant Payment Period
- a means the relevant Area
- y means the relevant Payment Year

4.9 Training Service Unavailability Deduction

4.9.1 The Training Service Unavailability Deduction for each Payment Period in respect of each Training Session and/or Course which has an Unavailability Event shall be calculated in accordance with the following formula:

$$TSUD_n = CreditDeduction_n \times R \times BandRate_n \times TF_n$$

where:

- TSUD_n means the Training Service Unavailability Deduction for the Payment Period "n", where such amount shall be rounded up to a whole number
- Σ means the aggregate for set "a" of the formula that follows in brackets, for each Unavailability Event in month "n" from the first Unavailability Event (a=0) to the last Unavailability Event (a=q)
- ServiceCredits_a means the Service Credits which are awarded to the Authority for any Training Session and/or Course affected by an Unavailability Event in accordance with Table 11 (Service Credits) in Part

12 (Service Credits)

CreditDeduction_n means the amount (rounded down to the nearest whole number) calculated in accordance with the following formula, where for every 15 ServiceCredits_a awarded to the Authority, a credit deduction shall be applied. Any remaining ServiceCredits_a shall be carried forward to the next month.

$$CreditDeduction_n = \left(\sum_{a=0}^q TU_a \times ServiceCredits_a \right) \div 15$$

TU_a means the number of Training Units effected by an Unavailability Event for the Training Session and/or Course

TF_n means the Transition Factor for the Annual Unitary Charge, as calculated in accordance with paragraph 2.3

R means the Ratchet, which shall be determined in accordance with paragraph 4.9.2 by reference to Table 10 (Service Credit Ratchet) in Part 11 (Ratchets)

a means each Unavailability Event affecting a Training Session and/or Course commencing with the first for the Payment Period "n"

q means the last Unavailability Event affecting a Training Session and/or Course as defined for the Payment Period "n"

n means the relevant Payment Period

4.9.2 If in any Payment Period the Authority is awarded [insert details] or more Service Credits then, for each successive Payment Period in which the Authority is awarded [insert details] or more Service Credits the Training Service Unavailability Deduction, calculated in accordance with paragraph 4.9.1, shall include the Ratchet determined in accordance with Table 10 (Service Credit Ratchet) in Part 11 (Ratchets).

4.10 Temporary Alternative Accommodation

4.10.1 If an Area becomes Unavailable the Contractor may avoid the imposition of Area Unavailability Deductions by offering alternative accommodation to the Authority subject to the provisions of this paragraph 4.10 ("**Temporary Alternative Accommodation**").

4.10.2 In order to offer Temporary Alternative Accommodation to the Authority the Contractor shall deliver to the Authority within **forty-eight** hours of an Area becoming Unavailable a plan (a "**Temporary Relocation Plan**") setting out:

- (a) full details of the proposed Temporary Alternative Accommodation (including, without limitation, its location, the extent to which it complies with the Authority's Requirements for the relevant Area and any logistical (including the transfer of employees and equipment) or other arrangements which are required and which the Contractor proposes to be put in place in

order to facilitate the Authority's occupation of the proposed Temporary Alternative Accommodation); and

(b) the relevant Relocation Date.

Notwithstanding receipt of the Temporary Relocation Plan by the Authority, Area Unavailability Deductions will apply in accordance with this Part 8 from the end of the Rectification Period to the date of relocation to the Temporary Alternative Accommodation.

- 4.10.3 The Authority's Representative shall not be obliged to accept any Temporary Alternative Accommodation but shall act reasonably (unless and to the extent that it rejects the Temporary Alternative Accommodation on security grounds and, if requested, a Senior Civil Servant personally confirms in writing to the Contractor that security was the ground for rejection) in considering the proposals for Temporary Alternative Accommodation and accepting or rejecting such Temporary Alternative Accommodation and will notify the Contractor promptly of its decision whether or not such proposed Temporary Alternative Accommodation is acceptable. If the Authority rejects the proposed Temporary Alternative Accommodation, Area Unavailability Deductions shall apply in accordance with this Part 8 in respect of the Area which is Unavailable.
- 4.10.4 The performance regime will apply to any Temporary Alternative Accommodation accepted by the Authority so that the Authority shall be entitled to make Area Unavailability Deductions, Unavailable But Used Deductions, Service Performance Deductions, and Other Deductions in respect of that Temporary Alternative Accommodation.
- 4.10.5 The Contractor shall bear all costs incurred by it, and all reasonable costs incurred by the Authority arising as a result of the provision or occupation of any such Temporary Alternative Accommodation.
- 4.10.6 If at any time such Temporary Alternative Accommodation ceases to meet any of the agreed minimum Availability Criteria, the Authority may reject such Temporary Alternative Accommodation and shall notify the Contractor of its decision to do so. Area Unavailability Deductions shall apply in respect of the Area which is Unavailable (for which the Temporary Alternative Accommodation is a replacement) from such notification until such Area ceases to be Unavailable.
- 4.10.7 If the Contractor has not made Available to the Authority the Area for which Temporary Alternative Accommodation is a replacement (such Area being in compliance with all applicable Availability Criteria) by the Relocation Date, or the Temporary Alternative Accommodation is rejected by the Authority under paragraph 4.10.6, then the Authority may:
- (a) vacate some or all of the Temporary Alternative Accommodation, and make Area Unavailability Deductions in respect of the Area for which the Temporary Alternative Accommodation so vacated is a replacement; or
 - (b) remain in occupation of the Temporary Alternative Accommodation and make Unavailable But Used Deductions in respect of the Area for which the Temporary Alternative Accommodation is a replacement,

and in each case, such Deductions may be made by the Authority in respect of each Additional Period from (and including) the Logged Event Time during which the Contractor's failure to make the relevant Unavailable Area(s) Available by the Relocation Date occurred.

- 4.10.8 The Contractor and the Authority may agree to any new Relocation Date (suggested by either Party) in which case the provisions of this paragraph 4.10 shall apply on an equivalent basis to such revised Relocation Date.
- 4.10.9 If there is any dispute relating to the provision of Temporary Alternative Accommodation under this paragraph 4.10, either Party may refer the matter to dispute resolution in accordance with PART 27 (Dispute Resolution) (except where the Authority has refused the proposed Temporary Alternative Accommodation on security grounds) and until the resolution of such dispute the decision of the Authority shall prevail.

4.11 Temporary Repairs

- 4.11.1 If the Contractor informs the Authority that it is unable to Rectify an Event within the specified Rectification Period due to the need for specialised materials or personnel that are not, and cannot reasonably be expected to be, immediately available at the Authority Sites but that a Temporary Repair can be achieved:
- (a) the Authority shall permit the Contractor to carry out the Temporary Repair proposed by the Contractor unless the Authority, acting reasonably, does not consider that, if the Temporary Repair proposed by the Contractor is carried out, the use of the relevant Area will be in accordance with the Authority's operational practices; and
 - (b) where a Temporary Repair is permitted, a deadline by which a Permanent Repair must be made shall be set, giving the Contractor a reasonable period within which to carry out the Permanent Repair (the "**Permanent Repair Deadline**"). Both the Authority and the Contractor shall act reasonably in seeking to agree what the deadline should be.
- 4.11.2 During any period beginning at the time when a Temporary Repair has been approved by the Authority and ending at the earlier of:
- (a) the time at which a Permanent Repair is successfully completed; or
 - (b) the Permanent Repair Deadline,
- the Availability Criteria shall be replaced by the agreed minimum Availability Criteria for the purposes of assessing if the relevant Area and/or Training Session and/or Course is Unavailable.
- 4.11.3 If the agreed Temporary Repair is affected within the specified Rectification Period (as referred to in paragraph 4.11.1) and the Permanent Repair is effected by no later than the Permanent Repair Deadline then no Service Performance Failure or Unavailability Event will occur, and no Deduction may be made, in respect of the Event.
- 4.11.4 If the Temporary Repair is not carried out within the specified Rectification Period, a Service Performance Failure and/or, as the case may be, Unavailability Event shall be deemed to occur and the following provisions shall apply:
- (a) there shall be a further period (an "**Additional Period**") beginning on the expiry of the Rectification Period and of a duration equal to that of the Rectification Period. The Contractor shall ensure that the Temporary Repair is successfully carried out prior to the expiry of the Additional Period. If the Temporary Repair is not successfully carried out by the Contractor before the expiry of the Additional Period, a further Service Performance

Failure or, as the case may be, Unavailability Event shall occur and a further Additional Period shall commence; and

- (b) unless the Temporary Repair has been successfully carried out by the Contractor prior to the expiry of each Additional Period then, subject to paragraph 4.11.4(c), a further Service Performance Failure or, as the case may be, Unavailability Event shall occur until such time as the Temporary Repair shall have been successfully completed; and
- (c) if the Temporary Repair is not successfully carried out by the Contractor prior to the Permanent Repair Deadline, and no Permanent Repair has been successfully carried out, the right for the Contractor to carry out a Temporary Repair pursuant to this paragraph 4.11 shall cease and paragraph 4.11.5 shall apply.

4.11.5 If the Permanent Repair is not carried out by the Permanent Repair Deadline, a Service Performance Failure and/or, as the case may be, an Unavailability Event shall be deemed to occur on the expiry of the Permanent Repair Deadline and the provisions of paragraphs 4.4.3 and 4.4.4 (Commencement and Duration of Unavailability) shall apply.

PART 5 – SERVICE PERFORMANCE DEDUCTIONS

5.1 Authority's right to make Deductions

5.1.1 In the event of a Service Performance Failure, the Authority may make Service Performance Deductions in accordance with this Schedule 13.

5.2 Notice of a Service Performance Failure

5.2.1 If the Authority's Representative or a Service User believes that a Service Performance Failure may have, or has occurred, then that Party may give notice (an "**Event Notice**") to the Help Desk Service, or to a Contractor Party which shall contain the following information:

- (a) where relevant, details of the Area where the Event causing the Service Performance Failure occurred; and
- (b) details of the relevant fault or failure including, where applicable, the relevant Performance Category believed to be applicable to the relevant Event; and
- (c) where relevant, details of the Service believed to be subject to the Event; and
- (d) the reasons why such Services is believed to be subject to the Event.

5.2.2 Where an Event Notice is provided to a Contractor Party, then the Contractor Party shall report the details of the Event Notice to the Help Desk Service within ten minutes of receipt of the Event Notice and the time of such notification to the Help Desk Service shall constitute the Logged Event Time in relation to such Service Performance Failure. Where the Contractor Party fails to notify the Help Desk Service in the required time the Logged Event Time will be deemed to have occurred on the expiry of the allowed notification period.

5.2.3 Where the Event Notice is provided directly to the Help Desk Service, then the time of such notification shall constitute the Logged Event Time in relation to such Service Performance Failure. Where the same failure is recorded by the Authority and the Contractor or where either Party has reported the same Event on more than one occasion, the earliest time will constitute the Logged Event Time.

5.2.4 If, notwithstanding that an Event Notice has not been provided by the Authority, the Contractor believes that a Service Performance Failure has occurred then it shall give notice, containing the information required under paragraph 5.2.1, to the Help Desk Service within ten minutes. The time of such notification will constitute the Logged Event Time in relation to such Service Performance Failure and the Help Desk Service shall notify the Authority's Representative, promptly after its receipt of the details contained within it. Where the Contractor Party fails to notify the Help Desk Service in the required time the Logged Event Time will be deemed to have occurred on the expiry of the allowed notification period.

5.2.5 The Event Notice shall be given to the Help Desk Service or, where relevant, the Contractor Party either orally or in writing. If given orally then the Help Desk Service shall make a written record of the Event Notice. The Contractor shall, within one hour of the relevant Logged Event Time (and without prejudice to the expiry of the relevant Rectification Period) confirm orally or in writing to the Authority's Representative whether or not it agrees that there is a Service Performance Failure. If the Contractor does not so confirm then it will be deemed to agree that there is a Service Performance Failure. If the Parties do not agree then the

question of whether or not there is a Service Performance Failure shall be resolved in accordance with PART 27 (Dispute Resolution).

5.3 Commencement of Service Performance Failure Deductions

- 5.3.1 Subject to paragraph 6.3 (Repeated Rectification Deduction), if the Contractor successfully carries out Rectification within the specified Rectification Period then no Deduction shall be made.
- 5.3.2 If Rectification is not successfully carried out by the Contractor within the specified Rectification Period, then Service Performance Failure Deductions will be made.
- 5.3.3 There shall then be a further period, (an "**Additional Period**") beginning on the expiry of the Rectification Period and of a duration specified in Table 2 (Performance Categories) in Schedule 1 Part 0 (Introduction to Authority's Requirements) for the applicable Performance Category. The Contractor shall ensure that Rectification is successfully carried out prior to the expiry of the Additional Period. If Rectification is not successfully carried out by the Contractor before the expiry of the Additional Period, a further Service Performance Failure shall occur and a further Additional Period shall commence.
- 5.3.4 Unless Rectification has been successfully carried out by the Contractor a further Service Performance Failure shall occur at the expiry of each Additional Period and a further Additional Period shall commence until such time as Rectification shall have been successfully completed.
- 5.3.5 The provisions of paragraphs 5.3.3 and 5.3.4 shall not apply to Service Performance Failures in cases where, if Rectification is not carried out to Rectify an Unavailability Event within the Rectification Period, the Authority's Representative notifies the Contractor's Representative that the Authority no longer requires the relevant Services.

5.4 Duration of a Service Performance Failure Deduction

- 5.4.1 If a Service Performance Failure notified to the Help Desk Service in accordance with paragraph 5.2.1, paragraph 5.2.2 or paragraph 5.2.4 (Notice of a Service Performance Failure) has not been remedied by the end of the Rectification Period, then a Service Performance Deduction will be made by the Authority in respect of each expired Additional Period until such time as Rectification shall have been successfully completed.
- 5.4.2 The Rectification Period and Additional Periods shall be temporarily suspended where the Contractor has reasonably demonstrated that its attempts to remedy the relevant Service Performance Failure are frustrated by the Authority failing to grant the Contractor access to an Area (or Adjoining Area where the Contractor reasonably needs access to an Adjoining Area to remedy the relevant Service Performance Failure). Such suspension of the Rectification Period and Additional Periods shall cease upon the Authority granting access to the relevant Area or Adjoining Area where the Contractor reasonably needs access to an Area to remedy the relevant Service Performance Failure.
- 5.4.3 The Contractor shall immediately notify the Help Desk Service when it believes that any Service Performance Failure has been Rectified. The time of such notification will, unless the Service Performance Failure is determined further to paragraph 5.4.4 not to have been rectified, constitute the Logged Rectification Time in relation to such Service Performance Failure and the Help Desk Service shall, as soon as is reasonably practicable after such notification by the Contractor, and in any event within twenty-four hours, notify the Authority's Representative that

the relevant Unavailability has been Rectified (the "**Notice of Rectification**").

5.4.4 The Authority's Representative and/or any Service User shall be entitled to inspect the Service within **forty-eight** hours of receipt of the Notice of Rectification by the Authority's Representative. If the Authority's Representative acting reasonably does not agree that such Service Performance Failure has been so Rectified then it shall promptly notify the Contractor. The Authority's decision will prevail for the purposes of determining whether Rectification has occurred however the Contractor may refer the matter to dispute resolution under PART 27 (Dispute Resolution). If the Authority and/or any Service User has not inspected the Service within **forty-eight** hours of receipt of the Notice of Rectification or the Authority Representative does not promptly notify the Contractor if it does not agree that the Service Performance Failure has been rectified then the Service Performance Failure (as applicable) will be deemed to be Rectified.

5.5 **Total Service Performance Deduction**

5.5.1 The Total Service Performance Deduction for each Payment Period shall be the aggregate of all the Service Performance Deductions referable to each Service in that Payment Period.

5.6 **Service Performance Deduction**

5.6.1 The Service Performance Deduction for each Service Performance Failure shall be calculated in accordance with the following formula:

$$PD_s = SFD \times PF \times R \times TF_n$$

where:

PD_s means the Service Performance Deduction for the relevant Service "s"

SFD means the relevant Service Performance Failure Deductions arising from a Service Performance Failure in relation to the requirements of Schedule 1 Part 3 (Service Provision Requirements) as set out in Table 5 (Service Performance Failure Deductions)

PF means the number of Service Performance Failures relating to Service "s"

R means the Ratchet, which shall be determined in reference to Table 9 (Service Performance Deduction Ratchet) in Part 11 (Ratchets) of this Schedule 13 for the relevant Performance Category for Service "s" and the total duration of the Service Performance Failure

TF_n means the Transition Factor for the Annual Unitary Charge, as calculated in accordance with paragraph 2.3 (Transition Factor)

n means the relevant Payment Period

s means the relevant Service

Table 5 - Service Performance Failure Deductions

Service Performance Category ¹⁰⁰	Service Performance Failure Deduction		
	(A) Priority 1	(B) Priority 2	(C) Priority 3
Critical	£[insert]	£[insert]	£[insert]
Major	£[insert]	£[insert]	£[insert]
Medium	£[insert]	£[insert]	£[insert]
Minor	£[insert]	£[insert]	£[insert]
Irritant	£[insert]		

5.6.2 Indexation of Calculation of Service Performance Failure Deductions

On each Review Date the Service Performance Failure Deductions set out in this Part 5 shall be indexed in accordance with the following formula:

$$SFD_y = SFD_0 \times AUC_m / AUC_0$$

where:

SFD_y means the Service Performance Failure Deduction for the current Contract Year "y"

SFD₀ means the Service Performance Failure Deductions set for the first Contract Year, as detailed in paragraph 5.6.1

AUC_y means the Annual Unitary Charge for the current Contract Year "y"

AUC₀ means the Annual Unitary Charge for the first Contract Year

y means the relevant Payment Year

¹⁰⁰ The number of Service Performance Categories may be tailored on a project specific basis balancing the need for simplicity in operation and effectiveness of the incentives.

PART 6 - OTHER DEDUCTIONS

6.1 Other Deductions

6.1.1 Other Deductions comprise Reporting Deductions, Repeated Rectification Deductions and Change Protocol Deductions incurred during the relevant Payment Period under paragraphs 6.2 (Reporting Deductions), 6.3 (Repeated Rectification Deduction) and 6.4 (Change Protocol Deduction) and calculated in accordance with paragraph 5.6 (Service Performance Deduction) plus any costs incurred under paragraph 6.2.5.

6.2 Reporting Deduction

6.2.1 Subject to paragraphs 6.2.2 to 6.2.8 the Monthly Performance Report produced by the Contractor in accordance with paragraph 8 (Reporting) for any Payment Period shall be the source of the factual information regarding the performance of the Services for the relevant Payment Period for the purposes of calculating the relevant Monthly Unitary Payment.

6.2.2 If the Authority disputes any aspect of a Monthly Performance Report the provisions of paragraph 8 (Reporting) shall apply.

6.2.3 If the Contractor fails to monitor or accurately to report an Event, a Service Performance Failure or an Unavailability Event then, without prejudice to the Deduction to be made in respect of the relevant Service Performance Failure or Unavailability Event (if any), the failure to monitor or report the Event, Service Performance Failure or Unavailability Event shall be deemed to be a new Service Performance Failure with a Performance Category of Minor Priority 3, unless the circumstances set out in paragraph 6.2.7 apply, in which case there shall be deemed to be a new Service Performance Failure with a Performance Category of Major Priority 3.

6.2.4 Where the Contractor fails to monitor or accurately to report a Service Performance Failure or an Unavailability Event in the circumstances referred to in paragraph 6.2.7, the Authority may require that the Contractor make available to the Authority for inspection such of the records as the Authority may reasonably specify.

6.2.5 The Authority shall deduct from the Monthly Unitary Payment for any Payment Period a sum equal to the costs reasonably incurred by the Authority in the preceding Payment Period in carrying out any inspection and investigation of records made available pursuant to paragraph 6.2.4.

6.2.6 If the Authority's inspection or investigation of records made available pursuant to paragraph 6.2.4 reveals any further matters of the type referred to in paragraphs 6.2.3 and 6.2.4, those matters shall be dealt with in accordance with paragraph 6.2.3 or 6.2.4 as appropriate and the Authority shall, in addition, be entitled to make Deductions in respect of any Service Performance Failures or Unavailability Events in the manner prescribed in Parts 4 (Unavailability Deductions) and 5 (Service Performance Deductions). Any such Deductions shall be made from the Monthly Unitary Payment payable in respect of the Payment Period in which the relevant matters were revealed by the Authority's investigations.

6.2.7 For the purposes of paragraphs 6.2.3 and 6.2.4 the relevant circumstances are:

- (a) fraudulent action or inaction; or
- (b) deliberate misrepresentation; or
- (c) gross misconduct or incompetence,

in each case on the part of the Contractor or a Contractor Related Party.

6.2.8 The provisions of this Part 6 shall be without prejudice to any rights of the Authority in this Contract pursuant to Clause 21 (Authority's Performance Monitoring) and Clause 132 (Termination by the Authority).

6.3 Repeated Rectification Deduction

6.3.1 Notwithstanding that the Contractor completes a Rectification in respect of an Event within the relevant Rectification Period there shall be deemed to be a Service Performance Failure with a Service Performance Category of Minor Priority 3 on the occurrence of:

- (a) the third such Event that arises during the Contract Day; and/or
- (b) the fourth such Event which occurs in any consecutive seven Contract Day period.

Provided that:

- (c) each such Event is in connection with the same Service Provision Requirement and occurs in the same Area and/or Training Session and/or Course; and
- (d) whether or not such Events occur in the same Area and/or Training Session and/or Course, there is good reason to believe that the root cause of each Event is the same.

6.3.2 If the same such Event occurs more than three times in a day or more than four times in any consecutive seven day period, a Service Performance Failure with a Service Performance Category of Minor Priority 3 shall be deemed to have occurred in respect of each and every such Event which has occurred during the day or during the consecutive seven day period (as the case may be).

6.3.3 The Repeated Rectification Deduction shall be calculated as the aggregate of all Events deemed to be Service Performance Failures in accordance with this paragraph 6.3 for the relevant Payment Period.

6.4 Change Protocol Deductions

6.4.1 Change Protocol Deductions shall apply in the manner set out in paragraph 6.4.2 where the Contractor is in breach of PART 18 (Changes and Change in Law).

6.4.2 If the Contractor fails to administer the Change process in accordance with PART 18 (Changes and Change in Law) a Service Performance Failure with a Service Performance Category as set out in Table 6 (Change Protocol Deductions) shall be deemed to have occurred in respect of each and every such Event which has occurred.

Table 6 – Change Protocol Deductions

	Small Works Change	Medium Value Change	Major Change
Failure to provide a response to a request for a Change	Minor Priority 3 for each Business Day the Minor Change Estimate is delivered by the Contractor to the Authority after the deadline specified in Clause 84.5.2 (Minor Changes) of	Minor Priority 2 for each Business Day the Higher Value Change Estimate is delivered by the Contractor to the Authority after the deadline specified in Clause 84.9.2 (Higher Value	Minor Priority 1 for each Business Day the Higher Value Change Estimate is delivered by the Contractor to the Authority after the deadline specified in Clause 84.9.2 (Higher Value

	Small Works Change	Medium Value Change	Major Change
	this Contract.	Change – Providing the Estimate) of this Contract. A Service Performance Failure shall not apply where the Contractor refuses a Medium Value Change in accordance with Clause 84.14.2 (Changes Proposed by the Authority) of this Contract.	Change – Providing the Estimate) of this Contract. A Service Performance Failure shall not apply where the Contractor refuses a Medium Value Change in accordance with Clause 84.14.2 (Changes Proposed by the Authority) of this Contract.
Failure to provide a response of the required standard	Not applicable ¹⁰¹	Minor Priority 2 for each Business Day over fifteen Business Days following the Authority notifying the Contractor that, further to the Authority's good faith evaluation under Clause 85.2 (Evaluating the Estimate) and in the Authority's reasonable opinion, the Higher Value Change Estimate in the Notice of Change submitted by the Contractor does not satisfy the requirements set out in Clause 84 (Step 2 – Preparing the Estimate).	Minor Priority 1 for each Business Day in the case of a Contractor Stage 1 Response, following a determination pursuant to Clause 84.7.4 of this Contract that the Higher Value Change Estimate does not represent a fair and reasonable response to the Notice of Change, or (ii) in the case of a Higher Value Change Estimate, following the Authority notifying the Contractor that, further to the Authority's good faith evaluation under Clause 85.2 (Evaluating the Estimate) and in the Authority's reasonable opinion, the Higher Value Change Estimate in the Notice of Change submitted by the Contractor

¹⁰¹ There is no deduction proposed in these circumstances on the basis that if the Contractor cannot provide an acceptable proposal the Authority can carry out the Small Value Change itself.

	Small Works Change	Medium Value Change	Major Change
			does not satisfy the requirements set out in Clause 84 (Step 2 – Preparing the Estimate).
Failure to implement any change in accordance with the agreed Notice of Change in accordance with PART 18 (Changes and Change in Law) of this Contract by the agreed date	As per the agreed Notice of Change in accordance with PART 18 (Changes and Change in Law) of this Contract.	As per the agreed Notice of Change in accordance with PART 18 (Changes and Change in Law) of this Contract.	As per the agreed Notice of Change in accordance with PART 18 (Changes and Change in Law) of this Contract.

6.4.3 The Change Protocol Deduction shall be calculated as the aggregate of all Events deemed to be Service Performance Failures in accordance with paragraph 6.4.2 for the relevant Payment Period.

6.4.4 Change Protocol Deductions shall cease to accrue where:

- (a) the Authority withdraws the related Notice of Change;
- (b) (in relation to deductions for a failure to provide a response) the Contractor submits a response;
- (c) (in relation to deductions for a failure to submit a response of the required standard for a Medium Value Change) the Contractor submits a revised Estimate; and
- (d) (in relation to deductions for a failure to implement the Change) the Contractor implements the Change in accordance with the terms of this Contract.

PART 7 – LIMITATIONS ON DEDUCTIONS

7.1 **Bedding-In Period**

7.1.1 In respect of each Service, there shall be a period of [five] Business Days for bedding-in beginning on the achievement of each of the Service Levels (the "**Bedding-In Period**"). During the Bedding-In Period, no Deductions may be made in respect of Service Performance Failures occurring in the provision of the relevant Service to the extent that the Services affected relate to the Areas and/or Training Sessions and/or Courses becoming available under that Service Level, save for Service Performance Failures relating to the transition service described in Schedule 1 (Authority's Requirements).

7.2 **No Deductions**

7.2.1 No Unavailability Deduction, Service Performance Deduction or Other Deduction may be made to the extent that the relevant Event is a direct result of, or where and to the extent that such Event is ongoing and the Contractor and/or any Contractor Related Party is unable to rectify such Event for reasons directly and solely arising out of, the occurrence of:

- (a) an Authority Default; or
- (b) the Contractor implementing a Change other than in respect of a Foreseeable Change in Law in accordance with PART 18 (Changes and Change in Law), to the extent that the Authority has specifically agreed pursuant to PART 18 (Changes and Change in Law) that Deductions should not apply in respect of the implementation of such Change; or
- (c) a Discriminatory Change in Law or Specific Change in Law, to the extent such relief has been agreed or otherwise determined pursuant to PART 18 (Changes and Change in Law); or
- (d) any Authority Damage, such relief from Deductions to be reasonable in the circumstances taking into account the likely adverse effect arising from such damage on the Contractor's ability to perform of any of its obligations provided in this Contract in accordance with their terms, save that no relief shall be granted where and to the extent that:
 - (i) the Contractor fails to reinstate, replace or make good such damage in accordance with Clause 122 (Damage to the Specified Assets); and
 - (ii) such failure(s) increase(s) or otherwise exacerbate(s) the likely adverse effect arising from such damage on the Contractor's performance of its obligations (including the duration of the likely adverse effect) provided in this Contract; or
- (e) maintenance work being carried out in accordance with the Planned Maintenance Programme; or
- (g) the Authority's Representative making a specific request of the Contractor or giving specific instructions to the Contractor (in either case, against the reasonable advice of the Contractor, and provided that the Contractor has advised the Authority's Representative of the impact such request or instruction will have on the ability of the Contractor to perform its obligations under this Contract) which prevent the Contractor ensuring that an Area or Areas meets the relevant Availability Criteria; or

- (h) a Compensation Event, such relief being as agreed or otherwise resolved pursuant to Clause 75 (Compensation Events); or
- (i) the Authority taking any Required Action under Clause 78 (Measures in a crisis) and PART 17 (Authority Step-In), such entitlement to no Unavailability Deductions, Service Performance Deductions and/or other Deductions being as agreed or otherwise resolved in accordance with Clause 78 (Measures in a crisis) and PART 17 (Authority Step-In), subject to the rights of the Authority in accordance with Clause 78 (Measures in a crisis) and PART 17 (Authority Step-In) to deduct the Authority's costs of operation in taking the Required Action; or
- (j) the Authority assuming responsibility for unforeseen ground conditions and/or contamination in accordance with Clause 14 (Authority Sites) of this Contract; or
- (k) the Authority using Temporary Alternative Accommodation and/or Training Sessions and/or Courses provided by the Contractor in place of the original Area which is Unavailable pursuant to paragraph 4.10 (Temporary Alternative Accommodation); or
- (l) the failure by the Authority to provide the Government Furnished Assets in accordance with PART 8 (Government Furnished Assets, Existing Assets and Existing Contracts); or
- (m) an Authority Party Action where the Rectification Period in respect of the affected Service has not expired; or
- (n) the Contractor, due to the actions of the Authority, has been unable to obtain access to an Area and/or Unit as is reasonably necessary to Rectify an Unavailability Event or Service Performance Failure.

7.3 Total Deductions Cap

- 7.3.1 Except as provided in paragraphs 6.2 (Reporting Deduction) and 6.3 (Repeated Rectification Deduction), the Authority may not, in respect of any Payment Period, make Total Deductions which are greater than the Monthly Unitary Charge. Deductions which, but for this paragraph, could have been made by the Authority will be permanently disregarded for the purposes of calculating the Monthly Unitary Charge.

7.4 Limitations on Deductions

- 7.4.1 Subject to Parts 4 (Unavailability Deductions) and 5 (Service Performance Deductions), the calculation of Service Performance Deductions shall be made only once in respect of a particular Service Performance Failure occurring in a particular Area and/or Training Session and/or Course at a particular time, notwithstanding that more than one report may have been received by the Help Desk Service.
- 7.4.2 Where a Service Performance Failure is such that it can be classified as a failure to meet more than one Service Provision Requirement then the Authority shall only be entitled to make Service Performance Deductions in respect of that Service Performance Failure by reference to one such Service Provision Requirement and not to each such Service Provision Requirement but shall be entitled to Service Performance Deductions in respect of such Service Provision Requirement as attracts the greatest Service Performance Deduction.
- 7.4.3 No Service Performance Deduction may be made in any Operational Period in relation to any Service if an Unavailability Deduction is made by the Authority in respect of an Area affected by the Service Performance Failure

for the same Operational Period provided that Service Performance Deductions may be made for a Service Performance Failure if such Area:

- (a) is Unavailable But Used (but only to the extent that it is practicable to provide the relevant Services in such Unavailable But Used Area); or
- (b) is occupied by the Authority as Temporary Alternative Accommodation in accordance with paragraph 4.10 (Temporary Alternative Accommodation).

7.4.4 Subject to Parts 8 (Reporting) and 10 (Authority Escalation Measures), the calculation of Unavailability Deductions shall be made only once in respect of a particular Service Performance Failure occurring in a particular Area and/or Training Session and/or Course at a particular time, notwithstanding that more than one report may have been received by the Help Desk Service.

7.4.5 Where a Service Performance Failure is such that a single failure results in the Unavailability of an Area and/or Training Session and/or Course such that both Area Unavailability Deductions and Training Service Unavailability Deductions may apply, the Authority shall be entitled to make both Area Unavailability Deductions and Training Service Unavailability Deductions for such Service Performance Failure.

7.4.6 Where a Service Performance Failure is such that a single failure results in the Unavailability of a Training Session and/or Course such that Training Service Unavailability Deductions may apply, the Authority shall be entitled to make both CCNCO and either DCOF or DPCO or DNCO Training Service Performance Deductions, but shall not be entitled to make DCOF and DPCO and DNCO Training Service Performance Deductions for the same Service Performance Failure but shall instead be entitled to Service Performance Deductions in respect of such Service Provision Requirement as attracts the greatest Service Performance Deduction.

PART 8 – REPORTING

8. Reporting

8.1 The Contractor's Representative shall, within five Business Days after the end of each Payment Period, produce and submit to the Authority's Representative for discussion at the Monthly Review Meeting the Monthly Performance Report in respect of which the following provisions shall apply:

8.1.1 Each Monthly Performance Report shall be substantially in such form as the Parties (acting reasonably) shall from time to time agree and shall in any event contain all information in respect of:

- (a) the performance of the Services during the Payment Period;
- (b) any failure to provide the Specified Assets and the Services during the Payment Period;
- (c) details of any failure to satisfy the Service Provision Requirements;
- (d) details of any Unavailability Deductions, Service Performance Deductions, Reporting Deductions, Repeated Rectification Deductions or Change Protocol Deductions;
- (e) details of all "factors" applicable by way of calculation to any Unavailability Deductions, Service Performance Deductions, Reporting Deductions or Repeated Rectification Deductions; and
- (f) details of all "factors" applicable by way of calculation to any Third Party Income Share or Energy and Utilities Adjustment,

so as to enable the Contractor to calculate and the Authority to audit the Monthly Unitary Payment for the Payment Period.

8.1.2 Without prejudice to the generality of paragraph 8.1.1, the Monthly Performance Report for each Payment Period shall include:

- (a) a spreadsheet for the Payment Period presenting the data relevant to the calculation of the Total Deductions accrued in the Payment Period; and
- (b) a written report in spreadsheet format giving particulars of each Event leading to a Deduction including but not limited to:
 - (i) the date of each Event;
 - (ii) the time of each Event;
 - (iii) the nature of each Event; and
 - (iv) the time taken by the Contractor or the Contractor's Representative, or Contractor Party as applicable, to respond to and Rectify the Event measured from the Logged Event Time; and
- (c) a summary and explanation of all calculations culminating in the relevant Deductions.

8.1.3 The following provisions shall apply in respect of each Monthly Performance Report:

- (a) the Authority's Representative shall, within five Business Days after receipt of a Monthly Performance Report, (the "**Monthly Performance Report Consideration Period**") issue to the Contractor's Representative either:
 - (i) confirmation that the Monthly Performance Report is acceptable (such confirmation will be deemed to have been given at expiry of the Monthly Performance Report

- Consideration Period if a Monthly Performance Report Dispute Notice has not been issued); or
- (ii) a notice ("**Monthly Performance Report Dispute Notice**") specifying those aspects of the Monthly Performance Report which the Authority disputes; and
- (b) if the Authority issues a Monthly Performance Report Dispute Notice, the Parties shall use all reasonable endeavours to procure that:
- (i) a meeting is held, within five Business Days after the receipt by the Contractor of the relevant Monthly Performance Report Dispute Notice, between the Contractor and the Authority for the purposes of agreeing a resolution to the disputed aspects or contents of the relevant Monthly Performance Report; and
 - (ii) a revised and agreed Monthly Performance Report (if necessary) is re-submitted by the Contractor to the Authority within five Business Days after the meeting; and
- (c) if the disputed aspects of a Monthly Performance Report are not resolved in accordance with paragraph 8.1.3(b), either Party shall be entitled to refer the matter for determination under PART 27 (Dispute Resolution); and
- (d) without prejudice to the generality of this paragraph 8.1, the Contractor shall ensure that performance of the Services is monitored, measured and evaluated in respect of all Events (whether Rectified by the Contractor within the appropriate Rectification Period or not) for each Payment Period in accordance with the provisions of this Schedule 13.

PART 9 – ENERGY AND UTILITIES ADJUSTMENT

9.1 Energy and Utilities Adjustment

9.1.1 The "Energy and Utilities Adjustment" ("EUA") in relation to a Contract Year shall be calculated as the aggregate of all Annual Utility Adjustments for each Utility Service on each Site, each calculated in accordance with paragraphs 9.4 (Annual Utility Adjustment).

9.2 Utility Services

9.2.1 The Authority shall be responsible for and shall settle all invoices relating to the Utility Services, such costs to be negotiated by the Authority with its chosen utility supplier.

9.3 Annual Utility Services Consumption Targets

9.3.1 A target for consumption of each Utility Service and for the Renewable Energy Percentage in relation to each Site shall be set for each Contract Year in advance of such Contract Year in accordance with paragraphs 9.3.3 to 9.3.5 (together the "Annual Utility Services Consumption Targets"). The Annual Utility Services Consumption Targets, except for the Renewable Energy Percentage, shall be expressed in volume terms, being kWh in relation to gas, biofuel and electricity, and m³ in relation to water.

9.3.2 The Annual Utility Services Consumption Targets in relation to the final Contract Year shall be pro-rated according to the length of such period taking account, on a fair and reasonable basis, of seasonal variations. The Annual Utility Services Consumption Targets in relation to the first Contract Year shall be as set out in Table 7 (Annual Utility Services Consumption Targets for the first Contract Year).

Table 7 - Annual Utility Services Consumption Targets for the first Contract Year

Name of Site	Gas Consumption (kWh)	Biofuel Consumption (kWh)	Electricity Consumption (kWh)	Renewable Energy Percentage (Biofuel as a percentage of gas, biofuel and electricity)	Water Consumption (m ³)
[Site "A"]	[xxx,xxx]	[xxx,xxx]	[xxx,xxx]	[xx]%	[xxx,xxx]
[Site "B"]	[xxx,xxx]	[xxx,xxx]	[xxx,xxx]	[xx]%	[xxx,xxx]
Total	[xxx,xxx]	[xxx,xxx]	[xxx,xxx]	[xx]%	[xxx,xxx]

9.3.3 Not less than three Payment Periods prior to the end of the current Contract Year, the Contractor shall submit to the Authority the Annual Utility Services Consumption Targets it proposes to apply to the next Contract Year. In support of its proposals, the Contractor shall submit the following documentation to the Authority:

- (a) up to date logs for each Site of consumption of the Utility Services in the current Contract Year; and

- (b) detailed calculations on which the proposed targets are based; and
- (c) [the carbon emission ratings associated with the targets for the next following Contract Year]; and
- (d) details of anticipated consumption of utility services at each Site that are not Utility Services (for example if certain energy demand or certain water requirements, for which the Authority will not be charged, are to be met by renewable energy generation or water recycling facilities, respectively, installed on the relevant Site).

9.3.4 Not more than one Payment Period following receipt by the Authority of the Contractor's proposed Annual Utility Services Consumption Targets for the next Contract Year, the Contractor and the Authority shall meet to discuss those proposals and agree the Annual Utility Services Consumption Targets for the next Contract Year. Any failure to agree any such Annual Utility Services Consumption Target(s) by the start of the next following Contract Year shall be referred to the Dispute Resolution Procedure under PART 27 (Dispute Resolution) of this Contract. If for any reason a decision has not been made as to any such Annual Utility Services Consumption Target(s) by the end of the current Contract Year, then the Authority's decision as to the relevant Annual Utility Services Consumption Target(s) shall be final.

9.3.5 Notwithstanding paragraphs 9.3.1 to 9.3.4, in agreeing the Annual Utilities Services Consumption Targets for the next Contract Year, the Authority and the Contractor shall consider the recorded consumption of each Utility Service at each Site in respect of the preceding twelve months, and adjustments which may need to be made in accordance with paragraph 9.3.6.

9.3.6 In determining the Annual Utility Services Consumption Targets for a Contract Year, the Authority and the Contractor shall take account, on a fair and reasonable basis, of the following events if they have occurred in the then current Contract Year or any part of the preceding Contract Year following agreement of the Annual Utility Services Consumption Targets for the then current Contract Year:

- (a) a Change in respect of the utilisation of a Site having a material impact on utility consumption; and
- (b) a material Change in respect of additional equipment being introduced to a Site or existing equipment being removed from a Site, in each case having a material impact on utility consumption; and
- (c) the replacement at any Site of one Utility Service by another (e.g. gas is replaced by biofuel); and
- (d) a significant change in delivery methods, as agreed between the Authority and the Contractor, leading to an increase or decrease in utility consumption levels,

and the Authority and Contractor shall also take account on a fair and reasonable basis of seasonal variations and any change that is planned to take place in respect of the forthcoming Contract Year in relation to a Site which the Parties agree may change the consumption levels of any Utility Service in relation to such Site and such Contract Year.

9.4 Annual Utility Adjustment

9.4.1. Save in respect of the first Contract Year, on the first Business Day of each Contract Year, the actual consumption of each Utility Service relating to each Site in respect of the preceding Contract Year shall be calculated and compared with the relevant Annual Utility Service Consumption Target in respect of such Contract Year and the Annual Utility Adjustment shall be calculated as set out below. Where the difference between the actual consumption of a Utility Service relating to a Site in respect of the preceding Contract Year and the relevant Annual Utility Service Consumption Target is less than or equal to 10% of such target, the Annual Utility Adjustment shall be calculated in accordance with paragraph 9.4.2 or 9.4.3, as applicable. Where the difference between the actual consumption of a Utility Service relating to a Site in respect of the preceding Contract Year and the relevant Annual Utility Service Consumption Target exceeds 10% of such target, the Annual Utility Adjustment shall be calculated in accordance with paragraph 9.4.4 or 9.4.5, as applicable.

9.4.2 Where actual consumption of a Utility Service in respect of a Site in the preceding Contract Year exceeded the relevant Annual Utilities Services Consumption Target in respect of such Contract Year but by less than or equal to 10% of the relevant target, then the Contractor shall bear the costs associated with such extra consumption of that Utility Service in respect of such relevant Site. Such costs (the "Annual Utility Adjustment" or "AUA") shall be calculated as follows:

$$AUA = - (UA \times (CA - Ct))$$

where:

UA means the average actual unit cost of the relevant Utility Service in respect of the relevant Site in respect of the preceding Contract Year

CA means the actual consumption of the Utility Service in respect of the relevant Site in respect of the preceding Contract Year

Ct means the relevant Annual Utility Services Consumption Target for the Utility Service in respect of the relevant Site for the preceding Contract Year

9.4.3 Where actual consumption of a Utility Service in respect of a Site in the preceding Contract Year was less than the relevant Annual Utility Services Consumption Target in respect of such Contract Year but the difference is less than or equal to 10% of the relevant target, then the Contractor shall retain and benefit from the cost savings associated with such reduced consumption of that Utility Service in respect of such relevant Site. The cost saving that it shall retain and benefit from (the "Annual Utility Adjustment" or "AUA") shall be calculated as follows:

$$AUA = UA \times (Ct - CA)$$

where:

UA means the average actual unit cost of the relevant Utility Service in respect of the relevant Site in respect of the preceding Contract Year

Ct means the relevant Annual Utility Services Consumption Target for the Utility Service in respect of the relevant Site for the preceding Contract Year

CA means the actual consumption of the Utility Service in respect of the relevant Site in respect of the preceding Contract Year.

9.4.4 Where actual consumption of a Utility Service in respect of a Site in the preceding Contract Year exceeded the relevant Annual Utilities Services Consumption Target in respect of such Contract Year by more than 10% of the relevant target, the "Annual Utility Adjustment" or "AUA" for the Utility Service in respect of the relevant Site and the preceding Contract Year shall be calculated as set out below.

$$AUA = -\left(\frac{UA}{2} \times \left(CA - Ct \times \left(\frac{110}{100}\right)\right) + UA \times (Ct \times 0.1)\right)$$

where:

UA means the average actual unit cost of the relevant Utility Service in respect of the relevant Site in respect of the preceding Contract Year

CA means the actual consumption of the Utility Service in respect of the relevant Site in respect of the preceding Contract Year

Ct means the relevant Annual Utility Services Consumption Target for the Utility Service in respect of the relevant Site for the preceding Contract Year

9.4.5 Where actual consumption of a Utility Service in respect of a Site in the preceding Contract Year was less than the relevant Annual Utility Services Consumption Target in respect of such Contract Year and the difference is more than 10% of the relevant target, the "Annual Utility Adjustment" or "AUA" for the Utility Service in respect of the relevant Site and the preceding Contract Year shall be calculated as set out below.

$$AUA = \frac{UA}{2} \times \left(Ct \times \left(\frac{90}{100}\right) - CA\right) + UA \times (Ct \times 0.1)$$

where:

UA means the average actual unit cost of the relevant Utility Service in respect of the relevant Site in respect of the preceding Contract Year

CA means the actual consumption of the Utility Service in respect of the relevant Site in respect of the preceding Contract Year

Ct means the relevant Annual Utility Services Consumption Target for the Utility Service in respect of the relevant Site for the preceding Contract Year

PART 10 - AUTHORITY ESCALATION MEASURES

10.1 Warning Notices

10.1.1 Without prejudice to the Authority's rights under Clause 132 (Termination by the Authority) and any other rights under this Contract, if at any time the Contractor has:

- (a) exceeded the threshold of [insert%] for Total Deductions as a percentage of three months aggregated Monthly Unitary Charge in any rolling period of three successive Payment Periods; and/or
- (b) exceeded the threshold of [insert%] for Total Deductions as a percentage of twelve months aggregated Monthly Unitary Charge in any rolling period of twelve successive Payment Periods;

then the Authority shall give written notice (a "**Warning Notice**") to the Contractor setting out which of the triggers set out in this paragraph 10.1.1 has given rise to such notice and containing a reminder to the Contractor of the implications of such notice as specified in the remainder of this Part 10.

10.1.2 Any Deductions in respect of which a Warning Notice has already been issued under paragraph 10.1.1 of this Schedule 13, including any Deductions over and above the threshold level in the latest Payment Period in the rolling period, shall be ignored for the purpose of calculating progress against thresholds for subsequent Warning Notices under paragraph 10.1.1.

10.1.3 A maximum of one Warning Notice shall be issued under paragraph 10.1.1 in any Payment Period.

10.2 Increased Monitoring

10.2.1 Without prejudice to the Authority's rights under Clause 132 (Termination by the Authority) and any other rights under this Contract, if the Contractor receives three or more Warning Notices in any rolling period of eighteen successive Payment Periods, the Authority may by notice to the Contractor increase, to the extent the Authority considers appropriate, the level of its monitoring of the Contractor or (at the Authority's discretion) the level of the Contractor's monitoring of its own performance of its obligations under this Contract until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that it will perform (and is capable of performing) its obligations under this Contract.

10.3 Remedial Plan

10.3.1 Without prejudice to the Authority's rights under Clause 132 (Termination by the Authority) and any other rights under this Contract, if the Contractor receives six or more Warning Notices in any rolling period of eighteen successive Payment Periods, the Authority may by notice to the Contractor require a Remedial Plan to be developed and implemented by the Contractor to improve its performance of the Services to which the default relates until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that it will perform (and is capable of performing) such Services in accordance with its obligations under this Contract.

10.3.2 The Contractor shall submit the Remedial Plan to the Authority within ten Business Days of receipt of the sixth Warning Notice.

10.3.3 The Authority shall review the Remedial Plan and shall acting reasonably approve the Remedial Plan in writing within ten Business Days of its receipt or provide comments to the Contractor in accordance with paragraph 10.3.5.

- 10.3.4 If the Authority approves the Remedial Plan within the period stated in paragraph 10.3.3 or the Authority fails to reply within the specified period, then the Remedial Plan will be deemed to be accepted by the Authority and the Contractor shall implement the Remedial Plan.
- 10.3.5 If the Remedial Plan is not submitted in accordance with paragraph 10.3.2 or the Authority, acting reasonably, considers the Remedial Plan to be inadequate, the Authority shall within ten Business Days of receipt of the Remedial Plan indicate in writing to the Contractor where it considers the Remedial Plan is inadequate.
- 10.3.6 If the Authority has provided comments in accordance with paragraphs 10.3.3 and 10.3.5, the Contractor shall resubmit an amended Remedial Plan taking into account the comments of the Authority to the Authority within ten Business Days of receipt of the comments on the Remedial Plan to the Authority.
- 10.3.7 If the Remedial Plan is not resubmitted in accordance with paragraph 10.3.6 or the Authority, acting reasonably, considers the Remedial Plan to be inadequate or the remedial measures are not implemented in accordance with the Remedial Plan, then the Authority may take such measures as it considers necessary (either itself or by engaging others to take any such measures) to ensure performance of the Services that are the subject of the Remedial Plan to the standards required by this Contract (or as close to those standards as the circumstances permit and, in any event, in accordance with Good Industry Practice) (the "**Authority Remedial Measures**").
- 10.3.8 Where the Authority considers it to be necessary to do so, the Authority Remedial Measures shall include partial or total suspension of the right and obligation of the Contractor to provide the whole or part of the Services that are the subject of the Remedial Plan but only until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that it will perform (and is capable of performing) its obligations in respect of those Services to the required standards.
- 10.3.9 Where the Authority exercises any of its rights under paragraphs 10.3.7 and 10.3.8, the following provisions shall apply:
- (a) the Authority shall, at least forty-eight hours prior to it procuring Authority Remedial Measures, confirm in writing to the Contractor:
 - (i) what Authority Remedial Measures it intends to take; and
 - (ii) to what areas of the Authority Sites it will require access in order to procure the Authority Remedial Measures; and
 - (iii) the amount of costs to be recharged to the Contractor; and
 - (b) the Contractor's Representative shall be given the opportunity to monitor the carrying out of the Authority Remedial Measures and the Authority shall have due regard to any reasonable representations put forward by the Contractor's Representative in connection with such remedial measures; and
 - (c) the Authority shall procure that the Authority Remedial Measures are carried out in accordance with Good Industry Practice and using materials and goods of a satisfactory quality; and
 - (d) the Authority shall procure that no Prohibited Materials are used in connection with the Authority Remedial Measures; and
 - (e) the Authority shall procure that the Authority Remedial Measures are carried out so as to cause minimal disruption to the Contractor's operations at the Authority Sites.

PART 11 – RATCHETS

Table 8 – Availability Deduction Ratchet

Duration of Unavailability Event (hours)	Ratchet Availability Category			
	1	2	3	4
<24				
24 - 48				
48 - 72				
72 - 96				
96 - 120				
120 - 144				
144 - 168				
168 - 192				
192 - 216				
216 - 240				
>240				

Table 9 – Service Performance Deduction Ratchet

Duration of Performance Failure (hours)	Ratchet Performance Category				
	Critical	Major	Medium	Minor	Irritant
<24					
24 - 48					
48 - 72					
72 - 96					
96 - 120					
120 - 144					
144 - 168					
168 - 192					
192 - 216					
216 - 240					
>240					

Table 10 – Service Credit Ratchet

Number of successive months after the first qualifying month	Ratchet
1	[0.99]
2	[0.98]
3	[0.97]
4	[0.96]
5	[0.95]

PART 12 - SERVICE CREDITS

Table 11 - Service Credits

	Duty Carried Out (DCO)	Duty Carried Out with Faults (DCOF)	Duty Partially Carried Out (DPCO)	Duty Not Carried Out (DNCO)	Course Completion Not Carried Out (CCNCO)
Service Credits awarded for each Training Session where an Unavailability Event has occurred	Nil	Category A 1 Service Credit per Training Unit	Category B 10 Service Credits per Training Unit	Category C 30 Service Credits per Training Unit	Category D [30] Service Credits per Course
Effect on Authority's Requirements	Training Service delivered in accordance with the Authority's Requirements without any limitations	any Training Session which has in the Authority's reasonable opinion failed to meet all the requirements for that Training Session as set out in Schedule 1 (Authority's Requirements) and/or was carried out with minor faults with no material effect on the achievement of the Training Tasks as described in the relevant Operational Performance Statement, Formal Training Statement, Training Performance Statement, Syllabus, Assessment Specification, Instructional Specification, Enabling Objectives and/or Training Objectives as required in Schedule 1 (Authority's Requirements) for that Training Session including where any Specified Asset or Area	any Training Session which has in the Authority's reasonable opinion failed to meet significant requirements for that Training Session as set out in Schedule 1 (Authority's Requirements) and/or was carried out with faults affecting some of the Training Tasks as described in the relevant Operational Performance Statement, Formal Training Statement, Training Performance Statement, Syllabus, Assessment Specification, Instructional Specification, Enabling Objectives and/or Training Objectives as required in Schedule 1 (Authority's Requirements) for that Training Session including where any Specified Asset or Area needed to deliver that Training Session as required by the relevant	any Training Session which has in the Authority's reasonable opinion failed to meet the requirements for that Training Session as set out in Schedule 1 (Authority's Requirements) and/or not carried out or carried out with faults materially affecting or preventing the achievement of the Training Tasks as described in the relevant Operational Performance Statement, Formal Training Statement, Training Performance Statement, Syllabus, Assessment Specification, Instructional Specification, Enabling Objectives and/or Training Objectives as required in Schedule 1 (Authority's	any Course which has in the Authority's reasonable opinion failed to be completed (including where relevant any required assessment and evaluation of Students, Student remedial Training which may be required, or Student end-of-course reports, Student end-of-training reports, or class completion reports being provided by the Contractor to the Authority) in accordance with the requirements for that Course as described in the relevant Operational Performance Statement, Formal Training Statement, Training Performance Statement, Syllabus, Assessment Specification, Instructional Specification, Enabling Objectives and/or Training Objectives for that

	Duty Carried Out (DCO)	Duty Carried Out with Faults (DCOF)	Duty Partially Carried Out (DPCO)	Duty Not Carried Out (DNCO)	Course Completion Not Carried Out (CCNCO)
Service Credits awarded for each Training Session where an Unavailability Event has occurred	Nil	Category A 1 Service Credit per Training Unit	Category B 10 Service Credits per Training Unit	Category C 30 Service Credits per Training Unit	Category D [30] Service Credits per Course
		needed to deliver that Training Session as required by the relevant Instructional Specification is not physically available to the Authority for use or in a suitable condition to be used by the Authority for its intended training purposes in accordance with the Contract (known as "Duty Carried Out with Faults" or "DCOF")	Instructional Specification is not physically available to the Authority for use or in a suitable condition to be used by the Authority for its intended training purposes in accordance with the Contract (known as "Duty Partially Carried Out" or "DPCO")	Requirements) for that Training Session, including where any Specified Asset or Area needed to deliver that Training Session as required by the relevant Instructional Specification is not physically available to the Authority for use or in a suitable condition to be used by the Authority for its intended training purposes in accordance with the Contract (known as "Duty Not Carried Out" or "DNCO")	Course as required in Schedule 1 (Authority's Requirements), or failed to complete all the Training Sessions comprising the Course in accordance with the requirements for that Course, or where and to the extent that a Course has been affected by any fault or failure of any Authority Government Furnished Assets and the Contractor has not demonstrated that it has implemented its continuity plans to deliver a revised programme of training (known as "Course Completion Not Carried Out" or "CCNCO")
Non exhaustive examples of faults	No limitations	[insert project specific examples]	[insert project specific examples]	[insert project specific examples]	[insert project specific examples]

**SCHEDULE 14 – DOCUMENTS AND DATA REFERRED TO IN PART 18
(CHANGES AND CHANGE IN LAW)**

Part 1 – Notice of Change

SECTION 1 – REQUEST FOR CHANGE	
Contract No. [insert details]	Change Proposal No. [insert details]
To: [Change Recipient]	
From: [Change Proposer]	
Classification of the Change (to be completed by the Change Proposer)	
<input type="checkbox"/>	Administrative Change
<input type="checkbox"/>	Minor Change
<input type="checkbox"/>	Medium Value Change
<input type="checkbox"/>	Major Change
<input type="checkbox"/>	Change necessary to comply with a Change in Law
Details of the Change (including Authority Stage 1 Notice)	
All Changes	[insert details, including in the case of: <ul style="list-style-type: none"> • a Change to Asset Provision, details of the nature of the Change and which of the provisions of the Asset Requirements and/or the Asset Provision Proposals are required to be amended to accommodate the relevant Change; or • a Change which requires additional works as part of Asset Provision, details of: <ul style="list-style-type: none"> ○ the nature and scope of the relevant additional works to the same level of detail as set out in Asset Requirements and/or the Asset Provision Proposals; and ○ the times at or by which the work to implement the relevant additional works is proposed to be commenced and completed; or • a Change to Service Provision, details of the nature of the Change and which of the provisions of the Service Provision Requirements and/or the Service Provision Proposals are required to be amended to accommodate the relevant Change.]
Higher Value	[If the Authority is the Change Proposer indicate whether the

Changes	Authority intends to require the Contractor use its reasonable endeavours to seek funding for Capital Expenditure.]
Changes Proposed by the Contractor	[insert details of the Contractor's reasons for proposing the Change.] Signed for and on behalf of the Change Proposer by Name Position Date
Contractor Stage 1 Response (to be completed by the Contractor)	
Authority Stage 1 Confirmation	
SECTION 2 – CONTRACTOR'S ESTIMATE (to be completed by the Contractor)	
Statement of Work	
Administrative Change, Minor Change, Higher Value Change	[insert details of the steps the Contractor proposes to take to implement the Change pursuant to Clauses 84.3 (Administrative Changes), 84.5 (Minor Changes) or 84.9 (Higher Value Changes – Providing the Estimate), as appropriate].
Relief from Contractor's obligations required	
Minor Change, Higher Value	[insert details of any extension of time required for Asset Provision, any proposed revised Planned Services Commencement Date and/or any relief from obligations to meet the Service Provision Requirements and/or the Service Availability Requirements required to put the Parties in a no better and no worse position in relation to the Project than they would have been in if such Change had not been implemented]. [Enclose a revised Asset Provision Programme if relevant. Indicate whether the extension of time and/or relief claimed is subject to receiving any Necessary Consent and the time by which it must be received for the extension of time claimed in Section 2 to remain valid.]
Cost of the Change	

Minor Change	<p>[insert estimate using Minor Rates]</p> <p>[insert proposal for varying the Unitary Charge pursuant to Clause 87.3.1(b) or 87.4.1(b), as the case may be]</p>
Medium Value Changes	<p>[insert full details of Estimated Change in Project Costs calculated using unit rates/unit costs/equivalent rates, as set out in Part 3 of this Schedule 14 and taking into account:</p> <ul style="list-style-type: none"> • any impact upon the Unitary Charge from any Capital Expenditure required or no longer required as a result of the Change and, if appropriate, such increase or decrease in Capital Expenditure broken down into: <ul style="list-style-type: none"> ○ any capitalised interest, expenses or other third Party financing costs to be incurred by the Contractor as a result of any delay in achieving any relevant Planned Services Commencement Date or any other consequence of the Change; and/or ○ any Capital Expenditure or other lump sum expenditure likely to be incurred under the Service Provision Contract, including: <ul style="list-style-type: none"> ▪ direct labour (man hours and wage rates) ▪ materials ▪ any sub-contracted work where the value of such work is in excess of £50,000 (fifty thousand pounds sterling) identifying (i) each sub-system, package of work, service or purchase of components and raw materials; (ii) a detailed breakdown of prices/rates quoted for each tender requirement and the means by which prices are determined as fair and reasonable; (iii) the identity of the proposed Sub-Contractor; and (iv) any other relevant factors. If the Contractor does not propose to invite competitive tenders for such sub-contracted work and the value of such work exceeds £50,000 (fifty thousand pounds sterling), the Contractor shall provide full details of its reasons for not doing so; ▪ specialist tools ▪ travel and subsistence ▪ overheads ▪ finance charges (including arrangement fees), and/or; • any impact upon the Unitary Charge from any operating costs required or no longer required as a result of the Change and,

	<p>if appropriate, the Unitary Charge that would result from such increase or decrease in operating costs broken down into:</p> <ul style="list-style-type: none"> ○ any increase or decrease in maintenance costs for the Specified Assets; ○ any increase or decrease in the utility costs; ○ any increase or decrease in the costs of staff, consumables and sub-contracted or bought-in Services <p>[insert details of any estimated overhead recoveries that are anticipated after the Change is implemented]</p> <p>[insert Change Payment Schedule if Authority is meeting funding for Capital Expenditure for a Change not necessary as a result of a Discriminatory/Specific Change in Law]</p>
Major Change	<p>[insert full details of Estimated Change in Project Costs, taking into account:</p> <ul style="list-style-type: none"> • any impact upon the Unitary Charge from any Capital Expenditure required or no longer required as a result of the Change and, if appropriate, such increase or decrease in Capital Expenditure broken down into: <ul style="list-style-type: none"> ○ the likely valuation of the proposed Change under the Asset Provision Contract and/or the capital costs likely to be incurred under any other contract; ○ any capitalised interest, expenses or other third party financing costs to be incurred by the Contractor as a result of any delay in achieving any relevant Planned Services Commencement Date or any other consequence of the Change; and/or ○ any Capital Expenditure or other lump sum expenditure likely to be incurred under the Service Provision Contract including: <ul style="list-style-type: none"> ▪ direct labour (man hours and wage rates) ▪ materials ▪ any sub-contracted work where the value of such work is in excess of £50,000 (fifty thousand pounds sterling) identifying (i) each sub-system, package of work, service or purchase of components and raw materials; (ii) a detailed breakdown of prices/rates quoted for each tender requirement and the means by which prices are determined as fair and reasonable; (iii) the identity of the proposed Sub-Contractor; and (iv) any other relevant factors. If the Contractor does not propose to invite competitive tenders for such sub-contracted work and the value of such work exceeds £50,000 (fifty thousand pounds sterling), the Contractor shall provide full details of its

	<p>reasons for not doing so;</p> <ul style="list-style-type: none"> ▪ specialist tools ▪ travel and subsistence ▪ overheads ▪ finance charges (including arrangement fees), and/or; <ul style="list-style-type: none"> • any impact upon the Unitary Charge from any operating costs required or no longer required as a result of the Change and, if appropriate, the Unitary Charge that would result from such increase or decrease in operating costs broken down into: <ul style="list-style-type: none"> ○ any increase or decrease in maintenance costs for the Specified Assets; ○ any increase or decrease in the utility costs; ○ any increase or decrease in the costs of staff, consumables and sub-contracted or bought-in Services] <p>[insert details of any estimated overhead recoveries that are anticipated after the Change is implemented]</p> <p>[insert Change Payment Schedule if Authority is meeting funding for Capital Expenditure for a Change not necessary as a result of a Discriminatory/Specific Change in Law]</p>
Necessary Consents Required or Required to be Amended	
Minor Change, Higher Value Change	[insert details]
Timing of Implementation of the Change	
Minor Change, Higher Value Change	[insert details]
Higher Value Change	[insert details of certification procedures if required]
Other Consequences of the Change	
Administrative Change, Minor Change, Higher Value Change	[insert details]
Signed for and on behalf of the Contractor by	
.....	

	Name
	Position
	Date
SECTION 3 – AGREEMENT OF THE CHANGE (to be completed by agreement between the Parties)	
Administrative	Nil cost.
Change or Minor Change	Not applicable.
Higher Value Change	[insert details of the Unitary Charge that would result from the proposed Change]
Changes Proposed by the Contractor	[insert details and terms of agreed change incorporating information required for Contractor’s Estimate. This may be done by reference to Section 2 (CONTRACTOR’S ESTIMATE) and specifically identifying any amendments to the Estimate / further information]
SECTION 4 – EQUALITY OF INFORMATION STATEMENT (to be completed by both Parties)	
Medium Value Changes	Subject to Clauses 113 (Confidentiality) and 114 (Freedom of Information) of this Contract, the Authority and the Contractor shall each maintain in confidence the information provided by the other Party for the purpose of the negotiations mentioned in paragraph 1 agreeing the Change. Information will not be disclosed to others without the prior written consent of the other Party. The Authority and the Contractor confirm that each Party is free to provide such information to the appropriate person pursuant to Clause 144 (Disputes) of this Contract.
Major Change	<p>1. The Contractor and the Authority each confirms that the negotiations leading to the agreement of the cost of the Change in Section 3 were conducted in accordance with the principles of paragraph 9 (Equality of Information) of The 1968 Profit Formula Agreement which has now been carried forward in the 2006 Annual Review of the Profit Formula for Non-Competitive Government Contracts.</p> <p>2. The Contractor and the Authority each confirms that it is not aware of any material omission or inaccuracy in the facts and pricing assumptions provided by it, on which the cost of the Change in Section 3 is based.</p> <p>3. The Contractor confirms that in estimating the costs on which the cost of the Change recorded in Section 3 is based, it has observed the cost accounting practices as referred to in Clause 116 (Contractor’s Information, Documents and Records) of the Contract.</p> <p>4. Subject to Clauses 113 (Confidentiality) and 114 (Freedom of Information) of this Contract, the Authority and the Contractor shall each maintain in confidence the information provided by the other Party for the purpose of the negotiations mentioned in paragraph 1 agreeing the Change. Information will not be disclosed to others without the prior written consent of the other Party. The</p>

Authority and the Contractor confirm that each Party is free to provide such information to the appropriate person pursuant to Clause 144 (Disputes) of the Contract.

5. The agreement of the cost of the Change recorded in Section 3 does not constitute any representation of either Party to the other or oblige either Party to contract with the other.

Signed for and on behalf of the Contractor

 Name
 Position
 Date

Signed for and on behalf of the Authority

 Name
 Position
 Date

SECTION 5 – NOTICE TO PROCEED (to be completed by the Authority)

All Changes	Technical Approval	Financial Approval
	(MOD Project Manager)	(MOD Finance Manager)

	Name	Name
	Branch	Branch
	Date	Date

All Changes	Requirement Approval	Overall Approval
	(MOD Sponsor/Customer)	(Authority's Representative Commercial Officer)

	Name	Name
	Branch	Branch
	Date	Date

SECTION 6 – CONFIRMATION OF COMPLETION OF WORK COVERED BY THE CHANGE (to be completed by the Contractor)

Minor Change,
 Higher Value
 Change

SECTION 7 – CERTIFICATION OF WORK COVERED BY THE CHANGE (to be completed in accordance with agreed method of certification)

Minor Change,
 Higher Value

Change

Part 2 – Minor Rates

[insert details of Minor Rates and consider extent to which a Small Value Change Catalogue approach would be of benefit].

Part 3 – Pricing Information

Section 1 – Construction Unit Rates¹⁰²

[Project Teams may provide for these costs to be uplifted using the BCIS index for construction cost inflation in the period between the Commencement Date and the date the Medium Value Change or Major Change is to be commenced, or otherwise periodically update these.]

Section 2 – Lifecycle Maintenance Unit Rates¹⁰³

[To be expressed as a cost per square metre or a percentage of construction cost–no indexation applies]

Section 3 – Fees and Profit Margins¹⁰⁴

[Insert professional fees, contingencies, overheads and profit margin figures from subcontractors (as % of asset provision cost). No indexation applies.]

Part 4 – Contractor Management Costs¹⁰⁵

[Insert hourly rate for costing Contractor time, fixed for life of the Project but indexed at RPI]

[For FM Services, include original rates, adjustable for RPI as per financial model

For FM Contractor Management Costs, insert hourly rate for costing Contractor time, fixed for life of the Project but indexed at RPI (as per Base Case) or otherwise periodically updated]

Part 5 – Project Management Fee¹⁰⁶

[Insert daily rate for different grades of Contractor staff–to be reviewed every [two] years and indexed meanwhile at RPI]

¹⁰² Detailed information may be included in the Financial Model and cross referenced from here.

¹⁰³ Detailed information may be included in the Financial Model and cross referenced from here.

¹⁰⁴ Detailed information may be included in the Financial Model and cross referenced from here.

¹⁰⁵ Detailed information may be included in the Financial Model and cross referenced from here.

¹⁰⁶ Detailed information may be included in the Financial Model and cross referenced from here.

SCHEDULE 15 – DATA REFERRED TO IN PART 21 (TUPE, CONDO AND SPONSORED RESERVES)

PART 1 - EMPLOYEE TRANSFER ARRANGEMENTS ON ENTRY¹⁰⁷

1 DEFINITIONS

1.1 In this Schedule 15 Part 1, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) of the Contract.

1.2 Without prejudice to Schedule 1 (Definitions) of the Contract, in this Schedule 15 Part 1 unless the context otherwise requires:

"Authority Employees" means those employees of the Authority who are listed in the Final List;

"CSCS" means Civil Service Compensation Scheme;

"Contract Award Date" means the date of this Contract;

"Costs" means recruitment costs in respect of the provision of the Services, those costs of employing the employees of the Authority and/or any reasonable termination costs, including, without limitation, redundancy payments (but excluding costs arising from acts or omissions of the Contractor and/or Employing Sub-Contractor, and/or any payment which the Contractor and/or any Employing Sub-Contractor is not obliged to make by contract or statute and/or any compensation, payment, costs or awards (whether protective or otherwise) in connection with claims of unfair dismissal, discrimination and claims in respect of a protective award under the Trade Union and Labour Relations (Consolidation) Act 1992 (save where such claims are as a result of an act or omission of the Authority));

"Employee Liability Information" has the same meaning as in Regulation 11(2) of the Transfer Regulations;

"Employing Sub-Contractor" means any sub-contractor of the Contractor who is or is to be the employer of an Authority Employee, an Ex-Authority Employee, a Previous Contractor Employee or an Unexpected Employee;

"Ex-Authority Employees" means those employees of a Previous Contractor who (i) are ex-employees of the Authority (ii) are listed in Appendix 2 of this Schedule 15 Part 1 (iii) at the Ex-Authority Relevant Transfer Date have not been dismissed, resigned, been reassigned or objected to the Ex-Authority Relevant Transfer and (iv) transferred from the Authority under a previous contract for the provision of the Services or services which are similar to or equivalent to the Services;

"Ex-Authority Relevant Transfer" means a transfer to the Contractor or an Employing Sub-Contractor of the Ex-Authority Employees pursuant to this Contract and the Transfer Regulations;

¹⁰⁷ Please note that these clauses deal with Entry requirements for outsourcing and re-lets and the clauses may need adjustment depending on what types of transfer there are in each particular project.

"Ex-Authority Relevant Transfer Date" means the date on which the Ex-Authority Relevant Transfer is effected for the Ex-Authority Employees;

"Expected Authority Transferee" means an employee of the Authority whom the Authority considers is assigned or whose principal purpose is to provide the Services to be provided by the Contractor and/or an Employing Sub-Contractor prior to the Relevant Transfer Date and who the Authority expects to transfer to the Contractor or an Employing Sub-Contractor on the Relevant Transfer Date;

"Final List" means the list of Expected Authority Transferees as at 14 days prior to the Relevant Transfer Date, plus the information listed in Appendix 3 of this Schedule 15 Part 1 in respect of those Expected Authority Transferees;

"Final Relevant Transfer Date" means [insert date];

"New Provider" means any replacement service provider or providers nominated by the Authority to provide the Services or substantially similar services or the Authority itself where the Services or substantially similar services continue to be provided by the Authority after partial termination, termination or expiry of this Contract;

"Previous Contractor" means [insert details];

"Previous Contractor Employee" means an employee of a Previous Contractor who immediately before the Previous Contractor Relevant Transfer Date is assigned to carry out the services to be carried out by the Contractor or Sub-Contractor under this Contract and who has not been dismissed, resigned, been reassigned or objected to the Previous Contractor Relevant Transfer;

"Previous Contractor Relevant Transfer" means a transfer to the Contractor or an Employing Sub-Contractor of a Previous Contractor Employee pursuant to this Contract and the Transfer Regulations;

"Previous Contractor Relevant Transfer Date" means the date on which the Previous Contractor Relevant Transfer is effected for the Previous Contractor Employees;

"Provisional List" means the list of Expected Authority Transferees plus the information listed in Appendix 3 of this Schedule 15 Part 1 for those Expected Authority Transferees;

"Relevant Statutory Scheme" has the same meaning as in Regulation 8 of the Transfer Regulations;

"Relevant Transfer" means a transfer to the Contractor or an Employing Sub-Contractor of the Authority Employees pursuant to this Contract and the Transfer Regulations;

"Relevant Transfer Date" means the date on which the Relevant Transfer is effected for the Authority Employees¹⁰⁸;

"Unexpected Employee" means any employee of the Authority or former employee of the Authority (excluding any Ex-Authority Employee) who is not on the Final List provided in accordance with paragraph 2.1.3 and who is or was

¹⁰⁸ May require adjustment if there is more than one transfer date. This may affect other aspects of the drafting.

assigned by the Authority to the Services to be provided by the Contractor and/or an Employing Sub-Contractor prior to the Relevant Transfer Date;

2 AUTHORITY EMPLOYEES

2.1 Authority Employee Information / Unitary Charge Adjustment

2.1.1 Three months¹⁰⁹ prior to the Relevant Transfer Date, the Authority shall provide the Contractor with the Provisional List. The Authority's Representative may propose a Change to the Provisional List pursuant to PART 18 (Changes and Change in Law) up to 14 days prior to the Relevant Transfer Date and:

(a) the Authority's Representative shall notify the Contractor of such Change pursuant to PART 18 (Changes and Change in Law) as soon as is reasonable practical; and

(b) the Contractor's Representative shall prepare an Estimate pursuant to PART 18 (Changes and Change in Law) in respect of such a Change.

2.1.2 The Contractor's Representative shall provide any information provided to it by the Authority under paragraph 2.1.1 to an Employing Sub-Contractor within seven Business Days of receipt to the extent that such Expected Authority Transferees are to transfer to an Employing Sub-Contractor under a Relevant Transfer on the Relevant Transfer Date.

2.1.3 Fourteen days prior to the Relevant Transfer Date the Authority shall provide to the Contractor the Final List, together with Employee Liability Information in respect of Expected Authority Transferees to the extent not already provided, save that where this information has previously been provided, the Authority is only obliged to confirm whether this is still accurate.

2.1.4 Paragraphs 2.1.1 and 2.1.3 are subject to the Authority's obligations in respect of the DPA and the Authority shall use its reasonable endeavours to obtain the consent of its employees to the extent necessary under the DPA or provide the data in anonymous form in order to enable disclosure of the information required under paragraphs 2.1.1 or 2.1.3.

2.1.5 Where any differences between the employee lists at Appendix 1 (which shows the employee information [at the pricing reference date] on which the Contractor based the Authority personnel costs element of the Unitary Charge, that element being¹¹⁰ £insert sum) and the Final List result in reasonable additional Costs to the Contractor and/or any Employing Sub-Contractor, the Contractor may include in the Estimate a reasonable adjustment to the Unitary Charge¹¹¹ to meet such reasonable additional Costs that the Contractor and/or any Employing Sub-Contractor incurs as a result of such a Change provided that such a Change is not as a result of an act or omission of the Contractor and/or any Employing Sub-Contractor. The Contractor shall produce such reasonable evidence of the reasonable additional Costs incurred as the Authority may reasonably require as soon as is reasonably practicable and in any event no later than 28 days following the receipt of such a request prior to any adjustment being made. No

¹⁰⁹ Time may require adjustment depending on date of transfer. Note MOD's TU TUPE consultation timescales (minimum three calendar months from contract award date) prior to the transfer.

¹¹⁰ The drafting assumes an identifiable employment cost being submitted as part of the bid with a benchmark set of employment data against which the bidder will have priced and against which any adjustments are calculated.

¹¹¹ This assumes that the method of adjustment is to the Unitary Charge. Projects may want to consider whether this is the correct method (an indemnity is an alternative). Note also whether either method constitutes a reportable contingent liability.

adjustment to the Unitary Charge shall be made where there is a failure to produce such evidence within this timescale or where the Authority considers such information insufficient.

- 2.1.6 Where the Authority considers that any differences between the employee lists at Appendix 1 (which shows the employee information [at the pricing reference date] on which the Contractor based the personnel costs element of the Unitary Charge, that element being £insert sum) and the Final List result in a reduction of Costs (including, without limitation, any reduction in employment and pension costs due to the Contractor and/or Employing Sub-Contractor employing new recruits in place of Authority employees who were on the list at Appendix 1 but not the Final List) to the Contractor and/or any Employing Sub-Contractor, the Contractor shall include in the Estimate a reasonable adjustment to the Unitary Charge to reflect any reasonable reduction in Costs (including, without limitation, any reduction in employment and pension costs due to the Contractor and/or Employing Sub-Contractor employing new recruits in place of Authority employees who were on the list at Appendix 1 but not the Final List) to the Contractor and/or any Employing Sub-Contractor. The Authority and the Contractor shall produce such reasonable evidence as the other Party shall reasonably require as soon as is reasonably practicable and in any event no later than 28 days after a request is made in writing in order to establish such a reduction in Costs. A failure by the Contractor to produce such evidence shall preclude the Contractor from objecting to an adjustment to the Unitary Charge. A failure by the Authority to produce such evidence, save where such a failure is as a result of an act or omission of the Contractor or Employing Sub-Contractor, shall result in no adjustment to the Unitary Charge.
- 2.1.7 The Authority shall notify the Contractor of any changes to the terms and conditions of any Expected Authority Transferee and/or Authority Employee that are made after the Contract Award Date but prior to the Relevant Transfer Date as soon as reasonably practicable. The Contractor shall provide any such information to an Employing Sub-Contractor within seven Business Days of receipt to the extent that such employees are to transfer to an Employing Sub-Contractor under a Relevant Transfer on the Relevant Transfer Date.
- 2.1.8 Where, following the Relevant Transfer Date, the Contractor and/or the Authority provides reasonable evidence to the other Party that any of the details in the Final List were inaccurate (other than details in respect of the number or identity of the Expected Authority Transferees which shall not be taken into account in respect of any Unitary Charge adjustment due to additional Costs) the Unitary Charge shall be adjusted to reflect the adjustment which would have been made under paragraphs 2.1.5 and/or 2.1.6 (if any) had the Final List been accurate on the Relevant Transfer Date. The Authority and the Contractor shall produce such reasonable evidence of the inaccuracies and/or the additional Costs and/or reduction in Costs (including, without limitation, any reduction in employment and pension costs due to the Contractor and/or Employing Sub-Contractor employing new recruits in place of Expected Authority Transferees who were on the Final List but who do not transfer) incurred as the other Party may reasonably require as soon as is reasonably practicable and in any event, no later than 28 days following the receipt of such a request prior to any adjustments being made. Where there is a failure by the Contractor to produce such evidence within this timescale or where the Authority reasonably considers such information insufficient, no adjustment to the Unitary Charge shall be made. A failure by the Authority to produce reasonable evidence to demonstrate inaccuracies and/or the reduction in Costs, save where such a failure is as a result of an act or omission of the Contractor or Employing Sub-Contractor, shall result in no adjustment to the Unitary Charge.

2.1.9 No adjustments shall be made to the Unitary Charge in respect of inaccuracies raised under paragraphs 2.1.5, 2.1.6 or 2.1.8 more than six months following the Relevant Transfer Date.

2.1.10 The Parties agree that any adjustments to the Unitary Charge under paragraphs 2.1.5, 2.1.6 or 2.1.8 for each Relevant Transfer shall be made at the same time which shall be after the Final Relevant Transfer Date.

If a claim or allegation is made by an Unexpected Employee that he has or should have transferred to the Contractor and/or any Sub-Contractor and/or (in the case of an Unexpected Employee whose employment terminated on or before the Relevant Transfer Date) that any liability relating to him has transferred to the Contractor and/or any Sub-Contractor by virtue of the Transfer Regulations and this Contract, the Party receiving the claim or allegation shall notify the other Party (or the Contractor shall notify the Authority on the Sub-Contractor's behalf) in writing within ten Business Days of receiving written notification of the Unexpected Employee's claim or allegation, whereupon:

- (a) the Authority shall, as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
- (b) if the Unexpected Employee's claim or allegation is not withdrawn or resolved the Authority shall notify the Contractor (who will notify any Sub-Contractor who is a party to such claim or allegation), and the Contractor or Sub-Contractor shall employ the Unexpected Employee or as soon as reasonably practicable, serve notice to terminate the Unexpected Employee's employment in accordance with his contract of employment or (in the case of an Unexpected Employee whose employment terminated on or before the Relevant Transfer Date) shall resist any claim brought by the Unexpected Employee against the Contractor and/or any Sub-Contractor; and
- (c) the Authority shall effect an adjustment to the Unitary Charge which has the effect of reimbursing the Contractor for any of the following liabilities incurred by the Contractor or Sub-Contractor in dealing with or disposing of the Unexpected Employee's claim or allegation:
 - (i) any additional costs of employing the Unexpected Employee to provide the Services under this Contract up to the date of dismissal where the Unexpected Employee has been dismissed in accordance with paragraph 2.1.10(b);
 - (ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Employee;
 - (iii) any liabilities relating to the termination of the Unexpected Employee's employment provided the Contractor or Sub-Contractor has used reasonable endeavours to find alternative employment for the Unexpected Employee or, if this has not been possible, provided the Contractor or Sub-Contractor has carried out the termination fairly and in accordance with all statutory obligations imposed on an employer;
 - (iv) any liabilities incurred under a settlement of the Unexpected Employee's claim which was reached with the express permission of the Authority;

- (v) reasonable administrative costs incurred by the Contractor or Sub-Contractor in dealing with the Unexpected Employee's claim or allegation, subject to a cap per Unexpected Employee of £5,000; and
- (vi) legal and other professional costs reasonably incurred;
- (d) the Contractor shall be deemed to have waived its right to an adjustment as per paragraph 2.1.10(c) if it fails without reasonable cause to take, or fails to procure any Sub-Contractor takes, any action in accordance with any of the timescales referred to in this paragraph 2.1.

2.2 Obligations in Respect of Authority Employees

- 2.2.1 The Contractor and the Authority acknowledge, and the Contractor shall procure that the Employing Sub-Contractors acknowledge, that the provision of the Services under this Contract will constitute Relevant Transfers for the purposes of the Transfer Regulations.
- 2.2.2 The Contractor agrees and shall procure that the Employing Sub-Contractors agree that from the Relevant Transfer Date the contracts of employment of any Authority Employees together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme) will take effect as if originally made between the Contractor or an Employing Sub-Contractor and the Authority Employees (or the relevant trade union, as the case may be).
- 2.2.3 The Authority and the Contractor shall (and the Contractor shall procure that any Employing Sub-Contractors shall):
 - (a) before and in relation to the Relevant Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Authority Employees to the Contractor or Employing Sub-Contractor; and
 - (b) comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13.
- 2.2.4 The Authority shall be responsible for all emoluments and outgoings in respect of an Authority Employee (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken up to the Relevant Transfer Date, PAYE, national insurance contributions and contributions to retirement benefit schemes) in respect of the period prior to the Relevant Transfer Date on which that Authority Employee transfers to the Contractor or Employing Sub-Contractor.
- 2.2.5 The Contractor or Employing Sub-Contractor (as the case may be) shall have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken after the Relevant Transfer Date, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to an Authority Employee with effect from and including the Relevant Transfer Date on which that Authority Employee transfers until the date that Authority Employee leaves the employment of the Contractor and/or Employing Sub-Contractor.
- 2.2.6 No later than three months after the Relevant Transfer Date the Contractor shall pay to the Authority a sum equal to the outstanding balance on the Relevant Transfer Date of any loan, salary, advance or other indebtedness of any

Authority Employee due to the Authority immediately prior to the Relevant Transfer.

- 2.2.7 The Authority shall indemnify the Contractor in respect of a redundancy payment to an Authority Employee dismissed by the Contractor or Employing Sub-Contractor after the Relevant Transfer Date by reason of redundancy as defined in section 139 of the Employment Rights Act 1996 provided such redundancy is carried out fairly, in accordance with all statutory obligations imposed on an employer. For the avoidance of doubt, the indemnity provided by the Authority in respect of each redundant Authority Employee shall:
- (a) cover only the amount he or she would have received under the CSCS which, for the avoidance of doubt, shall include any enhancement to the Authority Employee's pension benefits that results from the redundancy;
 - (b) not apply in respect of any Authority Employee who is moved out of or re-deployed from the Services at any time.
- 2.2.8 The Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim or claims by any Authority Employee brought against the Contractor and/or any Employing Sub-Contractor at any time arising out of or in connection with any acts or omissions of the Authority which occurred prior to the Relevant Transfer Date for that Authority Employee provided that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with such claims are not the result of any act or omission of the Contractor and/or Employing Sub-Contractor.
- 2.2.9 The Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim or claims by any Authority Employee or trade union representative or Authority Employee representative brought against the Contractor, whether before or after the Relevant Transfer Date, arising out of any failure by the Authority to comply with its obligations under Regulation 13 of the Transfer Regulations in respect of any Authority Employee or any other employee of the Authority who transfers to the Contractor or any Employing Sub-Contractor pursuant to this Contract and the Transfer Regulations or any other employee of the Authority affected by the Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations), except to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with such claims are the result of any act or omission of the Contractor and/or Employing Sub-Contractor.
- 2.2.10 The Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with:
- (a) any claim or claims brought by any Authority Employee against the Authority at any time on or after the Relevant Transfer Date on which that Authority Employee transferred which arise as a result of an act or omission of the Contractor or any Sub-Contractor during the period from and including the Relevant Transfer Date;
 - (b) any claim or claims brought by any employees (other than any Authority Employee) engaged in connection with the Services by the Contractor or any Sub-Contractor against the Authority at any time on or after the Relevant Transfer Date (including for the avoidance of doubt any health

and safety and personal injury claims) which arise as a result of an act or omission of the Contractor or any Sub-Contractor from and including the Relevant Transfer Date,

save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with such claims are the result of the act or omission of the Authority.

2.2.11 The Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim or claims by any employee or trade union representative or employee representative brought against the Authority, whether before or after the Relevant Transfer Date, arising out of any failure by the Contractor or any Sub-Contractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Authority Employee or any other employee engaged wholly or mainly in connection with the Services by the Contractor or any Sub-Contractor or any other employee of the Contractor or any Sub-Contractor affected by the Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations), save to the extent that any reasonable costs (including reasonable legal costs), losses, and expenses and all damages, compensation, fines and liabilities arising out of such claims are the result of the act or omission of the Authority or any Previous Contractor.

2.2.12 The Contractor shall indemnify the Authority in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change proposed or made by the Contractor or any Employing Sub-Contractor to the working conditions of all or any Authority Employees to the material detriment of such Authority Employees. For the purposes of this paragraph the expressions "substantial change" and "material detriment" shall have the same meaning as for the purposes of Regulation 4(9) of the Transfer Regulations.

2.3 Post Transfer Reporting

2.3.1 The Contractor shall provide (and/or shall procure an Employing Sub-Contractor shall provide) the Authority with the following information as part of the normal reporting regime of this Contract when any of the following events occur:

- (a) any proposed, agreed or imposed changes to terms and conditions of service in respect of Authority Employees;
- (b) disputes relating to compliance with the Transfer Regulations which are regarded as unresolved by a recognised Trade Union;
- (c) any court action or tribunal proceedings relating to compliance with the Transfer Regulations;
- (d) completed court action or tribunal proceedings relating to compliance with the Transfer Regulations;
- (e) out of court settlements relating to compliance with the Transfer Regulations,

such reports shall also include information relating to Authority Employees transferred under the Transfer Regulations to Sub-Contractors as a result of this Contract; and

the Contractor acknowledges that information referred to in this paragraph 2.3 may also be used in considering the Contractor's bid to re-let, or in considering the Contractor's bid(s) for other contracts let by the Authority.

2.4 Application of Paragraphs in this Schedule 15 to employed Unexpected Employees

2.4.1 Paragraph 2.2.2, 2.2.4 to 2.2.6, 2.2.8, 2.2.10, 2.2.12 and 2.3 of this Schedule 15 Part 1 and paragraph 2.5 of Schedule Part 2 (Staff Transfer on Exit) shall apply to any Unexpected Employee whom the Contractor and/or any Sub-Contractor has decided to employ in accordance with paragraph 2.1.10(b) save that references to "the Relevant Transfer Date" in paragraphs 2.2.4 to 2.2.6, 2.2.8 and 2.2.10 of this Schedule 15 Part 1 shall be construed as being references to the date on which such an Unexpected Employee took up employment with the Contractor or Sub-Contractor.

2.5 Contract Changes during the Contract

2.5.1 If there is a Change which gives rise to a Relevant Transfer the provisions which shall apply to any transfer of employees pursuant to the Transfer Regulations from the Authority to the Contractor or any Sub-Contractors shall be dealt with at the time of the Change or request for Additional Services, although the Parties agree that the principles set out in the provisions of paragraphs 2, 3 and 4 of this Schedule 15 Part 1 in their entirety shall apply.

2.6 Employee Liability Information

2.6.1 The Parties consider that the provisions of this Contract (and in particular paragraph 2.1.5 of this Part 1) provide sufficient protection and opportunity for compensation to the Contractor or Employing Sub-Contractors in the event of any breach by the Authority of its obligations under Regulation 11 of the Transfer Regulations.

2.6.2 The Parties agree that the Authority is not a "third party" for the purpose of Regulation 11(7)(b) of the Transfer Regulations and nothing in this Contract shall have the effect of making the Authority such a third party.

2.7 General

2.7.1 The Contractor shall not recover any Costs and/or other losses under this Schedule 15 Part 1 where such Costs and/or losses are recoverable by the Contractor elsewhere in this Contract and/or have been recovered under the Transfer Regulations or otherwise.

3 EX-AUTHORITY EMPLOYEES/PREVIOUS CONTRACTOR EMPLOYEES

3.1 Employee Information

3.1.1 No later than three months prior to the Ex-Authority Relevant Transfer Date the Authority shall provide to the Contractor:

- (a) a completed Appendix 2 to this Schedule 15 Part 1 listing the expected Ex-Authority Employees; and
- (b) the information listed in Appendix 3 of this Schedule 15 Part 1 in respect of Ex-Authority Employees to the extent that such information has been provided to the Authority by the Previous Contractor.

- 3.1.2 No later than three months prior to the Previous Contractor Relevant Transfer Date the Authority shall provide to the Contractor the information listed in Appendix 3 of this Schedule 15 Part 1 in respect of Previous Contractor Employees, to the extent that such information has been provided to the Authority by the Previous Contractor.
- 3.1.3 The Authority shall provide the Contractor with any update to the information provided under paragraphs 3.1.1 and 3.1.3 as soon as is reasonably practicable, to the extent that such information has been provided to the Authority by the Previous Contractor.
- 3.1.4 The Contractor shall provide any information provided to it by the Authority pursuant to paragraphs 3.1.1, 3.1.3 and 3.1.3 to an Employing Sub-Contractor within seven Business Days of receipt to the extent that such Previous Contractor Employees are to transfer to an Employing Sub-Contractor under a Previous Contractor Relevant Transfer on the Previous Contractor Relevant Transfer Date.
- 3.1.5 The Authority does not warrant the accuracy of the information provided under paragraphs 3.1.1, 3.1.3 and 3.1.3.

3.2 Obligations in respect of Ex-Authority Employees and Previous Contractor Employees

- 3.2.1 The Contractor and the Authority acknowledge (and the Contractor shall procure that the Employing Sub-Contractor acknowledges) that the provision of the Services under this Contract will constitute an Ex-Authority Relevant Transfer and a Previous Contractor Relevant Transfer.
- 3.2.2 The Contractor agrees (and will procure that the Employing Sub-Contractor agrees) that from the Ex-Authority Relevant Transfer Date and the Previous Contractor Relevant Transfer Date the contracts of employment of any Ex-Authority Employees and Previous Contractor Employees together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme) will take effect as if originally made between the Contractor or an Employing Sub-Contractor and the Ex-Authority Employees and the Previous Contractor Employees (or the relevant trade union, as the case may be) subject to any variations to such contracts of employment made pursuant to Regulation 9 of the Transfer Regulations, where applicable.
- 3.2.3 Save for any liabilities in respect of Ex-Authority Employees or Previous Contractor Employees under a Relevant Statutory Scheme or Schemes, the Contractor or Employing Sub-Contractor (as the case may be) shall have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken after the Ex-Authority Relevant Transfer Date or the Previous Contractor Relevant Transfer Date as appropriate, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to the Ex-Authority Employees and the Previous Contractor Employees with effect from and including the Ex-Authority Relevant Transfer Date or the Previous Contractor Relevant Transfer Date on which that Ex-Authority Employee or Previous Contractor Employee transfers until the date the Ex-Authority Employee or Previous Contractor Employee leaves the employment of the Contractor or Employing Sub-Contractor.

3.3 Indemnities

3.3.1 The Contractor shall indemnify and hold harmless [names of Previous Contractors to be inserted] against all demands, claims, liabilities, losses and damages, costs and expenses (including all interest, penalties, legal and other costs and expenses together with any applicable Value Added and similar taxes or liability for deduction of PAYE tax properly incurred by [names of Previous Contractors to be inserted]) arising out of or in connection with any act, default or omission of the Contractor and/or any Employing Sub-Contractor after the Previous Contractor Relevant Transfer Date relating to the employment by the Contractor or any Employing Sub-Contractor of any of the Ex-Authority Employees and/or Previous Contractor Employees including any liability arising through the breach by the Contractor and/or any Employing Sub- Contractor of their obligations to inform and consult under the Transfer Regulations and any liability in connection with any collective agreement or any arrangement with any trade union or staff association after the Ex-Authority Relevant Transfer Date and the Previous Contractor Relevant Transfer Date.

3.4 Post Transfer Reporting

3.4.1 The Contractor shall provide (or shall procure that an Employing Sub-Contractor shall provide) the Authority with the following information as part of the normal reporting regime of this Contract when any of the following events occur:

- (a) any proposed, agreed or imposed changes to terms and conditions of service in respect of Ex-Authority Employees and Previous Contractor Employees;
- (b) disputes relating to compliance with the Transfer Regulations which are regarded as unresolved by a recognised Trade Union;
- (c) any court action or tribunal proceedings relating to compliance with the Transfer Regulations;
- (d) completed court action or tribunal proceedings relating to compliance with the Transfer Regulations; and
- (e) out of court settlements relating to compliance with the Transfer Regulations if possible having regard to the wording of the settlement

such reports shall also include information relating to Ex-Authority Employees and Previous Contractor Employees transferred under the Transfer Regulations to Sub-Contractors as a result of this Contract; and

the Contractor acknowledges that the information referred to in this paragraph 3.4.1 may also be used in considering the Contractor's bid to re-let, or in considering the Contractor's bid(s) for other contracts let by the Authority.

3.5 Employee Liability Information

3.5.1 The Parties consider that the provisions of this Contract provide sufficient protection and opportunity for compensation to the Contractor or Employing Sub-Contractors in the event of any breach by the Authority of its obligations under Regulation 11 of the Transfer Regulations.

3.5.2 The Parties agree that the Authority is not a "third party" for the purpose of Regulation 11(7)(b) of the Transfer Regulations and nothing in this Contract shall have the effect of making the Authority such a third party.

4 PENSION MATTERS

4.1 In this paragraph 4, unless the context otherwise requires, the following expressions have the following meanings:

"Actuary" means a Fellow of the Institute of Actuaries or a Fellow of the Faculty of Actuaries;

"Actuary's Letter" means the bulk transfer terms issued by the PCSPS Actuary (as set out in the notes dated [insert date] in respect of the Contractor's Scheme and/or Initial Sub-Contractor's Scheme as applicable, copies of each of which are included at Appendix 4 to Schedule 15 Part 1) which specify the actuarial methods and assumptions for calculating the Transfer Values;

"Authority Pension Employee" means an employee of the Authority named in the Final List (as defined in paragraph 1.2) and/or an Unexpected Employee (as defined in paragraph 1.2) who in either case on the day before the Relevant Transfer Date is either:

- in Reckonable Service (or eligible to be in Reckonable Service); or
- would be in Reckonable Service, but for the fact that he is long term absent from work or is in a waiting period; or
- an Opted-out Employee;

"Consenting Employees" means those of the Authority Pension Employees who join the Contractor's Scheme or the Initial Sub-Contractor's Scheme as applicable on the Relevant Transfer Date and who consent in writing to payment of the Transfer Value in respect of their benefits to the Contractor's Scheme or the Initial Sub-Contractor's Scheme as applicable within the period specified in paragraph 4.6.1(b) and who do not withdraw that request before expiry of the period specified in paragraph 4.6.1(b). For the avoidance of doubt an Authority Pension Employee shall cease to be a Consenting Employee if he dies or withdraws his consent before the expiry of the period specified in paragraph 4.6.1(b);

"Contractor's Actuary" means the Actuary appointed by the Contractor for the purposes of this Contract;

"Contractor's Scheme" means the one or more retirement benefits schemes established by the Contractor or in which it participates for the purposes of paragraph 4 (Pension Matters). A reference to the Contractor's Scheme shall, where appropriate, include a reference to the trustees or administrators thereof;

"Contractor's Scheme Actuary" means the Actuary appointed as scheme actuary by the trustees of the Contractor's Scheme for the purposes of Section 47 of the Pensions Act 1995;

"Designated Schemes" means either a Designated Stakeholder Scheme or an occupational pension scheme (as defined in section 1 of the Pensions Schemes Act 1993) which provides Money Purchase Benefits (as defined in Section 181 of the Pension Schemes Act 1993);

"Designated Stakeholder Schemes" means the one or more Stakeholder Pension Schemes designated from time to time by the Contractor or Initial Sub-Contractor or Employing Sub-Contractor as applicable for the purposes of section 3 of the Welfare Reform and Pensions Act 1999;

"Employing Sub-Contractor" means any sub-contractor of the Contractor (including an Initial Sub-Contractor and a Future Sub-Contractor) providing all or any part of the Services who is or is to be the employer of an Authority Employee or an Unexpected Employee;

"Employing Sub-Contractor's Scheme" means the one or more retirement benefits schemes established by the Employing Sub-Contractor or in which it participates for the purposes of paragraph 4 (Pension Matters). A reference to the Employing Sub-Contractor's Scheme shall, where appropriate, include a reference to the trustees or administrators thereof;

"Employing Sub-Contractor's Scheme Actuary" means the Actuary appointed by the Employing Sub-Contractor for the purposes of this Contract;

"Future Sub-Contractor" means any Sub-Contractor appointed to provide the services by the Contractor or Initial Sub-Contractor after the Relevant Transfer Date;

"Future Sub-Contractor's Scheme" means the one or more retirement benefits schemes established by a Future Sub-Contractor or in which it participates for the purposes of paragraph 4 (Pension Matters). A reference to the Future Sub-Contractor's Scheme shall, where appropriate, include a reference to the trustees or administrators thereof;

"GAD" means the Government Actuary's Department;

"Initial Sub-Contractor" means the employer of an Authority Pension Employee or Unexpected Employee where such employment arises by direct transfer from the Authority to the Initial Sub-Contractor rather than via the Contractor;

"Initial Sub-Contractor's Scheme" means the one or more retirement benefits schemes established by the Initial Sub-Contractor or in which it participates for the purposes of paragraph 4 (Pension Matters). A reference to the Initial Sub-Contractor's Scheme shall, where appropriate, include a reference to the trustees or administrators thereof;

"Initial Sub-Contractor's Scheme Actuary" means the Actuary appointed by the Initial Sub-Contractor for the purposes of this Contract;

"Investment Roll-up" has the meaning ascribed to it in the Actuary's Letter;

"Money Purchase Benefits" means money purchase benefits as defined in Section 181 of the Pension Schemes Act 1993;

"Partnership Pension Account" means the Stakeholder Pension Schemes designated by or on behalf of the Authority and known collectively by the title of "Partnership Pension Account";

"Partnership Pension Account Death Benefits Scheme" means the scheme established on 30 April 2003 (but with effect from 1 October 2002) by the Minister for the Civil Service under section 1 of the Superannuation Act 1972 and known as the Partnership Pension Account Death Benefits Scheme;

"Partnership Pension Account Employees" means Authority Employees who on the day before the Relevant Transfer Date are entitled to a contribution from the Authority to the Partnership Pension Account;

"**PCSPS**" means the scheme established under section 2 of the Superannuation Act 1972 and known as the Principal Civil Service Pension Scheme. A reference to the PCSPS in relation to an Authority Pension Employee shall include a reference to the Section or Sections of the PCSPS of which he is a member and shall, where appropriate, also include a reference to the administrators thereof;

"**PCSPS Actuary**" means the Actuary (or firm of Actuaries) appointed for the time being as scheme actuary to the PCSPS;

"**Pensionable Service**" means pensionable service under a Previous Contractor's Scheme within the meaning of the Trust Deed or Rules of that Previous Contractor's Scheme;

"**Reckonable Service**" means reckonable service under the PCSPS within the meaning of the Rules of the PCSPS up to the date immediately prior to the Relevant Transfer Date;

"**Relevant Transfer**" means a transfer to the Contractor or an Initial Sub-Contractor of the Authority Pension Employees pursuant to this Contract and the Transfer Regulations;

"**Stakeholder Pension Scheme**" means a stakeholder pension scheme within the meaning of section 1 of the Welfare Reform and Pensions Act 1999;

"**Sub-contractor's Scheme**" means the Initial Sub-Contractor's Scheme or Employing Sub-Contractor's Scheme, as applicable;

"**Sub-contractor's Scheme Actuary**" means the Initial Sub-Contractor's Scheme Actuary or Employing Sub-Contractor's Scheme Actuary as applicable;

"**Transfer Amount**" means the amount equal to the Transfer Value adjusted to the date of the payment of the Transfer Amount in line with the Investment Roll-up;

"**Transfer Value**" means the value of the retirement and death benefits under either of the 1972 Section or the 2002 Section of the PCSPS (as therein defined), relating to Consenting Employees up to the day immediately prior to the Relevant Transfer Date, which are prospectively and contingently payable to and in respect of the Consenting Employees (but excluding any benefits which may be payable wholly as a result of injury under Section 11 of the PCSPS and any Money Purchase Benefits) as calculated by the PCSPS Actuary and verified by the Contractor's Actuary and/or Initial Sub-Contractor's Scheme Actuary in accordance with the actuarial methods and assumptions set out in the Actuary's Letter and, for the avoidance of doubt a separate transfer value will be calculated in respect of each group of Authority Employees if more than one such group transfers to the employment of the Contractor and/or the Initial Sub-Contractor on more than one date;

"**Transfer Value Date**" means the date following 30 days after the date on which the Transfer Value is determined by the PCSPS Actuary and verified by the Contractor's Actuary;

4.2 Contractor's Scheme

- 4.2.1 The Contractor shall (and shall procure that any Employing Sub-Contractor shall) notify the details of the Contractor's Scheme or any Employing Sub-Contractor's Scheme as applicable to the Authority no later than the Relevant Transfer Date.

4.3 Requirements of Contractor's Scheme for Authority Employees

4.3.1 The Contractor shall procure that, by no later than the Relevant Transfer Date the Contractor's Scheme (or the Initial Sub-Contractor's Scheme as applicable):

- (a) is registered with HMRC for the purposes of the Finance Act 2004;
- (b) has in place a relevant contracting out certificate in accordance with Part III of the Pension Schemes Act 1993;
- (c) is certified in writing by GAD as providing for and in respect of Authority Pension Employees, benefits for their service from the Relevant Transfer Date which are broadly comparable to the benefits which would have been provided for and in respect of them for that service under the terms of the PCSPS as at the day before the Relevant Transfer Date, had they remained active members in Reckonable Service under the PCSPS;
- (d) contains a provision enabling it to accept transfer payments from the PCSPS;
- (e) for the purpose of determining whether an Authority Pension Employee is entitled to benefits (including any enhancement of service on ill-health retirement or death benefits) under the Contractor's Scheme or the Initial Sub-Contractor's Scheme as applicable, takes periods of employment with the Authority and its successor into account as a single unbroken period; and
- (f) satisfies such other requirements, either in addition to or in substitution for all or any of the foregoing requirements in this paragraph, as GAD may at any time prior to the Relevant Transfer Date impose in respect of Authority Employees.

For the avoidance of doubt, nothing in this paragraph 4.3 shall prevent lower or different benefits from being provided by the Contractor or a Sub-Contractor to an Authority Employee in respect of any period during which the Authority Employee is not employed in connection with the Services.

4.3.2 The Contractor shall further procure that:

- (a) no amendment shall be made to the Contractor's Scheme or to any Sub-Contractor's Scheme without the prior written consent of the Authority Pension Employee concerned which could reduce the value of the benefits of any Authority Pension Employee accrued to the date upon which the power to amend is exercised, such value to be calculated as a past service reserve on the basis of such reasonable terms and assumptions (including, for the avoidance of doubt, a reasonable assumption as to their future increases in pensionable earnings) as are determined by the trustees of the Contractor's Scheme or Sub-Contractor's Scheme, acting on the advice of the Contractor's Scheme Actuary or Sub-Contractor's Scheme Actuary as applicable; and
- (b) if GAD has certified the Contractor's Scheme or Initial Sub-Contractor's Scheme, as applicable in this paragraph 4.3.1 on an interim basis, the Contractor shall secure renewal of the GAD certification and that there is a valid interim certificate issued by GAD for the Contractor's Scheme or Initial Sub-Contractor's Scheme in place no later than six months prior to Relevant Transfer Date; and

- (c) such documents, information and other evidence as the Authority may reasonably require from time to time and at any time to enable it to be satisfied that the Contractor, any Sub-Contractor and their respective schemes comply and continue to comply with the requirements of this paragraph 4 (Pension Matters) relating to Authority Pension Employees are submitted to the Authority as soon as is practicable.

4.4 Requirements of Contractor's Scheme or Initial Sub-Contractor's Scheme for Ex-Authority Employees

4.4.1 The Contractor shall procure that, by no later than the Ex-Authority Relevant Transfer Date the Contractor's Scheme or the Initial Sub-Contractor's Scheme, as applicable:

- (a) is registered with HMRC for the purposes of the Finance Act 2004; and
- (b) has in place a relevant contracting out certificate in accordance with Part III of the Pension Scheme Act 1993; and
- (c) is certified in writing by GAD as providing for and in respect of Ex-Authority Employees, benefits for their service from the Ex-Authority Relevant Transfer Date which are broadly comparable to the benefits which would have been provided for and in respect of such Ex-Authority Employees had they been in Pensionable Service under Part 1 (the 2002 Section) of PCSPS as at the date immediately preceding the Ex-Authority Relevant Transfer Date; and
- (d) contains a provision enabling it to accept transfer payments from the Previous Contractor's Scheme; and
- (e) for the purpose of determining whether an Ex-Authority Employee is entitled to benefits (including any enhancement of service on ill-health retirement or death benefits) under the Contractor's Scheme or the Initial Sub-Contractor's Scheme as applicable, takes periods of employment with the Authority and the Previous Contractor into account as a single unbroken period; and
- (f) satisfies such other requirements, either in addition to or in substitution for all or any of the foregoing requirements in this paragraph, as GAD may at any time prior to the Ex-Authority Relevant Transfer Date impose in respect of Ex-Authority Employees.

Nothing in this paragraph 4 (Pension Matters) shall prevent lower or different benefits from being provided by the Contractor or a Sub-Contractor to an Ex-Authority Employee in respect of any period during which such an employee is not employed in connection with the Services.

4.4.2 The Contractor shall further procure that:

- (a) No amendment shall be made to the Contractor's Scheme or the Initial Sub-Contractor's Scheme as applicable without the prior written consent of the Ex-Authority Employees concerned which could reduce the value of the benefits of any Ex-Authority Employee accrued to the date upon which the power to amend is exercised (such value to be calculated as a past service reserve on the basis of such reasonable terms and assumptions as to their future increases in pensionable earnings) as are determined by the trustees of the Contractor's Scheme or the Initial Sub-Contractor's scheme as applicable, acting on the advice of the

Contractor's Scheme Actuary or the Initial Sub-Contractor's Scheme Actuary as applicable; and

- (b) Such documents, information and other evidence as the Authority may reasonably require from time to time and at any time to enable it to be satisfied that the Contractor, any Sub-Contractor and their respective Schemes comply and continue to comply with the requirements of this paragraph 4 (Pension Matters) relating to Ex-Authority Employees are submitted to the Authority.

4.5 Membership of Contractor's or any Employing Sub-Contractor's Scheme

4.5.1 The Contractor shall procure that:

- (a) all Authority Pension Employees and Ex-Authority Employees shall be admitted automatically to membership of the relevant Contractor's Scheme or any relevant Employing Sub-Contractor's Scheme on the Relevant Transfer Date or Ex-Authority Relevant Transfer Date (as appropriate) (other than any Authority Pension Employee or any Ex-Authority Employee who opts out of membership of the Contractor's Scheme or relevant Employing Sub-Contractor's Scheme);
- (b) all Authority Pension Employees and Ex-Authority Employees who become members of the relevant Contractor's Scheme or relevant Employing Sub-Contractor's Scheme shall be eligible to remain members of it throughout the period of their employment with the Contractor or Employing Sub-Contractor in connection with the Services;
- (c) membership of the Contractor's Scheme or a relevant Employing Sub-Contractor's Scheme for Authority Pension Employees and Ex-Authority Employees shall not be conditional on such Authority Pension Employees' and Ex-Authority Employees agreeing to payment of any Transfer Value in respect of them; and
- (d) each Partnership Pension Account Employee, who had the option to join an alternative section of PCSPS and who by the day immediately prior to the Relevant Transfer Date has failed to exercise that option:
 - (i) shall be given the option, exercisable only once and within six months of the Relevant Transfer Date, to become a member of the Contractor's Scheme or the Initial Sub-Contractor's Scheme as applicable or the relevant Employing Sub-Contractor's Scheme on the same terms as to contributions and benefits from the date of joining as apply to Authority Pension Employees who were previously in Reckonable Service under that PCSPS Section; and
 - (ii) shall be given the option, exercisable only once and within six months of the Relevant Transfer Date, to opt out of membership of the Contractor's Scheme or the relevant Employing Sub-Contractor's Scheme and to join the Designated Schemes on the same terms as to contributions from the Contractor or the relevant Employing Sub-Contractor as applied to contributions from the Authority or, if more favourable, as apply to other Partnership Pension Account Employees at the date of joining the Designated Schemes; and on exercising the option specified in this paragraph shall be included automatically as a member of the scheme or schemes specified in paragraph 4.8 (Partnership Pension Account Employees);

- (e) each Authority Pension Employee who had the option to join the Partnership Pension Account and who by the day immediately prior to the Relevant Transfer Date has failed to exercise that option:
 - (i) shall be given the option, exercisable only once and within six months of the Relevant Transfer Date, to opt out of membership of the Contractor's Scheme or the Initial Sub-Contractor's Scheme as applicable and to join a Designated Scheme on the same terms as to contributions from the Contractor or Initial Sub-Contractor as applied to contributions from the Authority or, if more favourable, as apply to other Partnership Pension Account Employees at the date of joining a Designated Scheme;
 - (ii) on exercising the option specified in paragraph 4.5 of this Schedule 15 Part 1 (Membership of Contractor's or any Employing Sub-Contractor's Scheme) shall be included automatically as a member of the scheme or schemes specified in paragraph 4.8 (Partnership Pension Account Employees);
- (f) each Authority Pension Employee who opted not to join the Contractor's Scheme or the relevant Employing Sub-Contractor's Scheme on the Relevant Transfer Date (as referred to in paragraph 4.5 shall be given the option, exercisable only once and within six months of the Relevant Transfer Date, to join the Contractor's Scheme or Initial Sub-Contractor's Scheme with effect from the date he exercises the option on the same basis as to contributions and benefits as apply in respect of Authority Pension Employees who were in Reckonable Service under PCSPS at the Relevant Transfer Date;
- (g) any Ex-Authority Employee who was immediately before the Ex-Authority Relevant Transfer Date a member of a Previous Contractor's Designated Scheme who had the option to join the Previous Contractor's Scheme and has not exercised that option by the day immediately prior to the Relevant Transfer Date:
 - (i) shall be given the option, exercisable only once and within six months, to become a member of the Contractor's Scheme or the Initial Sub-Contractor's Scheme as applicable with effect from the date of the exercise of that option on the same terms as to contributions and benefits from the date of joining as apply to Ex-Authority Employees who were in Pensionable Service under the Previous Contractor's Scheme; and
 - (ii) shall be given the option, exercisable only once, and within six months to opt out of the Contractor's Scheme or the Initial Sub-Contractor's Scheme as applicable and join the Contractor's Designated Schemes on the same terms as to contributions from the Contractor or the Initial Sub-Contractor as applied to contributions from the Previous Contractor; and
- (h) any Ex-Authority Employee who was, immediately before the Ex-Authority Relevant Transfer Date a member of a Previous Contractor's Designated Scheme and who does not fall under paragraph 4.5.1(g) shall be given access to membership of the Contractor's or Initial Sub-Contractor's Designated Scheme on the same terms as to contributions from the Contractor or Initial Sub-Contractor as applicable as applied to contributions from the Previous Contractor.

4.6 Calculation of Transfer Amount

4.6.1 The Authority agrees that:

- (a) on or after the Relevant Transfer Date it will invite the Authority Pension Employees who join the Contractor's Scheme or the Initial Sub-Contractor's Scheme as applicable to request in writing payment of a Transfer Value in respect of them by the PCSPS to the Contractor's Scheme or the Initial Sub-Contractor's Scheme as applicable; and
- (b) that Authority Pension Employees shall be given three months from the date on which the invitations are issued under paragraph 4.6.1(a), in which to return their written requests to the Authority.

4.6.2 Following the receipt of requests made by Authority Pension Employees pursuant to in this paragraph 4.6 (Calculation of Transfer Amount), the Authority shall procure that the PCSPS instructs the PCSPS Actuary to determine the amount to be transferred in accordance with the Actuary's Letter and to notify the Contractor's Actuary or the Initial Sub-Contractor's Actuary as applicable of their findings for verification of that amount as the Transfer Value.

4.6.3 The Authority and the Contractor respectively shall procure that:

- (a) all such information within their respective possession or under their respective control as the PCSPS Actuary and/or the Contractor's Actuary and/or the Initial Sub-Contractor's Scheme Actuary may reasonably request for the purposes of calculating or verifying the Transfer Value or for any other purpose of this paragraph shall be made available to them within:
 - (i) for the purposes of the PCSPS Actuary, three months of the end of the period referred to in paragraph 4.6.1(b); and
 - (ii) otherwise, one month of the date upon which the PCSPS Actuary notifies the Contractor's Actuary and/or the Initial Sub-Contractor's Actuary pursuant to paragraph 4.6.2; and
- (b) with the exception of the request forms referred to in this paragraph 4.6 (Calculation of Transfer Amount), no notice or communication pertaining to a transfer payment from the PCSPS will be issued or given to the Authority Employees by the Authority or by the Contractor or Initial Sub-Contractor as applicable without the written approval of the other Party (such approval not to be unreasonably withheld or delayed).

4.7 Payment of Transfer Amount

4.7.1 The Authority shall procure that on the Transfer Value Date the PCSPS shall pay to the Contractor's Scheme or the Initial Sub-Contractor's Scheme as applicable an amount in cash equal to the Transfer Amount.

4.7.2 The Contractor shall procure that the trustees of the Contractor's Scheme or the Initial Sub-Contractor's Scheme as applicable promptly accept the Transfer Amount.

4.7.3 The Contractor shall procure that, subject to receipt of the Transfer Amount by the Contractor's Scheme or the Initial Sub-Contractor's Scheme as applicable:

- (a) each of the Consenting Employees is awarded a credit of day for day equivalent pensionable service in the Contractor's Scheme or the Initial

Sub-Contractor's Scheme as applicable or such actuarially equivalent service credits as the PCSPS Actuary has determined in the Actuary's Letter; and

- (b) any credit in the Contractor's Scheme or Employing Sub-Contractor's Scheme awarded to a Consenting Employee in accordance with this paragraph 4.7 and by reference to the proportion of the Transfer Amount relevant to such Consenting Employee shall be calculated as though subject to increases and revaluation by reference to the Retail Price Index rather than any alternative form of indexation; and
- (c) in the event of a change in governing law which prevents the increases and revaluation by reference to the Retail Price Index pursuant to paragraph 4.7.3(b) and the imposition of an alternative form of indexation which results in a reduction of the value of members' benefits overall creating additional funding within the Contractor's Scheme, the Contractor shall procure that the additional funding shall be used exclusively to re-instate the overall value of the members' benefits to the overall value they would have had had such change not been imposed.

4.8 Partnership Pension Account Employees

4.8.1 The Contractor undertakes :

- (a) to establish or participate in (and, if appropriate, procure that the Initial Sub-Contractor's establishes and participates in) and to notify to the Authority no later than the Relevant Transfer Date a retirement benefits scheme which provides for and in respect of Partnership Pension Account Employees for so long as they are employed in connection with the Services:
 - (i) benefits which (as evidenced by current GAD certificate) are broadly comparable to the benefits to which they would have been entitled under the Partnership Pension Account Ill-Health Benefits Scheme, had they continued in "eligible service" under the Partnership Pension Account Ill-Health Benefits Scheme (within the meaning of rule A2 of its Rules) after the Relevant Transfer Date, for this purpose treating their respective periods of eligible service and employment with the Contractor or Initial Sub-Contractor as a single unbroken period; and
 - (ii) benefits which (as evidenced by a current GAD certificate) are broadly comparable to the benefits to which they would have been entitled under the Partnership Pension Account Death Benefits Scheme, had they continued in "eligible employment" under the Partnership Pension Account Death Benefits Scheme (within the meaning of rule A1(1) of its Rules) after the Relevant Transfer Date, for this purpose treating their respective periods of eligible service and employment with the Contractor or Initial Sub-Contractor as a single unbroken period.
- (b) to procure that all Partnership Pension Account Employees shall be admitted automatically to membership of that scheme on the Relevant Transfer Date (other than any Partnership Pension Account Employee who opts out of membership of the scheme in writing on or before that day in a form to be agreed between the Authority and the Contractor in the absence of such agreement in a form directed by the Authority).

4.8.2 The Contractor shall and shall procure that any Sub-Contractor shall:

- (a) comply with all applicable requirements of Part I of the Welfare Reform and Pensions Act 1999 and in particular shall designate one or more stakeholder pension schemes for the purposes of section 3 of that Act; and
- (b) if applicable, notify any Designated Schemes to the Authority promptly following their designation (including any Stakeholder Pension Schemes designated from time to time by the Contractor or Sub-Contractor either in substitution for or in addition to any other Designated Scheme); and
- (c) with effect from the Relevant Transfer Date and for so long as the Partnership Pension Account Employee is employed in connection with the Services, contribute to such of those Designated Schemes in respect of Partnership Pension Account Employees as each of them may join, at the same annual rates and on the same terms as were in force for employer contributions from the Authority to the Partnership Pension Account on the day prior to the Relevant Transfer Date; and
- (d) obtain and submit to the Authority the written certificate of GAD (including all replacement certificates) that the Designated Schemes and the rate of and terms relating to the contributions paid to them by the Contractor are broadly comparable to the Partnership Pension Account.

4.9 Future Sub-contracting

4.9.1 Where as the result of the transfer of an undertaking which is the whole or part of the Services the employment of any Authority Pension Employee or Ex-Authority Employee is transferred to a Future Sub-Contractor, the Contractor shall, or shall procure that the Initial Sub-Contractor shall, notify the Authority as soon as is reasonably practicable and paragraphs 4.2-4.8 shall apply to the transfer of the relevant Authority Pension Employees from the Contractor or Initial Sub-Contractor to the Future Sub-Contractor as they apply to the transfer of such employees from the Authority to the Contractor or Initial Sub-Contractor making appropriate substitutions and adjustments in applying those paragraphs including, where necessary, (but not limited to) the following:

- (a) the Authority means the Contractor or the Initial Sub-Contractor as applicable;
- (b) the Contractor means the Future Sub-Contractor;
- (c) the Relevant Transfer Date and the Ex-Authority Relevant Transfer Date mean the date of the transfer of the undertaking from the Contractor or the Initial Sub-Contractor to the Future Sub-Contractor;
- (d) the Contractor's Scheme or the Initial Sub-Contractor's Scheme as applicable means one or more retirement benefit schemes established by the Future Sub-Contractor (see the definitions of Contractor's Scheme and Initial Sub-Contractor's Scheme in paragraph 4.1);
- (e) the Contractor's Scheme Actuary means an actuary appointed as scheme actuary by the trustees of the Future Sub-Contractor's Scheme;
- (f) the Designated Stakeholder Schemes are designated by the Future Sub-Contractor rather than the Contractor;

- (g) Authority Pension Employee(s) and Ex-Authority Employees means those of the Authority Pension Employees and Ex-Authority Employees as defined in paragraph 4.1 who are comprised in the transfer; and
- (h) the PCSPS and the Previous Contractor's Scheme means the Contractor's Scheme or the Initial Sub-Contractor's Scheme as applicable and the PCSPS Actuary means the Contractor's Actuary or the Initial Sub-Contractor's Scheme Actuary as applicable.

4.9.2 Where pursuant to a transfer of an undertaking under paragraph 4.9 one or more Authority Pension Employees or Ex-Authority Employees leave the employment of the Contractor or Initial Sub-Contractor as appropriate and become employed by a Future Sub-Contractor the transfer value payable in respect of him or them shall be calculated on a past service reserve basis using such reasonable terms and assumptions (including, for the avoidance of doubt, a reasonable assumption as to their future increases in pensionable earnings) as:

- (a) ¹¹²are broadly no less favourable (including for the avoidance of doubt but without limitation, increases or revaluation in line with the Retail Prices index subject to paragraph 4.7.3(b)) than those which were applied in the case of the Authority Employees, when calculating the Transfer Amount subject to consistent and equivalent reasonable adjustments in respect of market movements since the respective dates of the Actuary's Letter);
- (b) in the case of the Ex-Authority Employees either:
 - (i) where Fair Deal applied to the original transfer of Ex-Authority Employees from the Civil Service and the actuarial terms and assumptions governing that transfer are known, on terms and assumptions which are broadly no less favourable to the Ex-Authority Employees than those original actuarial terms (including for the avoidance of doubt but without limitation, increases or revaluation in line with the Retail Prices index subject to paragraph 4.7.3(b)) than those which were applied in the case of the Authority Employees, when calculating the Transfer Amount subject to consistent and equivalent reasonable adjustments in respect of market movements since the respective dates of the original actuary's letter; or
 - (ii) where Fair Deal did not apply to the original transfer of Ex-Authority Employees from the Civil Service or the original actuarial terms and assumptions governing that transfer are not known, the Contractor's Actuary or Initial Sub-Contractor's Scheme Actuary deems to be appropriate.

4.9.3 Paragraph 4.9.1 shall apply with appropriate substitutions and adjustments to one or more further transfers of Authority Pension Employees from the employment of an Employing Sub-Contractor to another sub-contractor and from the employment of a sub-contractor by one or more successive transfers to other sub-contractors or back to the Contractor or the Authority.

4.9.4 Paragraph 4.9.2 shall likewise apply if the employment of one or more Authority Pension Employees or Ex-Authority Employee is transferred directly to an Employing Sub-Contractor by the Authority at the beginning of this Contract

¹¹² Project teams need to check whether (a) Fair Deal applied to the any transfer of Ex-Authority Staff and (b) whether the Actuary's letter governing the original transfer still exists. If the answer to either of these questions is no, the pensions drafting for bulk transfer terms for Ex-Authority Employees will need adjusting.

rather than by a transfer to the Contractor and then to the Employing Sub-Contractor.

4.9.5 If any or all of the Authority Pension Employees do not elect to transfer their benefits pursuant to paragraph 4.9.3 or paragraph 4.9.4 such Authority Pension Employees shall be offered preserved benefits in the Contractor's Scheme of a value equivalent to that which would be secured by the transfer value calculated for them in accordance with the principles set out in paragraph 3.3 of Part 2.

4.9.6 Where the Contractor has failed to procure that the trustees of the Contractor's Scheme (or failed to procure that the trustees of any relevant Employing Sub-Contractors' schemes) offer bulk transfer terms in accordance with paragraph 4.9.2, the Contractor shall so advise the Authority and the Authority may issue such reasonable requests to such party, if any, as it thinks fit. The Contractor shall comply with and shall use its reasonable endeavours to procure that all Employing Sub-Contractors shall comply with, all such reasonable requests.

4.10 Authority to be indemnified

4.10.1 The Authority may from time to time and at any time require the Contractor to obtain and to produce to the Authority such information and evidence concerning the Contractor, and any Employing Sub-Contractor and their respective pension schemes as the Authority may reasonably require in order to be satisfied that the provisions of this paragraph 4 (Pension Matters) have been and continue to be satisfied and the Contractor shall promptly use all reasonable endeavours to obtain the same following the receipt of such a request at no cost to the Authority.

4.10.2 The Contractor shall indemnify the Authority on demand and shall keep it indemnified in full from and against all direct or indirect liability, loss, damages, injury, claims, costs and expenses incurred by the Authority, including the costs and expenses (whether legal, actuarial or other) incurred by the Authority in preparing for, defending and implementing any court, Employment Tribunal or Pensions Ombudsman proceedings, order, judgment, award, determination or direction, awarded against or incurred or paid by the Authority to and/or in favour of any Authority Pension Employee, Ex-Authority Employee Partnership Pension Account Employee or any other person:

- (a) as a result of the failure of the Contractor to comply with the provisions of this paragraph 4 (Pension Matters) and/or of the failure of any Employing Sub-Contractor to comply with the terms of its contract with the Contractor; and
- (b) arising out of or attributable to or in any way connected with the provision or transmission by the Authority (whether to employees or any other party) of information supplied to it by the Contractor or an Employing Sub-Contractor in connection with a re-tendering or proposed re-tendering of all or any of the Services.

Where the Contractor demonstrates to the satisfaction of the Authority (in respect of which the Authority shall act reasonably) that the direct or indirect liability, loss, damages, injury, claim, costs or expenses are partly attributable to an act or omission of the Authority, the indemnity given in paragraph 4.10.2 shall not apply to that part properly identified as being attributable to the act or omission of the Authority.

4.11 Change in Indexation provision

4.11.1 Where there is a Change in Law which automatically amends, without the need for further action to be taken by any person, the indexation provisions of the PCSPS or the Contractor's Scheme, and such Change in Law results in a reduction to the contributions made in respect of Authority Pension Employees or Ex-Authority Employees by the Contractor:

- (a) The Contractor shall instruct the Contractor's Actuary to certify the reduction in annual contributions attributable to such a change (the "Difference") and shall notify the Authority of the Difference supplying a copy of the Contractor's Actuary's certificate; and
- (b) The Contractor and the Authority shall agree in writing for an amount equal to the Difference to be reflected by an adjustment to the Charges, or to any other form or amount of adjustment or payment as agreed between the Contractor and the Authority.

If the agreement required by paragraph 4.11.1(b) between the Contractor and the Authority cannot be reached a determination shall be made in accordance with Part 27 (Dispute Resolution) of the Contract.

**LIST OF EMPLOYMENT INFORMATION ON WHICH THE CONTRACTOR BASED THE
AUTHORITY PERSONNEL COSTS ELEMENT OF THE UNITARY CHARGE**

LIST OF EX-AUTHORITY EMPLOYEES

PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS AGREEMENT

1. Pursuant to paragraphs 2.1.1 and 3.1.1 of this Schedule 15 Part 1, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) will be provided to the extent it is not included within the written statement of employment particulars:

1.1 **Personal, Employment and Career**

- a) Employee's full name;
- b) Date of birth and age;
- c) Home address;
- d) Security Vetting Clearance;
- e) Job title;
- f) Work location;
- g) Conditioned hours of work;
- h) Employment Status;
- i) Details of training and operating licensing required for Statutory and Health and Safety reasons;
- j) Details of training or sponsorship commitments;
- k) Standard Annual leave entitlement and current leave year entitlement and record;
- l) Annual leave reckonable service date;
- m) Details of disciplinary or grievance proceedings taken by transferring employees in the last two years;
- n) Information of any legal proceedings between employees and their employer within the previous two years that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
- o) Issue of Uniform/Protective Clothing;
- p) Working Time Directive opt-out forms; and
- q) Date from which the latest period of continuous employment began.

1.2 **Performance Appraisal**

- a) The current year's Performance Appraisal;
- b) Current year's training plan (if it exists); and
- c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;

1.3 **Superannuation and Pay**

- a) Maternity leave or other long-term leave of absence;
- b) Annual salary and rates of pay band/grade;
- c) Shifts, unsociable hours or other premium rates of pay;

- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period;
- f) Details of outstanding loan, advances on salary or debts;
- g) Bank/building society account details for payroll purposes Tax Code;
- h) Cumulative pay for tax and pension purposes;
- i) Cumulative tax paid;
- j) National Insurance Number;
- k) National Insurance contribution rate;
- l) Other payments or deductions being made for statutory reasons;
- m) Any other voluntary deductions from pay;
- n) Civil Service Pension Scheme Membership (Opt-out of Civil Service Pension Scheme, Classic, Classic Plus, Premium, Defined Contribution) or, where relevant Contractor Scheme or other Contractor/Sub-Contractor pension scheme membership;
- o) For pension purposes, the notional reckonable service date;
- p) Pensionable pay history for three years to date of transfer;
- q) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- r) Percentage of pay currently contributed under any added years arrangements.

1.4 Medical

- a) Sickness and absence records for the immediately preceding four-year period; and
- b) Details of any active restoring efficiency case for health purposes.

1.5 Disciplinary

- a) Details of any active restoring efficiency case for reasons of performance; and
- b) Details of any active disciplinary cases where corrective action is on going.

1.6 Further information

- a) Information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995;
- b) Short term variations to attendance hours to accommodate a domestic situation;
- c) Individuals that are TA members, or staff may have been granted special leave as a School Governor; and
- d) Information about any maternity or other statutory leave or other absence from work.

ACTUARY'S LETTER

PART 2 – STAFF TRANSFER ARRANGEMENTS ON EXIT

1 DEFINITIONS

1.1 In this Schedule 15 Part 1, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) of the Contract.

1.2 Without prejudice to Schedule 1 (Definitions) of the Contract, in this Schedule 15 Part 1 unless the context otherwise requires:

"Authority Employees" means those employees of the Authority who are listed in the Final List (as defined in Schedule 15 Part 1 (Employee Transfer Arrangements on Entry)) and who transferred to the Contractor or an Employing Sub-Contractor under the Transfer Regulations and pursuant to this Contract on the Relevant Transfer Date;

"CSCS" means Civil Service Compensation Scheme;

"Contract Award Date" means the date of this Contract;

"Contractor's Scheme" means the one or more retirement benefits schemes established by the Contractor or in which it participates for the purposes of paragraph 4 (Pension Matters) of this Schedule 15 Part 2. A reference to the Contractor's Scheme shall, where appropriate, include a reference to the trustees or administrators thereof;

"Employee Liability Information" has the same meaning as in Regulation 11(2) of the Transfer Regulations;

"Employing Sub-Contractor" means any sub-contractor of the Contractor who is the employer of an Authority Employee, an Ex-Authority Employee, a Previous Contractor Employee and/or an Unexpected Employee (as defined in Schedule 15 Part 1 (Employee Transfer Arrangements on Entry));

"Employing Sub-Contractor's Scheme" means the one or more retirement benefits schemes established by the Employing Sub-Contractor or in which it participates for the purposes of paragraph 3 (Pension Matters) of this Schedule 15 Part 2. A reference to the Employing Sub-Contractor's Scheme shall, where appropriate, include a reference to the trustees or administrators thereof;

"Ex-Authority Employees" means those ex-employees of the Authority who are listed in Appendix 2 of Schedule 15 Part 2 (Employee Transfer Arrangements on Entry) and who transferred to the Contractor or an Employing Sub-Contractor under the Transfer Regulations and pursuant to this Contract on the Ex-Authority Relevant Transfer Date;

"Ex-Authority Relevant Transfer" means a transfer to the Contractor or an Employing Sub-Contractor of the Ex-Authority Employees pursuant to this Contract and the Transfer Regulations;

"Ex-Authority Relevant Transfer Date" means the date on which the Ex-Authority Relevant Transfer is effected for the Ex-Authority Employees;

"New Provider" means any replacement service provider or providers nominated by the Authority to provide the Services or substantially similar services or the Authority itself where the Services or substantially similar

services continue to be provided by the Authority after partial termination, termination or expiry of this Contract;

"Relevant Transfer" means a transfer to the Contractor or an Employing Sub-Contractor of the Authority Employees pursuant to this Contract and the Transfer Regulations;

"Relevant Transfer Date" means the date on which the Relevant Transfer is effected for the Authority Employees¹¹³;

"Subsequent Relevant Transfer" means a transfer of Subsequent Transferring Employees from the Contractor or any Sub-Contractor to a New Provider under the Transfer Regulations;

"Subsequent Transfer Date" means the date on which the transfer of a Subsequent Transferring Employee takes place under the Transfer Regulations;

"Subsequent Transferring Employee" means an employee assigned to the Services who transfers under the Transfer Regulations from the Contractor or any Sub-Contractor to a New Provider;

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time.

2 EMPLOYMENT

2.1 Information on Re-tender, Partial Termination, Termination or Expiry

2.1.1 No earlier than two years preceding the Termination Date or a potential Subsequent Transfer Date or at any time after the service of a notice to terminate this Contract or the provision of any of the Services (whether in whole or part) and on receipt of a written request by the Authority, the Contractor shall (and shall procure that any Sub-Contractor shall):

- (a) supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Appendix 1 to this Schedule 15 Part 2 relating to the employees who are wholly or mainly employed, assigned or engaged in providing the Services or part of the Services under this Contract which may be subject to the Subsequent Relevant Transfer, separately identifying Authority Employees and/or Ex-Authority Employees who transferred to the Contractor and/or Employing Sub-Contractor on the Relevant Transfer Date and/or Ex-Authority Relevant Transfer Date and indicating which of these are members of the Contractor's Scheme and/or Employing Sub-Contractor's Scheme;
- (b) provide the information promptly and in any event not later than three months from the date when a request for such information is made and at no cost to the Authority;
- (c) acknowledge that the Authority will use the information for informing any prospective New Provider for any services which are substantially the same as the Services or part of the Services provided pursuant to this Contract;

¹¹³ May require adjustment if there is more than one transfer date. This may affect other aspects of the drafting.

- (d) enable and assist the Authority and a New Provider to communicate with and meet those employees and their trade union or other employee representatives;
 - (e) inform the Authority of any changes to the information provided under paragraph 2.1.1(a) up to the Subsequent Transfer Date as soon as reasonably practicable.
- 2.1.2 No later than three months prior to a Subsequent Transfer Date, the Contractor shall ensure that such information listed in Appendix 2 to this Schedule 15 Part 2 including any Employee Liability Information relating to all Subsequent Transferring Employees of the Contractor and any Sub-Contractor is provided to the Authority and New Provider.
- 2.1.3 No later than 14 days prior to the Subsequent Transfer Date the Contractor shall provide the Authority and New Provider with a final list of the Subsequent Transferring Employees, together with Employee Liability Information in respect of Subsequent Transferring Employees to the extent not already provided. The Contractor shall inform the Authority and New Provider of any changes to this list up to the Subsequent Transfer Date.
- 2.1.4 Paragraphs 2.1.1, 2.1.2 and 2.1.3 of this Appendix are subject to the Contractor's obligations in respect of the DPA and the Contractor shall use its reasonable endeavours to obtain the consent of its employees (and shall procure that its Sub-Contractors use their reasonable endeavours to obtain the consent of their employees) to the extent necessary under the DPA or provide the data in an anonymous form in order to enable disclosure of the information required under paragraphs 2.1.1, 2.1.2 and 2.1.3.
- 2.1.5 In the event of a Subsequent Relevant Transfer, the Authority shall procure that no later than three months after the Subsequent Transfer Date the New Provider shall pay to the Contractor or any Employing Sub-Contractor a sum equal to the outstanding balance on the Subsequent Transfer Date of any loan, salary, advance or other indebtedness of any Subsequent Transferring Employee due to the Contractor or any Employing Sub-Contractor immediately prior to the Subsequent Relevant Transfer.
- 2.1.6 On notification to the Contractor by the Authority of a New Provider or within six months of the Termination Date or after service of a notice to terminate this Contract (whether in whole or in part), whichever is earlier and in any event on receipt of a written request by the Authority, the Contractor shall not:
 - (a) materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the Services under this Contract; or
 - (b) replace or re-deploy from the Services any person wholly or mainly employed or engaged in providing the Services, or materially increase or decrease the number of persons performing the Services under this Contract or the working time spent on the Services; or
 - (c) reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services any duties unconnected with the Services under this Contract; or

- (d) terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the Services under this Contract,

save in the ordinary course of business and with the prior written consent of the Authority (not to be unreasonably withheld or delayed) and the Contractor shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of paragraphs 2.1.1, 2.1.2, 2.1.3 or 2.1.6 of this Schedule 15 Part 2.

- 2.1.7 The Authority may at any time prior to the period set out in paragraph 2.1.6 of this Schedule 15 Part 2 request from the Contractor any of the information in sections 1(a) to (d) of Appendix 1 and the Contractor shall and shall procure any Sub-Contractor will provide the information requested within three months of receipt of that request.

2.2 **Obligations in Respect of Subsequent Transferring Employees**

- 2.2.1 The Authority and the Contractor acknowledge that the provision by the Authority of the Services or any services which are substantially the same as the Services or part of the Services on partial termination, termination or expiry of this Contract will constitute Subsequent Relevant Transfers for the purposes of the Transfer Regulations.

- 2.2.2 The Authority agrees that in such circumstances (as set out in paragraph 2.2.1) the contracts of employment of any Subsequent Transferring Employees together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme) will take effect as if originally made between the Authority and the Subsequent Transferring Employees (or the relevant trade union, as the case may be).

- 2.2.3 The Contractor shall and shall procure any Employing Sub-Contractor shall and the Authority shall in such circumstances (as set out in paragraph 2.2.1):

- (a) before and in relation to the Subsequent Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Subsequent Transferring Employees to the Authority; and
- (b) comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13 of the Transfer Regulations.

2.3 **Unexpected Subsequent Transferring Employees**

- 2.3.1 If a claim or allegation is made by an employee or former employee of the Contractor or any Sub-Contractor who is not named on the list of Subsequent Transferring Employees provided under paragraph 2.1.3 (an "**Unexpected Subsequent Transferring Employee**") that he has or should have transferred to the Authority and/or New Provider and/or (in the case of an Unexpected Subsequent Transferring Employee whose employment terminated on or before the Subsequent Transfer Date) that any liability relating to him has transferred to the Authority and/or the New Provider by virtue of the Transfer Regulations (or any similar legislation enacting the Acquired Rights Directive outside the UK), the Party receiving the claim or allegation shall notify the other Party (or the Contractor shall notify the Authority on the Sub-Contractor's behalf and the Authority shall notify the Contractor on the New Provider's behalf) in writing

within ten Business Days of receiving written notification of the Unexpected Subsequent Transferring Employee's claim or allegation, whereupon:

- (a) the Contractor shall (or shall procure that the Sub-Contractor shall), as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Subsequent Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and
- (b) if the Unexpected Subsequent Transferring Employee's claim or allegation is not withdrawn or resolved the Contractor shall notify the Authority (who will notify any New Provider who is a party to such claim or allegation), and the Authority and/or New Provider (as appropriate) shall employ the Unexpected Subsequent Transferring Employee or as soon as reasonably practicable, serve notice to terminate the Unexpected Subsequent Transferring Employee's employment in accordance with his contract of employment or (in the case of an Unexpected Subsequent Transferring Employee whose employment terminated on or before the Subsequent Transfer Date) shall resist any claim brought by the Unexpected Subsequent Transferring Employee against the Authority and/or the New Provider; and
- (c) the Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any of the following liabilities incurred by the Authority or New Provider in dealing with or disposing of the Unexpected Subsequent Transferring Employee's claim or allegation:
 - (i) any additional costs of employing the Unexpected Subsequent Transferring Employee up to the date of dismissal where the Unexpected Subsequent Transferring Employee has been dismissed in accordance with paragraph 2.3.1(b);
 - (ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Subsequent Transferring Employee;
 - (iii) any liabilities relating to the termination of the Unexpected Subsequent Transferring Employee's employment provided the Authority or New Provider has used reasonable endeavours to carry out the termination fairly and in accordance with all statutory obligations imposed on an employer;
 - (iv) any liabilities incurred under a settlement of the Unexpected Subsequent Transferring Employee's claim which was reached with the express permission of the Contractor;
 - (v) reasonable administrative costs incurred by the Authority or New Provider in dealing with the Unexpected Subsequent Transferring Employee's claim or allegation, subject to a cap per Unexpected Subsequent Transferring Employee of £5,000; and
 - (vi) legal and other professional costs reasonably incurred;

2.3.2 the Authority shall be deemed to have waived its right to an indemnity under this paragraph 2.3.1(c) if it fails without reasonable cause to take, or fails to procure any New Provider takes, any action in accordance with any of the timescales referred to in this paragraph 2.3.

2.4 Indemnities on Subsequent transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of the Contract

2.4.1 If on the expiry, termination or partial termination of the Contract there is a Subsequent Relevant Transfer, the Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with:

- (a) any claim or claims by Subsequent Transferring Employees or by the New Provider or any sub-contractor of the New Provider at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the Contractor or any Sub-Contractor during the period prior to the Subsequent Transfer Date;
- (b) any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Contractor or any Sub-Contractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the Contractor or any Sub-Contractor or any other employee of the Contractor or any Sub-Contractor affected by the Subsequent Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations),

save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Authority, the New Provider or any sub-contractor of a New Provider.

2.4.2 If there is a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of, or in connection with:

- (a) any claim or claims by a Subsequent Transferring Employee at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the New Provider or a sub-contractor of a New Provider during the period from and including the Subsequent Transfer Date;
- (b) any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the New Provider or a sub-contractor of a New Provider to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the New Provider or any other employee of the Authority or any New Provider affected by the Subsequent Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations),

save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Contractor or any Sub-Contractor.

2.4.3 In the event of a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change by the New Provider or any sub-contractor of a New Provider on or after the Subsequent Transfer Date to the working conditions of any Subsequent Transferring Employee to the material detriment of any such Subsequent Transferring Employee. For the purposes of this paragraph 2.4.3, the expressions "substantial change" and "material detriment" shall have the meanings as are ascribed to them for the purposes of Regulation 4(9) of the Transfer Regulations.

2.5 Redundancy Liability on Partial Termination, Termination or Expiry

2.5.1 The Authority shall indemnify the Contractor against any liability of the Contractor and/or any Employing Sub-Contractor to make redundancy payments to Authority Employees as a consequence of dismissal by reason of redundancy provided that the dismissal by reason of redundancy (as defined by section 139 of the Employment Rights Act 1996) arises from the expiry or termination or partial termination of this Contract otherwise than by reason of a Default of the Contractor and that such a dismissal takes place within six months of such expiry or termination or partial termination and only if the Authority Employees are not transferred to a New Provider under the Transfer Regulations by reason other than a failure by the Contractor or any Sub-Contractor to comply with its or their obligations under the Transfer Regulations.

2.5.2 The indemnity set out in paragraph 2.5.1 of this Appendix shall not include:

- (a) any claims for and costs arising out of the unfair dismissal of Authority Employees;
- (b) any payments for monies paid to Authority Employees, Ex-Authority Employees in lieu of notice;
- (c) any payments for redundancy monies paid to Authority Employees which are referable to a period of time when they were not employed by the Authority or not working wholly or mainly on the Services under this Contract;
- (d) any enhancements or increases to redundancy payments or benefits agreed with or on behalf of the Authority Employees following the Relevant Transfer Date or Previous Contractor Relevant Transfer Date as applicable;
- (e) payments to any Authority Employees who are moved out of or re-deployed from the Services at any time; and
- (f) any payment for monies paid to Authority Employees, in lieu of untaken annual leave.

2.5.3 The Contractor warrants (and shall procure that any Employing Sub-Contractor warrants) that it will:

- (a) seek to effect dismissal on grounds of redundancy of any of the Authority Employees in accordance with the terms and conditions of employment of the Authority Employees and in accordance with any applicable collective agreements;
- (b) comply with all relevant statutory obligations which are imposed on an employer; and

- (c) effect any dismissal on grounds of redundancy fairly,

and it will be for the Contractor if so requested to demonstrate to the reasonable satisfaction of the Authority that in any particular case redundancy is or was the genuine reason for the dismissal and that the Transfer Regulations do not apply.

- 2.5.4 If the Contractor or an Employing Sub-Contractor by its acts or omissions is in breach of the warranties under paragraph 2.5.3 in respect of an Authority Employee the Authority will not be liable to indemnify under this paragraph 2.5 in respect of that Authority Employee.

2.6 Contract Changes during the Contract

- 2.6.1 If there is a Change or request for Additional Services which gives rise to a Subsequent Relevant Transfer the provisions which shall apply to any transfer of employees pursuant to the Transfer Regulations from the Contractor or any Sub-Contractor to a New Provider shall be dealt with at the time of the Change or request for Additional Services, although the Parties agree that the principles set out in the provisions of paragraphs 2 to 2.4.3 and paragraph 3 in their entirety shall apply.

2.7 Contracts (Rights of Third Parties) Act 1999

- 2.7.1 A New Provider may enforce the terms of paragraph 2.3 and 2.4 against the Contractor or an Employing Sub-Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 2.7.2 The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.
- 2.7.3 Nothing in this paragraph 2.7 shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Contract.

2.8 General

- 2.8.1 The Contractor shall not recover any Costs and/or other losses under this Appendix where such Costs and/or losses are recoverable by the Contractor elsewhere in this Contract and/or have been recovered under the Transfer Regulations or otherwise.

3 PENSION MATTERS

- 3.1 In this paragraph 3, unless the context otherwise requires, the following expressions have the following meanings:

"**Actuary**" means a Fellow of the Institute of Actuaries or a Fellow of the Faculty of Actuaries;

"**Actuary's Letter**" means the bulk transfer terms issued by the PCSPS Actuary (as set out in the notes dated [insert date] in respect of the Contractor's Scheme and/or Initial Sub-Contractor's Scheme as applicable, copies of each of which are included at Appendix 3 to Schedule 15 Part 2) which specify the actuarial methods and assumptions for calculating the Transfer Values;

"**Authority Pension Employee**" means an employee of the Authority named in the Final List (as defined in paragraph 1.2) and/or an Unexpected Employee (as defined in paragraph 1.2) who in either case on the day before the Relevant Transfer Date is either:

- in Reckonable Service (or eligible to be in Reckonable Service); or
- would be in Reckonable Service, but for the fact that he is long term absent from work or is in a waiting period; or
- an Opted-out Employee;

"Consenting Employees" means those of the Authority Pension Employees who join the Contractor's Scheme or the Initial Sub-Contractor's Scheme as applicable on the Relevant Transfer Date and who consent in writing to payment of the Transfer Value in respect of their benefits to the Contractor's Scheme or the Initial Sub-Contractor's Scheme as applicable within the period specified in paragraph 3.3.1(b) and who do not withdraw that request before expiry of the period specified in paragraph 3.3.1(b). For the avoidance of doubt an Authority Pension Employee shall cease to be a Consenting Employee if he dies or withdraws his consent before the expiry of the period specified in paragraph 3.3.1(b);

"Contractor's Actuary" means the Actuary appointed by the Contractor for the purposes of this Contract;

"Contractor's Scheme" means the one or more retirement benefits schemes established by the Contractor or in which it participates for the purposes of paragraph 3 (Pension Matters). A reference to the Contractor's Scheme shall, where appropriate, include a reference to the trustees or administrators thereof;

"Contractor's Scheme Actuary" means the Actuary appointed as scheme actuary by the trustees of the Contractor's Scheme for the purposes of Section 47 of the Pensions Act 1995;

"Designated Stakeholder Schemes" means the one or more Stakeholder Pension Schemes designated from time to time by the Contractor or Initial Sub-Contractor or Employing Sub-Contractor as applicable for the purposes of section 3 of the Welfare Reform and Pensions Act 1999;

"Employing Sub-Contractor" means any sub-contractor of the Contractor (including an Initial Sub-Contractor and a Future Sub-Contractor) providing all or any part of the Services who is or is to be the employer of an Authority Employee or an Unexpected Employee;

"Employing Sub-Contractor's Scheme" means the one or more retirement benefits schemes established by the Employing Sub-Contractor or in which it participates for the purposes of paragraph 3 (Pension Matters). A reference to the Employing Sub-Contractor's Scheme shall, where appropriate, include a reference to the trustees or administrators thereof;

"Ex-Authority Employee" means those ex-employees of the Authority who are listed in Appendix 2 of Schedule 15 Part 2 (Employee Transfer Arrangements on Entry) and who transferred to the Contractor or an Employing Sub-Contractor under the Transfer Regulations and pursuant to this Contract on the Ex-Authority Relevant Transfer Date;

"Initial Sub-Contractor" means the employer of an Authority Pension Employee or Partnership Pension Account Employee where such employment arises by direct transfer from the Authority to the Initial Sub-Contractor rather than via the Contractor;

"Initial Sub-Contractor's Scheme" means the one or more retirement benefits schemes established by the Initial Sub-Contractor or in which it participates for

the purposes of paragraph 3 (Pension Matters). A reference to the Initial Sub-Contractor's Scheme shall, where appropriate, include a reference to the trustees or administrators thereof;

"Initial Sub-Contractor's Scheme Actuary" means the Actuary appointed by the Initial Sub-Contractor for the purposes of this Contract;

"Money Purchase Benefits" means money purchase benefits as defined in Section 181 of the Pension Schemes Act 1993;

"New Provider's Actuary" means the Actuary appointed as the scheme actuary by the trustees of the New Provider's Scheme for the purposes of section 47 of the Pensions Act 1995;

"New Provider's Scheme" means the one or more retirement benefits schemes established by the New Provider or in which it participates for the purposes of paragraph 3 (Pension Matters). A reference to the New Provider's Scheme shall, where appropriate, include a reference to the trustees or administrators thereof;

"Opted-out Employee" means an Authority Pension Employee or an Ex-Authority Employee who on the day before the Relevant Pension Transfer Date has opted-out of membership of the Contractor's Scheme or the Initial Sub-Contractor's Scheme as applicable and has retained the right under the rules of the Contractor's Scheme or the Initial Sub-Contractor's Scheme as applicable to opt back into membership;

"Partnership Pension Account" means the Stakeholder Pension Schemes designated by or on behalf of the Authority and known collectively by the title of "Partnership Pension Account";

"Partnership Pension Account Employees" means Authority Employees who on the day before the Relevant Transfer Date are entitled to a contribution from the Authority to the Partnership Pension Account;

"PCSPS" means the scheme established under section 2 of the Superannuation Act 1972 and known as the Principal Civil Service Pension Scheme. A reference to the PCSPS in relation to an Authority Pension Employee shall include a reference to the Section or Sections of the PCSPS of which he is a member and shall, where appropriate, also include a reference to the administrators thereof;

"PCSPS Actuary" means the Actuary (or firm of Actuaries) appointed for the time being as scheme actuary to the PCSPS;

"Pension Transferring Employees" means such of the Authority Pension Employees and the Ex-Authority Employees whose employment transfers from the Contractor, the Initial Sub-Contractor or an Employing Sub-Contractor as applicable to the New Provider on the termination or expiry of this contract and who have past service benefits accrued under the Contractor's Scheme or the Initial Sub-Contractor's Scheme as applicable;

"Relevant Pension Transfer" means a transfer from the Contractor or the Initial Sub-Contractor as applicable of the Authority Pension Employees or the Ex-Authority Employees pursuant to this Contract and the Transfer Regulations and each such transfer shall be a Relevant Pension Transfer if more than one;

"Relevant Pension Transfer Date" means the date on which the Relevant Pension Transfer is effected;

"Subsequent Actuary's Letter" means the letter from the Contractor's Actuary, the Initial Sub-Contractors Actuary or the actuary appointed by a relevant Employing Sub-Contractor as appropriate to the New Provider's Actuary dated [insert date] (copies of which are included at Appendix 3) which specify the actuarial methods and assumptions in accordance with paragraph 3.3.2 for calculating the Transfer Values.

"Transfer Value Date" means the date falling 30 days after the date on which the Transfer Value is determined by the Contractor's Scheme Actuary or the Initial Sub-Contractor's Scheme Actuary as applicable and verified by the New Provider's Actuary;

"Transfer Value" means the value of the retirement and death benefits transferred to the Contractor's Scheme or the Initial Sub-Contractor's Scheme pursuant to Schedule 15 (Employee Transfer Arrangements), which are prospectively and contingently payable to and in respect of the Consenting Employees (but excluding any benefits which may be Money Purchase Benefits) as calculated by the Contractor's Scheme Actuary or the Initial Sub-Contractor's Scheme Actuary as applicable and verified by the New Provider's Actuary in accordance with the actuarial methods and assumptions set out in the Subsequent Actuary's Letter and, for the avoidance of doubt a separate transfer value will be calculated in respect of each group of Consenting Employees if more than one such group transfers to the employment of the Contractor or the Initial Sub-Contractor as applicable on more than one date.

3.2 Expiry, termination or partial termination of the Contract

- 3.2.1 Where the Authority has served a Termination Notice in respect of all or any part of the Services or where the Contract is due to expire through effluxion of time and the Authority has notified the Contractor of the identity of the New Provider paragraphs 3.3 to 3.5 shall apply to the transfer of the relevant Pension Transferring Employees from the Contractor, and one or more Employing Sub-Contractors to the New Provider (or to the Authority) and to the calculation and payment of one or more Transfer Values to the New Provider's Scheme or to one or more pension schemes selected by the Authority, as appropriate.
- 3.2.2 Where the Contractor has failed to procure that the trustees of the Contractor's Scheme (or failed to procure that the trustees of any relevant Employing Sub-Contractors' Schemes) offer bulk transfer terms in accordance with paragraphs 3.3 to 3.4 the Contractor shall so advise the Authority and the Authority may issue such reasonable requests to such party, if any, as it thinks fit. The Contractor shall comply with and shall use its reasonable endeavours to procure that all Employing Sub-Contractors shall comply with, all such reasonable requests.
- 3.2.3 Notwithstanding any provision of this paragraph 3 (Pension Matters) the Authority shall have no liability as a result of or arising out of the failure of any party to agree bulk transfer terms or to implement bulk transfer terms which have been agreed, nor shall it be liable for the costs or expenses incurred by any Party, including the Contractor and/or any Employing Sub-Contractor, in negotiating or endeavouring to negotiate bulk transfer terms or in carrying out or endeavouring to carry out any direction or request of the Authority issued under this paragraph 3 (Pension Matters).

3.3 Calculation of Transfer Value

3.3.1 The Contractor agrees that:

- (a) on or after the Relevant Pension Transfer Date it will invite or will procure that the Initial Sub-Contractor invites the Pension Transferring Employees who join the New Provider's Scheme to request in writing payment of a Transfer Value in respect of them by the Contractor's Scheme or the Initial Sub-Contractor's Scheme to the New Provider's Scheme; and
- (b) that Pension Transferring Employees shall be given three months from the date on which the invitations are issued under paragraph 3.3.1(a), in which to return their written requests to the Contractor or the Initial Sub-Contractor as applicable.

3.3.2 Following the receipt of requests made by Pension Transferring Employees pursuant to this paragraph 3.3 (Calculation of Transfer Value), the Contractor shall use its reasonable endeavours to procure that within one month of receiving such requests the Contractor's Scheme or the relevant Employing Sub-Contractor's Scheme instructs the Contractor's Scheme Actuary or any other such relevant Actuary to determine the Transfer Value:

- (a) in respect of Consenting Employees who are Authority Pension Employees in accordance with the actuarial methods and assumptions which are broadly no less favourable (including for the avoidance of doubt but without limitation, increases or revaluation in line with the Retail Prices index subject to paragraph 4.7.3(b) of Schedule 15 Part 1) than those which were applied in the case of the Authority Pension Employees, when calculating the Transfer Value calculated in accordance with the Actuary's Letter subject to consistent and equivalent reasonable adjustments in respect of market movements since the respective dates of the Actuary's Letter; and
- (b) in respect of Consenting Employees who are Ex-Authority Employees, in accordance with actuarial methods and assumptions which are broadly no less favourable (including for the avoidance of doubt but without limitation, increases or revaluation in line with the Retail Prices index) than those which were applied in the case of the Ex-Authority Employees, when calculating the transfer value in accordance with the actuary's letter which governed the transfer of those Ex-Authority Employees from the Civil Service to a Previous Contractor subject to consistent and equivalent reasonable adjustments in respect of market movements since the date of that actuary's letter on condition that those actuarial methods and assumptions were used to calculate the transfer value in respect of such Ex-Authority Pension Employees from a Previous Contractor to the Contractor); and
- (c) in respect of Consenting Employees who are not Authority Pension Employees and for which the condition in paragraph 3.3.1(b) is not satisfied on a past service reserve basis in accordance with reasonable methods and assumptions set by the Contractor's Scheme's Actuary or the Initial Sub-Contractor's Scheme Actuary as applicable,

and to notify the New Provider's Actuary of their findings for verification;

3.3.3 The Contractor shall procure that:

- (a) all such information within its possession or under its control or the control of an Employing Sub-Contractor as the New Provider's Actuary may reasonably request for the purposes of verifying the Transfer Value or for any other purpose of this paragraph shall be made available to him within one month of the end of the period referred to in paragraph 3.3.1(b);
- (b) with the exception of the request forms referred to in paragraph 3.3 of this Contract (Calculation of Transfer Value), no notice or communication pertaining to a transfer payment from the Contractor's Scheme or the Initial Sub-Contractor's Scheme as applicable will be issued or given to the Pension Transferring Employees or by the Contractor or Initial Sub-Contractor without the written approval of the New Provider (such approval not to be unreasonably withheld or delayed).

3.3.4 The Contractor shall procure that any of the Authority Pension Employees, Ex-Authority Employees or Opted-out Employees who participate in one or more of the Designated Stakeholder Schemes shall be notified of such Authority Pension Employees', Ex-Authority Employees' or Opted-out Employees' right to transfer the accumulated value of his account under the relevant Designated Stakeholder Scheme to a registered pension arrangement operated by the New Provider.

3.4 **Payment of Transfer Value**

3.4.1 The Contractor shall use its reasonable endeavours to procure that on the Transfer Value Date the Contractor's Scheme or the Employing Sub-Contractor's Scheme (as appropriate) shall pay to the New Provider's Scheme an amount in cash equal to the Transfer Value.

3.5 **Authority to be indemnified**

3.5.1 The Authority may from time to time and at any time on reasonable notice require the Contractor to obtain and to produce to the Authority such information and evidence concerning the Contractor, and any Employing Sub-Contractor and their respective pension schemes as the Authority may reasonably require in order to be satisfied that the provisions of this paragraph 3 (Pension Matters) have been and continue to be satisfied and the Contractor shall promptly use all reasonable endeavours to obtain the same following the receipt of such a request at no cost to the Authority.

3.5.2 The Contractor shall indemnify the Authority on demand and shall keep it indemnified in full from and against all direct or indirect liability, loss, damages, injury, claims, costs and expenses incurred by the Authority, including the costs and expenses (whether legal, actuarial or other) incurred by the Authority in preparing for, defending and implementing any court, Employment Tribunal or Pensions Ombudsman proceedings, order, judgment, award, determination or direction, awarded against or incurred or paid by the Authority to and/or in favour of any Authority Pension Employee, Partnership Pension Account Employee or any other person:

- (a) as a result of the failure of the Contractor or an Initial Sub-Contractor as applicable to comply with the provisions of this paragraph 3 (Pension Matters) and/or of the failure of any Employing Sub-Contractor to comply with the terms of its contract with the Contractor; and
- (b) arising out of or attributable to or in any way connected with the provision or transmission by the Authority (whether to Employees or any other Party) of information supplied to it by the Contractor or an

Employing Sub-Contractor in connection with a re-tendering or proposed re-tendering of all or any of the Services.

- 3.5.3 Where the Contractor demonstrates to the satisfaction of the Authority (in respect of which the Authority shall act reasonably) that the direct or indirect liability, loss, damage, injury, claim, cost or expenses are partly attributable to an act or omission of the Authority, the indemnity given in paragraph 3.5.2 shall not apply to that part properly identified as being attributable to the act or omission of the Authority.

CONTRACTOR PERSONNEL-RELATED INFORMATION TO BE RELEASED UPON RE-TENDERING WHERE THE TRANSFER REGULATIONS APPLIES

1. Pursuant to paragraph 2.1.1, the following information will be provided:
 - a) The total number of individual employees (including any employees of Sub-Contractors) that are currently engaged, assigned or employed in providing the Services and who may therefore be transferred. Alternatively the Contractor should provide information why any of their employees or those of their Sub-Contractors will not transfer;
 - b) The total number of posts or proportion of posts expressed as a full-time equivalent value that currently undertakes the work that is to transfer;
 - c) The preceding 12 months total pay costs - (Pay, benefits employee/employer ERNIC and Overtime);
 - d) Total redundancy liability including any enhanced contractual payments;

2. In respect of those employees included in the total at 1(a), the following information:
 - a) Age (not date of Birth);
 - b) Employment Status (i.e. Fixed Term, Casual, Permanent);
 - c) Length of current period of continuous employment (in years, months) and notice entitlement;
 - d) Weekly conditioned hours of attendance (gross);
 - e) Standard Annual Holiday Entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years);
 - f) Pension Scheme Membership (including for ex-Authority Employees or other former Civil Servants who are current members of the Contractor's Scheme or other Contractor pension scheme certified by GAD which was set up following a transfer to the Contractor or Sub-Contractor of former Civil Servants);
 - g) Pension and redundancy liability information;
 - h) Annual Salary;
 - i) Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);
 - j) Details of attendance patterns that attract enhanced rates of pay or allowances;
 - k) Regular/recurring allowances;
 - l) Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants);

3. The information to be provided under this Appendix 1 should not identify an individual employee by name or other unique personal identifier.

4. The Contractor will provide (and will procure that the Sub-Contractors provide) the Authority/tenderers with access to the Contractor's and Sub-Contractor's general employment terms and conditions applicable to those employees identified at paragraph 1(a) of this Appendix 1.

PERSONNEL INFORMATION TO BE RELEASED PURSUANT TO THIS CONTRACT

1. Pursuant to paragraphs 2.1.1 and 3.1.1 of this Schedule 15 Part 1, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) will be provided to the extent it is not included within the written statement of employment particulars:

1.1 Personal, Employment and Career

- a) Employee's full name;
- b) Date of birth and age;
- c) Home address;
- d) Security Vetting Clearance;
- e) Job title;
- f) Work location;
- g) Conditioned hours of work;
- h) Employment Status;
- i) Details of training and operating licensing required for Statutory and Health and Safety reasons;
- j) Details of training or sponsorship commitments;
- k) Standard Annual leave entitlement and current leave year entitlement and record;
- l) Annual leave reckonable service date;
- m) Details of disciplinary or grievance proceedings taken by transferring employees in the last two years;
- n) Information of any legal proceedings between employees and their employer within the previous two years that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
- o) Issue of Uniform/Protective Clothing;
- p) Working Time Directive opt-out forms; and
- q) Date from which the latest period of continuous employment began.

1.2 Performance Appraisal

- a) The current year's Performance Appraisal;
- b) Current year's training plan (if it exists); and
- c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements.

1.3 Superannuation and Pay

- a) Maternity leave or other long-term leave of absence;

- b) Annual salary and rates of pay band/grade;
- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period;
- f) Details of outstanding loan, advances on salary or debts;
- g) Bank/building society account details for payroll purposes Tax Code;
- h) Cumulative pay for tax and pension purposes;
- i) Cumulative tax paid;
- j) National Insurance Number;
- k) National Insurance contribution rate;
- l) Other payments or deductions being made for statutory reasons;
- m) Any other voluntary deductions from pay;
- n) Civil Service Pension Scheme Membership (Opt-out of Civil Service Pension Scheme, Classic, Classic Plus, Premium, Defined Contribution) or, where relevant Contractor Scheme or other Contractor/Sub-Contractor pension scheme membership;
- o) For pension purposes, the notional reckonable service date;
- p) Pensionable pay history for three years to date of transfer;
- q) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- r) Percentage of pay currently contributed under any added years arrangements.

1.4 **Medical**

- a) Sickness and absence records for the immediately preceding four-year period; and
- b) Details of any active restoring efficiency case for health purposes.

1.5 **Disciplinary**

- a) Details of any active restoring efficiency case for reasons of performance; and
- b) Details of any active disciplinary cases where corrective action is on going.

1.6 **Further Information**

- a) Information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995;
- b) Short term variations to attendance hours to accommodate a domestic situation;
- c) Individuals that are TA members, or staff that may have been granted special leave as a School Governor; and
- d) Information about any maternity or other statutory leave or other absence from work.

ACTUARY'S LETTER

SCHEDULE 16 – DATA REFERRED TO IN PART 22 (INTELLECTUAL PROPERTY, INFORMATION AND DISCLOSURE)

Part 1 – Form of Confidentiality Undertaking

[insert details to be drafted on a Project specific basis]

Part 2 – Commercially Sensitive Information

	Column 1	Column 2
Section 1	Insert details of Commercially Sensitive Contractual Provisions	Insert details of expiry dates of relevant period (where possible to specify)
Section 2	Insert details of Commercially Sensitive Material	Insert details of expiry dates of relevant period (where possible to specify)

Part 3 – Deliverable Documents

[insert details to be drafted on a Project specific basis]

SCHEDULE 17 – DOCUMENTS AND DATA REFERRED TO IN PART 23 (INSURANCE)¹¹⁴

Part 1 – Policies to be taken out by the Contractor and maintained during Asset Provision

INSUREDS COMMON TO ALL POLICIES IN PART 1 (UNLESS STATED OTHERWISE)

1. Authority; and
2. Contractor; and
3. Asset Provider; and
4. [Service Provider; and]
5. Sub-contractors of any tier; and
6. Senior Lenders; and
7. Subordinated Lenders; and
8. [Consultants for Site activities only],

each for their respective rights and interests in the Project.

1. CONTRACTORS' ALL RISKS INSURANCE

1.1 Insured Property

All permanent and temporary works, materials (including but not limited to Government Furnished Assets and/or Existing Assets) goods, plant and equipment for incorporation in the Specified Assets (other than constructional plant, tools, accommodation and equipment belonging to or the responsibility of the Contractor or the Asset Provider or the Asset Provider's sub-contractors) and all other property used or for use in connection with works associated with Asset Provision

1.2 Coverage

All risks of physical loss or damage to the Insured Property unless otherwise excluded

1.3 Sum Insured

At all times an amount not less than the full reinstatement or replacement value of the Insured Property, but not less than the value specified in the Asset Provision Contract plus provision to include extensions as appropriate¹¹⁵

¹¹⁴ Each Project requires careful analysis of the insurable risk. Additional classes of insurance are likely to be required for many MoD projects, particularly those which involve training services or the provision of equipment. In addition, specific cover may be required for marine and/or aviation assets, ordnance or CONDO, Acquisition teams should seek advice from MoD's insurance advisers before issue of the ITN.

¹¹⁵ For certain projects where a total loss is inconceivable the sum insured should correspond to the Estimated Maximum Loss (ABI definition), rather than the full reinstatement value. However, the risk of not insuring on the basis of a full reinstatement value, and there being insufficient proceeds in the event of a loss, should rest with the Contractor.

1.4 **Maximum Deductible**

£[insert amount]

1.5 **Territorial Limits**

United Kingdom including offsite storage and whilst in transit

1.6 **Period of Insurance**

During the Asset Provision Period and thereafter in respect of defects liability until expiry of twelve months from the Services Commencement Date for the final Service Level

1.7 **Cover Features & Extensions**¹¹⁶

1.7.1 Sabotage and terrorism¹¹⁷; and

1.7.2 Munitions of war clause; and

1.7.3 Professional fees clause (including Authority's advisers fees incurred during any period of reinstatement); and

1.7.4 Debris removal clause; and

1.7.5 72 hour clause; and

1.7.6 European Union local authorities clause; and

1.7.7 Free issue materials clause; and

1.7.8 115 percent automatic increase clause; and

1.7.9 Additional costs of completion clause; and

1.7.10 Automatic reinstatement of sum insured clause; and

1.7.11 Plans and documents clause; and

1.7.12 Loss minimisation; and

1.7.13 Testing/commissioning period clause

1.9 **Principal Exclusions**

1.9.1 War and related perils (UK market agreed wording); and

1.9.2 Nuclear/radioactive risks (UK market agreed wording); and

1.9.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds; and

1.9.4 Wear, tear and gradual deterioration; and

¹¹⁶ Additional Project specific extensions may be appropriate for certain projects e.g. subsidence, design defects, etc.

¹¹⁷ For projects operating outside the UK, these provisions should be reviewed by MOD's insurance advisers

1.9.5 Consequential financial losses; and

1.9.6 Cyber risks

2. DELAY IN START-UP INSURANCE

2.1 Insureds

2.1.1 Authority; and¹¹⁸

2.1.2 Contractor; and

2.1.3 Senior Lenders; and

2.1.4 Subordinated Lenders,

each for their respective rights and interests in the Project.

2.2 Indemnity

In respect of:

2.2.1 loss of anticipated Revenue during the Minimum Indemnity Period arising from a delay in completion of the Project as a result of loss or damage covered under the Contractors' All Risks Insurance, effected in accordance with Item 1 (Property Damage Insurance) of this Schedule 17 Part 2, including physical loss or damage which would be indemnifiable but for the application of any deductible; and

2.2.2 the additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of Revenue of the Contractor which without such expenditure would have taken place, during the Minimum Indemnity Period.

For the purposes of this paragraph 2.2:

"**Debt service**" shall mean interest and debt service costs incurred in respect of the Senior Financing Agreements less:

- (a) sums which are in arrears;
- (b) all sums reserved by the Contractor and which the Contractor is entitled to use to make such payments, without breaching the Senior Financing Agreements;

"**Revenue**" is defined as the projected unavoidable fixed costs and senior debt service costs of the Contractor.

"**Unavoidable fixed costs**" means the fixed costs incurred by the Contractor which first fall due for payment by the Contractor during the period of indemnity but excluding:

- (a) costs which could have reasonably been mitigated or avoided by the Contractor; and
- (b) payments to the Contractor's Affiliated Companies; and

¹¹⁸ The Authority should be named as a co-insured party to the extent that it has a demonstrable insurable interest. Advice should be sought from the Authority's insurance advisers regarding the existence / extent of such interest.

- (c) payments which are not entirely at arm's length; and
- (d) payments to Shareholders of the Contractor, subordinated debt holders and any other financing costs other than senior debt service; and
- (e) indirect losses suffered or allegedly suffered by any person; and
- (f) fines, penalties or damages for unlawful acts, breaches of contract or other legal obligations; and
- (g) payments the Contractor can recover under contract or in respect of which the Contractor has a remedy against another person in respect of the same liability; and
- (h) payments to the extent that the Contractor has available to it:
 - (i) reserves which the Contractor can draw upon without breaching the Senior Financing Agreements;
 - (ii) standby or contingent facilities or funds of senior debt or equity which the Contractor is entitled to have available; and
- (i) payments representing any profits of the Project (to the extent not already excluded in (e)).

2.3 Sum Insured

An amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period

2.4 Maximum Deductible

[insert number] days

2.5 Minimum Indemnity Period¹¹⁹

[insert number] months

2.6 Period of Insurance

As per the Contractors' All Risks Insurance, excluding the defects liability period

2.7 Cover Features & Extensions

- 2.7.1 Denial of access; and
- 2.7.2 Utilities; and
- 2.7.3 Terrorism
- 2.7.4 Professional Fees; and
- 2.7.5 Automatic Reinstatement of sum insured clause

¹¹⁹ The Minimum Indemnity Period is to be determined by the Contractor and its lenders. The proposed period should be validated by the Authority in consultation with its own insurance advisers.

2.8 **Principal Exclusions**

To follow the Contractors' All Risks Insurance, other than for consequential losses

3. **THIRD PARTY LIABILITY INSURANCE**

3.1 **Interest**

To indemnify the Insured in respect of all sums that they may become legally liable to pay (including claimant's costs and expenses) as damages in respect of:

3.1.1 death, or bodily injury, illness, death, disease contracted by any person; and

3.1.2 loss or damage to property; and

3.1.3 interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities, or any like cause,

happening during the period of insurance and arising out of or in connection with the Project.

3.2 **Limit of Indemnity**

Not less than £[insert amount]¹²⁰ in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution and products liability

3.3 **Maximum Deductible**

£[insert amount] for each and every occurrence of property damage (personal injury claims will be paid in full)

3.4 **Territorial Limits**¹²¹

Worldwide (to the extent such cover is commercially available in the prevailing market)

3.5 **Jurisdiction**

Worldwide (to the extent such cover is commercially available in the prevailing market)

3.6 **Period of Insurance**

From the Commencement Date until the Services Commencement Date for the final Service Level

3.7 **Cover Features & Extensions**

3.7.1 Munitions of war clause; and

3.7.2 Contractual liability clause; and

¹²⁰ Advice should be sought from the Authority's insurance advisers when project Team's are determining an appropriate limit of indemnity.

¹²¹ This will depend on the project and whether or not there are non-UK elements and risk exposures.

3.7.3 Cross liability clause; and

3.7.4 Motor contingent liability

3.8 **Principal Exclusions**

3.8.1 Liability for death, illness, disease or bodily injury sustained by employees of the insured; and

3.8.2 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles; and

3.8.3 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the insured; and

3.8.4 Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to all property belonging to the Authority which is in the care, custody and control of another Insured Party; and

3.8.5 Liability arising out of technical or professional advice (given for a fee) other than in respect of death or bodily injury to persons or damage to third party property; and

3.8.6 Liability arising from the ownership, possession or use of any aircraft or marine vessel; and

3.8.7 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

**Part 2 – Policies to be taken out by the Contractor and maintained during
Service Provision¹²²**

INSUREDS COMMON TO ALL POLICIES IN PART 2 (UNLESS STATED OTHERWISE)

1. Authority; and
2. Contractor; and
3. Service Provider; and
4. Sub-contractors of any tier; and
5. Senior Lenders; and
6. Subordinated Lenders,

each for their respective rights and interests in the Project.

1. PROPERTY DAMAGE INSURANCE

1.1 Insured Property¹²³

Any property of whatsoever nature or description associated with the Project which is the property of the Contractor or for which the Contractor may be responsible including but not limited to the Specified Assets

1.2 Coverage

All risks of physical loss or damage to the Insured Property from any cause not excluded, including machinery breakdown and computer breakdown in respect of appropriate equipment

1.3 Sum Insured¹²⁴

At all times an amount not less than the total reinstatement or replacement value of the Insured Property plus provision to include extensions as appropriate

1.4 Maximum Deductible

£[insert amount] (Indexed) each and every claim

1.5 Territorial Limits

United Kingdom plus elsewhere whilst in transit

¹²² Project Teams should consider whether or not additional insurable risk exposures are relevant to their projects, meaning that other types of insurance policy need to be specified in this Schedule 17.

¹²³ Consideration should be given to whether or not it is appropriate to include an obligation to insure Government Furnished Assets / Equipment or Issued Property.

¹²⁴ For certain projects where a total loss is inconceivable the sum insured should correspond to the Estimated Maximum Loss (ABI definition), rather than the full reinstatement value. However the risk of not insuring on the basis of a full reinstatement value, and there being insufficient insurance proceeds in the event of a loss, should rest with the Contractor.

1.6 **Period of Insurance**

From the Service Commencement Date or as otherwise specified in the Contract for the Contract Period and renewable on an annual basis unless agreed otherwise by the Parties.

1.7 **Cover Features & Extension**

1.7.1 Sabotage & terrorism; and

1.7.2 Pollution and contamination to the Insured Property arising from an event which itself is not otherwise excluded. To include pollution or contamination resulting from accidental damage; and

1.7.3 Automatic reinstatement of sum insured clause; and

1.7.4 Capital additions clause; and

1.7.5 72 hour clause; and

1.7.6 European union local authorities clause; and

1.7.7 Replacement of computer records; and

1.7.8 Professional fees; and

1.7.9 Debris removal; and

1.7.10 Repair/reinstatement basis of claims settlement with cash option for non-reinstatement

1.8 **Principal Exclusions**

1.8.1 War and related perils (UK market agreed wording); and

1.8.2 Nuclear/radioactive risks (UK market agreed wording); and

1.8.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds; and

1.8.4 Wear, tear and gradual deterioration; and

1.8.5 Consequential financial losses; and

1.8.6 Cyber risks

2. **BUSINESS INTERRUPTION**

2.1 **Insureds**

2.1.1 Contractor; and

2.1.2 Senior Lenders; and

2.1.3 Subordinated Lenders

2.1.4 Authority¹²⁵,

each for their respective rights and interests in the Project

2.2 **Indemnity**

In respect of:

2.2.1 loss of Revenue during the Minimum Indemnity Period arising from an interruption or interference in the operation the Project as a result of loss or damage covered under Property Damage Insurance, effected in accordance with Item 1 (Property Damage Insurance) of this Schedule 17 Part 2, including physical loss or damage which would be indemnifiable but for the application of any deductible; and

2.2.2 the additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss Revenue of the Contractor which without such expenditure would have taken place during the Minimum Indemnity Period.

"**Revenue**" is defined as the projected unavoidable fixed costs and senior debt service costs of the Contractor.

"**Debt service**" shall mean interest and debt service costs incurred in respect of the Senior Financing Agreements less:

- (a) sums which are in arrears; and
- (b) all sums reserved by the Contractor and which the Contractor is entitled to use to make such payments, without breaching the Senior Financing Agreements.

"**Unavoidable fixed costs**" should mean the fixed costs incurred by the Contractor which first fall due for payment by the Contractor during the period of indemnity but excluding:

- (a) costs which could have reasonably been mitigated or avoided by the Contractor; and
- (b) payments to the Contractor's Affiliated Companies; and
- (c) payments which are not entirely at arm's length; and
- (d) payments to Shareholders in the Contractor, subordinated debt holders and any other financing costs other than senior debt service; and
- (e) Indirect Losses suffered or allegedly suffered by any person; and
- (f) fines, penalties or damages for unlawful acts, breaches of contract or other legal obligations; and
- (g) payments the Contractor can recover under contract or in respect of which the Contractor has a remedy against another person in respect of the same liability; and

¹²⁵ The Authority should be named as a co-insured party to the extent that it has a demonstrable insurable interest. Advice should be sought from the Authority's insurance advisers regarding the existence / extent of such interest.

- (h) payments to the extent that the Contractor has available to it:
 - (i) reserves which the Contractor can draw upon without breaching the Senior Financing Agreements;
 - (ii) standby or contingent facilities or funds of senior debt or equity which the Contractor is entitled to have available; and
- (i) payments representing any profits of the Project (to the extent not already excluded in (e)).

2.3 **Sum Insured**

An amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

2.4 **Maximum Excess**

[insert number] days

2.5 **Minimum Indemnity Period**¹²⁶

[Insert number] months

2.6 **Period of Insurance**

From the Service Commencement Date for the first Service Level and for the duration of the Contract Period and renewable on an annual basis unless agreed otherwise.

2.7 **Cover Features & Extensions**

- 2.7.1 Denial of access; and
- 2.7.2 Utilities; and
- 2.7.3 Terrorism; and
- 2.7.4 Accountants Clause; and
- 2.7.5 Automatic reinstatement of sum insured

3. **THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE**

3.1 **Interest**

To indemnify the Insured in respect of all sums that they may become legally liable to pay (including claimant's costs and expenses) as damages in respect of:

- 3.1.1 death, or bodily injury, illness, death, disease contracted by any person; and
- 3.1.2 loss or damage to property; and
- 3.1.3 interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of

¹²⁶ The Minimum Indemnity Period is to be determined by the Contract in consultation with its lenders. The proposed period should be validated by the Authority in consultation with its own insurance advisers.

amenities, or any like cause happening during the period of insurance and arising out of or in connection with the Project and the provision of the Services.

3.2 **Limit of Indemnity**¹²⁷

Not less than £[insert amount] (Indexed) in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution and products liability

3.3 **Maximum Deductible**

£[insert amount] (Indexed) for each and every occurrence of property damage (personal injury claims will be paid in full)

3.4 **Territorial Limits**¹²⁸

Worldwide (to the extent such cover is commercially available in the prevailing market)

3.5 **Jurisdiction**

Worldwide (to the extent such cover is commercially available in the prevailing market)

3.6 **Period of Insurance**

From the Service Commencement Date or as otherwise specified in the Contract for the Contract Period and renewable on an annual basis unless agreed otherwise.

3.7 **Cover Features & Extensions**

- 3.7.1 Munitions of war clause
- 3.7.2 Contractual liability clause; and
- 3.7.3 Cross liability clause; and
- 3.7.4 Motor contingent liability

3.8 **Principal Exclusions**

- 3.8.1 Liability for death, illness, disease or bodily injury sustained by employees of the insured; and
- 3.8.2 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles; and
- 3.8.3 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the insured; and

¹²⁷ Advice should be sought from the Authority's insurance advisors when Project Team's are determining an appropriate limit of indemnity.

¹²⁸ This will depend on the project and whether or not there are non-UK elements and risk exposures.

- 3.8.4 Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to all property belonging to the Authority which is in the care, custody and control of another Insured Party; and
- 3.8.5 Liability arising out of technical or professional advice (given for a fee) other than in respect of death or bodily injury to persons or damage to third party property; and
- 3.8.6 Liability arising from the ownership, possession or use of any aircraft or marine vessel; and
- 3.8.7 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence

Part 3– Endorsements¹²⁹

Unless the context otherwise requires, defined terms set out in the following endorsements shall have the meaning set out in the Contract.

1. ENDORSEMENT 1

1.1 Cancellation

This policy shall not be cancelled or terminated before the original expiry date is to take effect except in respect of non-payment of premium.

The insurer shall by written notice advise the Authority:

- 4.1.1 at least thirty days before any such cancellation or termination is to take effect; and
- 4.1.2 at least thirty days before any reduction in limits or coverage or any increase in deductibles is to take effect; and
- 4.1.3 of any act or omission or any event of which the insurer has knowledge and which might invalidate or render unenforceable in whole or in part this policy.

2. ENDORSEMENT 2

2.1 Multiple Insured/Non-Vitiation Clause

2.1.1 Each of the parties comprising the insured shall for the purpose of this policy be considered a separate co-insured entity, insured on a composite basis, with the words "the insured" applying to each as if they were separately and individually insured provided that the total liability of the insurers under each section of this policy to the insured collectively shall not (unless the policy specifically permits otherwise) exceed the limit of indemnity or amount stated to be insured under that section or policy. Accordingly, the liability of the insurers under this policy to any one insured shall not be conditional upon the due observance and fulfilment by any other insured party of the terms and conditions of this policy or of any duties imposed upon that insured party relating thereto, and shall not be

¹²⁹ The endorsements in this Part 3 are recommended drafting. Whilst the Parties should endeavour to obtain cover in accordance with these wordings, if these are not in practice available, the Parties should obtain the best terms reasonably available in the market at the time. Project Teams should take advice from the Authority's insurance advisers regarding market availability.

affected by any failure in such observance or fulfilment by any such other insured party.

- 2.1.2 It is understood and agreed that any payment or payments by insurers to any one or more of the insureds shall reduce, to the extent of that payment, insurers' liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.
- 2.1.3 Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from any insured party in circumstances of fraud misrepresentation non-disclosure or material breach of warranty or condition of this policy (each referred to in this paragraph 2.1 as a "**Vitiating Act**") committed by that insured party unless such misrepresentation non-disclosure or breach of warranty or condition was committed innocently and in good faith. For the avoidance of doubt it is however agreed that a Vitiating Act committed by one insured party shall not prejudice the right to indemnity of any other insured who has an insurable interest and who has not committed the Vitiating Act.
- 2.1.4 Insurers hereby agree to waive all rights of subrogation and/or recourse which they may have or acquire against any insured party (together with their employees and agents) except where the rights of subrogation or recourse are acquired in consequence of a Vitiating Act in which circumstances insurers may enforce such rights against the insured responsible for the Vitiating Act notwithstanding the continuing or former status of the vitiating party as an insured.
- 2.1.5 Notwithstanding any other provision of this policy or any other document or any act and/or omission by any insured party insurers agree that:
- (a) no party other than the Authority has any authority to make any warranty, disclosure or representation in connection with this policy on behalf of the Authority; and
 - (b) where any warranty, disclosure or representation is required from the Authority in connection with this policy insurers will contact the Authority in writing (in accordance with Endorsement 3) and set out expressly the warranty, disclosure and/or representation required within a reasonable period of time from the Authority (regarding itself); and
 - (c) save as set out in a request from insurers to an Authority in accordance with (b), an Authority shall have no duty to disclose any fact or matter to insurers in connection with this policy save to the extent that for the Authority not to disclose a fact or matter would constitute fraudulent misrepresentation and/or fraudulent non-disclosure.

3 **ENDORSEMENT 3**

3.1 **Communications**

- 3.1.1 All notices or other communications under or in connection with this policy shall be given to each insured (and the Authority) and shall be in writing and authenticated by signature or by such other method as agreed between the parties and be marked in a prominent position with the number of this Contract and shall be served by sending the same by first

class post, facsimile or by hand, and shall be marked for the attention of the relevant person.

3.1.2 Notices given by post shall be effective upon the earlier of actual receipt and five Business Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:

(a) within two hours after sending, if sent on a Business Day between the hours of 9am and 4pm; or

(b) by 11am on the next following Business Day, if sent after 4pm on a Business Day but before 9am on that next following Business Day.

3.1.3 The address and facsimile number of the Authority for all notices under or in connection with this policy are those notified from time to time by the Authority's Representative for this purpose to the Contractor's insurance broker at the relevant time. The initial address and facsimile number of the Authority is the address and facsimile number of the Authority's Representative set out in Clause 145.4 (Addresses).

3.1.4 It is further agreed that a notice of claim given by the Authority or any other insured shall in the absence of any manifest error be accepted by the insurer as a valid notification of a claim on behalf of all insureds.

4. **ENDORSEMENT 4**

4.1 **Loss Payee (applicable only to the Physical Damage Policies)**

All proceeds of this policy shall be payable without deduction or set-off to the Joint Insurance Account

5. **ENDORSEMENT 5**

5.1 **Primary Insurance**

It is expressly understood and agreed that this policy provides primary cover for the insured parties and that in the event of loss destruction damage or liability covered by this policy which is covered either in whole or in part under any other policy or policies of insurance effected by or on behalf of any of the insured parties the insurers will indemnify the insured parties as if such other policy or policies of insurance were not in force and the insurers waive their rights of recourse if any against the insurers of such other policy or policies of insurance.

6. **ENDORSEMENT 6**

6.1 **Claims Negotiation Rights**

Notwithstanding any claim conditions contained herein insurers agree that the Authority has the right to settle and negotiate any claims received from third parties subject to prior consent of insurers. If the Authority takes or fails to take any action as a direct result of which insurers' liability is increased then the liability of insurers to provide an indemnity is reduced to such an extent.

7. **ENDORSEMENT 7**

7.1 Ringfencing

The level of any indemnity available to an insured party under this policy in relation to any claim(s) concerning the Project shall not be affected and/or reduced by any claim(s) unrelated to the Project.

Part 4 – Broker's Letter of Undertaking¹³⁰

To: The Authority

Dear Sirs

Agreement dated [insert date] entered into between [CONTRACTOR] LIMITED ("the **Contractor**") and THE SECRETARY OF STATE FOR DEFENCE ("the **Authority**") ("the **Contract**")

1. We refer to the Contract. Unless the context otherwise requires, terms defined in the Contract shall have the same meaning in this letter.
2. We act as insurance broker to the Contractor in respect of the Required Insurances and in that capacity we confirm that the Required Insurances which are required to be procured pursuant to Clause 117 (Insurances) and Schedule 17 (Documents and Date Referred to in PART 23) of the Contract:
 - 2.1 where appropriate name you and such other persons as are required to be named pursuant to the Contract for their respective interests; and that
 - 2.2 are, in our reasonable opinion as insurance brokers, as at today's date, in full force and effect in respect of all the matters specified in the Contract; and that
 - 2.3 all premiums due to date in respect of the Required Insurances are paid and the Required Insurances are, to the best of our knowledge and belief, placed with insurers which, as at the time of placement, are reputable and financially sound. We do not, however, make any representations regarding such insurers' current or future solvency or ability to pay claims; and that
 - 2.4 the endorsements set out in Schedule 17 Part 3 (Endorsements) of the Contract are as at today's date in full force and effect in respect of the Required Insurances.
3. We further confirm that the attached cover notes confirm this position.
4. Pursuant to instructions received from the Contractor and in consideration of your approving our appointment **or continuing appointment** as brokers in connection with the Required Insurances, we hereby undertake in respect of the interests of the Authority in relation to the Required Insurances.
5. **Notification Obligations**
 - 5.1 to notify the Authority's Representative at least thirty days prior to the expiry of any of the Required Insurances if we have not received instructions from the Contractor to negotiate renewal and in the event of our receiving instructions to renew, to advise the Authority's Representative promptly of the details thereof;

¹³⁰ The wording of this Part 4 is recommended drafting, however the precise words can vary between insurance brokers. Project Teams should take advice from the Authority's insurance advisers regarding the form of words available from particular brokers.

5.2 to notify the Authority's Representative at least ninety days prior to ceasing to act as brokers to the Contractor unless, due to circumstances beyond our control, we are unable to do so in which case we shall notify the Authority's Representative as soon as practicable; and

5.3 to pay into the Joint Insurance Account without set off or deduction of any kind for any reason all payments received by us from insurers in relation to the Required Insurances specified in Clause 121 (Joint Insurance Account) of the Contract.

6. Advisory Obligations

6.1 to notify the Authority's Representative promptly of any default in the payment of any premium for any of the Required Insurances; and

6.2 to notify the Authority's Representative if any insurer cancels or gives notification of cancellation of any of the Required Insurances, at least thirty days before such cancellation is to take effect or as soon as reasonably practicable if notification of cancellation takes place less than thirty days before it is to take effect; and

6.3 to notify the Authority's Representative of any act or omission, breach or default of which we have knowledge which in our reasonable opinion may either invalidate or render unenforceable in whole or in part any of the Required Insurances or which may otherwise materially impact on the extent of cover provided under the Required Insurances; and

6.4 to notify the Authority's Representative promptly upon becoming aware of any changes in the Required Insurances which may result in a reduction in limits or coverage (including those resulting from extensions in cover) or in any increase in deductibles, exclusions or exceptions; and

6.5 to advise the Contractor of its duties of disclosure and to specifically advise upon:

6.5.1 the facts, circumstances and beliefs that should generally be disclosed to insurers; and

6.5.2 the obligation not to misrepresent any facts, matters or beliefs to insurers.

7. Disclosure Obligations

7.1 to disclose to insurers all information made available to us and any fact, change of circumstances or occurrence made known to us which in our reasonable opinion is material to the risks insured against under the Required Insurances and which properly should be disclosed to insurers as soon as practicable after we become aware of such information, fact, change of circumstance or occurrence whether prior to inception or renewal or otherwise; and

7.2 to treat as confidential all information so marked or otherwise stated to be confidential and supplied to us by or on behalf of the Contractor or the Authority and not to disclose such information, without the prior written consent of the supplier, to any third party other than those persons who, in our reasonable opinion have a need to have access to such information from time to time, and for the purpose of disclosure to the insurers or their agents in respect of the Required Insurances in discharge of our obligation set out at paragraph 7.1 of this letter. Our obligations of confidentiality shall not conflict with our duties owed to the Contractor and shall not apply to disclosure required by an order of a court of competent jurisdiction, or pursuant to any applicable law, governmental or regulatory authority having the force of law or to information which is in the public domain.

8. **Administrative Obligations**

- 8.1 to hold all documents relating to or evidencing the Required Insurances, including but without prejudice to the generality of the foregoing, insurance slips, contracts, policies, endorsements and all documents evidencing renewal of the Required Insurances, payment of premiums and presentation and receipt of claims;
- 8.2 to supply to the Authority's Representative and/or the Authority's insurance advisers' authorised representatives) promptly on written request copies of the documents set out in paragraph 8.1 of this letter, and
- 8.3 to make available to such persons promptly upon the Authority's Representative's request the originals of such documents;
- 8.4 to administer the payment of premiums due pursuant to the Required Insurances such that, in so far as we hold appropriate funds, all such premiums shall be paid to insurers in accordance with the terms of the Required Insurances;
- 8.5 to administer the payment of claims from insurers in respect of the Insurances (the "**Insurance Claims**") including:
- 8.5.1 negotiating settlement of Insurance Claims presented in respect of the Required Insurances; and
- 8.5.2 collating and presenting all information required by insurers in relation to Insurance Claims presented in respect of the Required Insurances; and
- 8.5.3 insofar as it is relevant and practicable, liaising with and reporting to the Authority's Representative throughout the settlement, payment and administration of such Insurance Claims;
- 8.6 to advise the Authority's Representative promptly upon receipt of notice of any material changes which we are instructed to make in the terms of the Required Insurances and which, if effected, in our opinion as insurance brokers, would result in any material reduction in limits or coverage or in any increase in deductibles, exclusions or exceptions;
- 8.7 to advise the Authority's Representative in advance of any change to the terms of, or any lapse, non-renewal and/or cancellation of any policy maintained in respect of the Required Insurances; and
- 8.8 to use our reasonable endeavours to have endorsed on each and every policy evidencing the Required Insurances (when the same is issued) endorsements substantially in the form set out in Schedule 17 Part 3 (Endorsements) of the Contract.

9. **Insurance Cost Reporting Procedures**

- 9.1 to prepare following request, at the expense of the Contractor, a Joint Insurance Cost Report on behalf of both the Contractor and the Authority in accordance with the Insurance Review Procedure as set forth in Clause 118 (Insurance Review Procedure) of the Contract. We shall ensure that the information in the Joint Insurance Cost Report is fairly represented, based on the information available to us.

10. **Notification Details**

10.1 Our obligations at paragraph 4 of this letter to notify or inform you shall be discharged by providing the requisite information in hard copy to the address and facsimile number notified by you from time to time. The initial address and facsimile number of the Authority is:

Authority's Representative
[insert name]
[insert address]
[insert fax number]
[insert email address]

10.2 We shall supply further letters substantially in this form on renewal of each of the Required Insurances and shall supply copies of such letters to those parties identified to us by the Authority's Representative for such purposes.

Yours faithfully

For and on behalf of [Contractor's broker]¹³¹

¹³¹ The Contractor's broker may wish to limit its liability and include additional liability wording in the Broker's Letter of Undertaking. Whilst this is in principle acceptable, Project Teams will need to check that (i) the scope of such additional wording is appropriate (e.g. does not extend to a limitation of liability for fraudulent acts) and (ii) the capped amount is set at a sufficiently high level. The Authority's insurance advisers will be able to advise on both aspects, and also provide guidance on general market practice.

SCHEDULE 18 – DIRECT AGREEMENT

Consult MOD PFU for a draft template

SCHEDULE 19 – PROJECT MANAGEMENT

Part 1 – Liaison

[Notes:

1. Insert a liaison procedure to be drafted on a Project-specific basis. The following provides a template of Project Board governance arrangements.
2. The Schedule will need to include a means for agreeing matters and for resolving failures to agree (which may include reference to the Dispute Resolution Procedure) where the parties are to agree a matter in accordance with this Schedule 19 (Project Management). This should be drafted on a case by case basis.]

[Subject to the agreement of this Schedule 19, the following definition(s) will need to be added to Schedule 1]

"Board Member" means the Authority and Contractor Board appointments set out in the Appendix to this Schedule 19 Part 1;

"Board(s)" means the Project Board and Programme Board;

"Confirmation of Management Plan Receipt" is as defined in Part 2 paragraph 2 (Review Procedure for Management Plans)

"Programme Board" means the body described in paragraph [] of this Schedule 19;

"Project" means the project described in Clause 2.1 of the Contract;

"Project Board" means the management board described in paragraph [] of this Schedule 19;

"Project Managers" means the individuals appointed as such by the Authority and the Contractor in accordance with paragraph [] of this Schedule 19; and

"Project Plan" means the Implementation Plan, Test Plan, [insert other plans];

1 INTRODUCTION

1.1 This Schedule 19 describes the procedures that will be used to manage the relationship between the Authority and the Contractor under the Contract.

2 ESTABLISHMENT OF THE BOARDS

2.1 Boards shall be established by the Authority under this Contract on which both the Contractor and the Authority shall be represented.

2.2 The Contractor and the Authority shall each appoint a Project Manager.

2.3 The Project will be managed at the day to day level through the Contractor Project Manager and the Authority Project Manager, in accordance with the Project Plan.

2.4 The Project Board will be responsible for the executive management of the Project as set out in this Contract. The role and function of the Project Board is more particularly set out in paragraph 6.

2.5 The Programme Board will:

2.5.1 provide senior level guidance, leadership and strategy for the Project;

2.5.2 be the point of escalation from the Project Board; and

2.5.3 carry out the specific obligations attributed to it in this Agreement.

2.6 Both Parties will ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.

3 BOARD STRUCTURE & REPRESENTATION

3.1 The Appendix to this Schedule 19 describes in relation to each Board:

3.1.1 the Authority members of that Board;

3.1.2 the Contractor members of that Board;

3.1.3 the frequency that the Board shall meet (unless otherwise agreed between the Parties);

3.1.4 the location of the Board's meetings; and

3.1.5 the planned start date by which the Board shall be established.

3.2 If either Party wishes to replace any Board Member position, that Party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Authority Board Member has at all times a counterpart Contractor Board Member of equivalent seniority and expertise.

3.3 Each Party shall ensure that its Board Members shall make all reasonable efforts to attend Board meetings at which that Board Member's attendance is required. If any Board Member is not able to attend a Board meeting, that person shall use all reasonable endeavours to ensure that:

3.3.1 a delegate attends the relevant Board meeting in his/her place who (wherever possible) is properly briefed and prepared; and

3.3.2 that he/she is debriefed by such delegate after the Board Meeting.

3.4 A chairperson shall be appointed by the Authority for the Programme Board and Project Board as identified in the Appendix in this Schedule 19. The chairperson shall be responsible for:

3.4.1 scheduling Board meetings;

3.4.2 setting the agenda for Board meetings and circulating to all attendees in advance of such meeting;

3.4.3 chairing the Board meetings;

3.4.4 monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings;

3.4.5 ensuring that minutes for Board meetings are recorded and disseminated electronically to the appropriate persons and to all Board meeting participants within five Business Days after the Board meeting; and

3.4.6 facilitating the process or procedure by which any decision agreed at any Board meeting is given effect in the appropriate manner.

3.5 Board meetings shall be quorate as long as at least [two] representatives from each Party are present.

3.6 The Parties shall ensure, as far as reasonably practicable, that all Boards shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall use endeavours to ensure that Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

4 **ROLE OF PROGRAMME BOARD**

5 The Programme Board shall:

5.1.1 ensure that this Contract is operated throughout the Contract Period in a manner which optimises the value for money and operational benefit derived by the Authority and the commercial benefit derived by the Contractor;

5.1.2 receive and review reports from the Project Board which summarise key aspects of the operation of the Services and review reports on technology, service and other developments that offer potential for improving the benefit either Party is receiving, in particular value for money;

5.1.3 determine business strategy and provide guidance on policy matters which may impact on the implementation of the Services or on any Future Services or Additional Services;

5.1.4 authorise the commissioning and initiation of new business change projects and shall assess opportunities for Future Services and/or Additional Services;

5.1.5 consider and resolve Disputes (including Disputes as to the cause of a delay to the Project or the performance of the Services) escalated to the Programme Board; and

5.1.6 [recognise and promote participation in cross-governmental initiatives.]

6 **ROLE OF THE PROJECT BOARD**

6.1 The Project Board shall:

6.1.1 be accountable to the Programme Board for comprehensive oversight of the Project and for the senior management of the operational relationship between the Parties;

6.1.2 report to the Programme Board on significant issues requiring decision and resolution by the Programme Board and on progress against high level Project plans;

- 6.1.3 receive reports from the Project Managers on matters such as issues relating to delivery of existing Services and performance against Service Levels; progress against the Project Plan, possible future developments;
- 6.1.4 review and report to the Programme Board on service management, co-ordination of individual projects and any integration issues;
- 6.1.5 deal with the prioritisation of resources and the appointment of Project Managers on behalf of the Parties;
- 6.1.6 consider and resolve Disputes (including Disputes as to the cause of a delay to the Project or the performance of the Services) in the first instance and if necessary escalate the Dispute to the Programme Board; and
- 6.1.7 develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same.

7 CONTRACT MANAGEMENT MECHANISMS

- 7.1 Both Parties will pro-actively manage risks attributed to them under the terms of this Contract.
- 7.2 The Contractor will develop, operate, maintain and amend, as agreed with the Authority, processes for:
 - 7.2.1 the identification and management of risks. The project risk register will be completed by the Contractor and submitted for review by both Parties at the Project Board;
 - 7.2.2 the identification and management of issues;
 - 7.2.3 monitoring and controlling project plans;
 - 7.2.4 [benefit management;]
 - 7.2.5 [document control and management;]

8 ANNUAL REVIEW

- 8.1 An annual review meeting shall be held, on a date to be agreed between the Parties, throughout the Contract Period.
- 8.2 The meetings will be attended by the [insert details] of the Contractor and the [insert details] of the Authority and any other persons considered by the Authority necessary for the review.

Part 2 - Review Procedure for Management Plans

- 1. In accordance with [cross ref?], the Contractor shall submit to the Authority's Representative (in a previously agreed format) two hard copies and one soft copy of the relevant Management Plan to be reviewed together with a cover page stating the document version and change control information.
- 2. On receipt of a Management Plan, the Authority's Representative shall give written confirmation of receipt of such Management Plan ("**Confirmation of Management Plan Receipt**") to the Contractor's Representative.

3. As soon as reasonably possible, and within twenty Business Days of the date of the Confirmation of Receipt of the proposed Management Plan (or such other period as the Parties may agree), the Authority's Representative shall either give its approval, raise objections and/or request changes to the proposed Management Plan to make it acceptable to the Authority.
4. If the Authority's Representative fails to raise objections and/or request changes to the Contractor's Representative pursuant to paragraph 3, then the Authority's Representative shall be deemed to have approved the relevant Management Plan.
5. If the Authority's Representative raises objections or requests changes to any Management Plan, the Contractor shall resubmit a revised Management Plan within ten Business Days for review in accordance with this procedure.
6. No approval or comment or any failure to give or make an approval or comment under this review procedure shall operate to exclude or limit the Contractor's obligations or liabilities under this Contract (or the Authority's rights under this Contract) and/or shall constitute a Change proposed by the Authority.

Programme Board Representation and Structure

Authority members for Programme Board	[] [Chairperson]
Contractor members for Programme Board	
Start date for Programme Board meetings	
Frequency of Programme Board meetings	
Location of Programme Board meetings	

Project Board Representation and Structure

Authority Members for Project Board	[] [Chairperson]
Contractor Members for Project Board	
Start Date for Project Board meetings	
Frequency of Project Board meetings	
Location of Project Board meetings	

SCHEDULE 20 – COLLATERAL WARRANTY

THIS DEED is made on [insert date]

BETWEEN

THE SECRETARY OF STATE FOR DEFENCE (the "**Authority**"); and

CONTRACTOR LIMITED (company registered number [insert number]) whose registered office is at [insert address] (the "**Contractor**"); and

[insert details] (the "**Sub-contractor**"); and

[insert details] (the "**Security Trustee**" for the Senior Lenders) on behalf of itself and the Senior Lenders

BACKGROUND

[insert recitals]

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed unless otherwise defined the following terms shall, unless the context otherwise requires, have the following meanings:

"**Contract**" means the contract of [insert date] between the Authority and the Contractor;

"**Event of Contractor Default**" means [insert appropriate definition from the Sub-contract including all circumstances in which the Sub-contract could be terminated by the Sub-contractor];

"**Direct Agreement**" means the agreement of [insert date] between the Authority, [the Agent][the Security Trustee] and the Contractor;

"**Event of Sub-contractor Default**" means [insert appropriate definition from the Sub-contract including all circumstances in which the Sub-contract could be terminated by the Contractor];

"**Novation Agreement**" is as defined in paragraph 4.5.1(c);

"**Novation Effective Date**" means the date of performance of the obligations set out in paragraph 4.5.1(c)(ii);

"**Proposed Novation Date**" is as defined in paragraph 4.1.1;

"**Proposed Novation Notice**" is as defined in paragraph 4.1.1;

"**Proposed Step-in Date**" is as defined in paragraph 3.1.1;

"**Proposed Substitute**" is as defined in paragraph 4.1.1;

"**Security Documents**" is as defined in the Direct Agreement;

"Step-in Date" means the date of issue of the Step-in Undertaking;

"Step-in Notice" is as defined in paragraph 3.1.1;

"Step-in Period" means the period commencing on the Step-in Date and ending on the earliest of:

- (a) the date of the first anniversary of the Step-in Date (but subject always to paragraph 4.7 (Extension of Step-In Period));
- (b) the Step-out Date;
- (c) the Novation Effective Date; and
- (d) termination of the Sub-contract under paragraph 3.3 (Restriction of Right of Termination);

"Step-in Undertaking" is as defined in paragraph 3.2.4;

"Step-out Date" is as defined in paragraph 3.4.1;

"Sub-contract" is as defined in the Contract;

"Termination Notice" is as defined in paragraph 2.4.1;

1.2 Interpretation

1.2.1 Capitalised terms defined in the Contract shall have the same meaning in this Deed unless otherwise defined in this Deed.

1.2.2 In this Deed except where the context otherwise requires:

- (a) the masculine includes the feminine and vice-versa; and
- (b) the singular includes the plural and vice versa; and
- (c) a reference in this Deed to any paragraph is, except where expressly stated to the contrary, a reference to such paragraph to this Deed; and
- (d) any reference to this Deed or to any other document shall include any permitted variation, amendment or supplement to such document; and
- (e) any reference to any enactment, order, regulation or other similar instrument shall be a reference to such instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted; and
- (f) a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees; and
- (g) headings are for convenience of reference only; and
- (h) words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words.

2. TERMINATION NOTICE AND AUTHORITY TERMINATION

2.1 Sub-contractor's Warranties and Undertakings

2.1.1 The Sub-contractor warrants and undertakes to the Authority that it has complied with and fulfilled and shall continue to comply with and fulfil its duties and obligations arising under or by virtue of the Sub-contract, provided that the Authority shall only be entitled to make a claim against the Sub-contractor under this paragraph 2.1 if the Contract has terminated and shall not be entitled to do so during the Step-in Period or after the Sub-contract has been novated under paragraph 4 (Novation).

2.2 Liability of Sub-contractor

2.2.1 Any liability arising from any claim for breach of the warranty under or pursuant to paragraph 2.1 shall be in addition to and without prejudice to any other present or future liability of the Sub-contractor to the Authority (including any liability in negligence) and shall not be released, diminished or in any other way be affected by any independent enquiry into any relevant matter which may be made or carried out by or on behalf of the Authority by any person nor by any action or omission of any person whether or not such action or omission might give rise to an independent liability of such person to the Authority provided always that the Sub-contractor shall owe no greater duties or obligations to the Authority under this Deed than it owes or would have owed to the Contractor under the Sub-contract.

2.3 Retained Employee Indemnity

2.3.1 If the Contract is terminated because of an Event of Contractor Default then the Sub-contractor shall indemnify and keep indemnified the Authority against all Direct Losses relating to any contractual claims made by [Retained Employees] as a consequence of their redundancy resulting from the early termination of the Contract and/or the Sub-contract. The Authority will use reasonable endeavours to mitigate such Direct Losses.

2.4 Termination Notice

2.4.1 The Sub-contractor undertakes not to terminate the Sub-contract on account of an Event of Contractor Default without first giving the Authority not less than fifteen Business Days' prior written notice specifying the grounds for that termination. Subject to paragraph 0, any such notice, other than one given in circumstances where there is no default under the Sub-contract by the Contractor or the Sub-contractor, shall be a "**Termination Notice**".

2.4.2 Where the Sub-contractor's right to terminate the Sub-contract is subject to the terms of the Direct Agreement then the Sub-contractor shall notify the Authority of the Event of Default and of the fact that the Sub-contractor's right to terminate the Sub-contract is subject to the terms of the Direct Agreement as soon as reasonably practicable upon it becoming aware of the same. Thereafter as soon as the Sub-contractor becomes entitled to terminate the Sub-contract free from the constraints contained in the Direct Agreement, whether upon the expiry of the Step-in Period (as such term is defined in the Direct Agreement) or otherwise, then the Sub-contractor undertakes to the Authority not to

terminate the Sub-contract on account of an Event of Contractor Default (whether occurring before or after the Sub-contractor's right to terminate the Sub-contract was free from the constraints of the Direct Agreement) without first giving the Authority not less than fifteen Business Days' prior notice specifying the grounds for that termination and noting that the Sub-contractor's right of termination is not subject to the Direct Agreement. Any such notice, other than one given in circumstances where there is no default under the Sub-contract by Contractor or the Sub-contractor, shall for the purposes of this Deed also be a Termination Notice and the provisions of this Deed shall apply accordingly.

2.4.3 Notwithstanding any provision of the Sub-contract to the contrary, on termination of the Contract by the Authority, the Parties agree that the Sub-contract shall not come to an end except in accordance with the terms of this Deed.

3. **STEP-IN AND STEP-OUT**

3.1 **Step-in Notice**

3.1.1 If the Authority has terminated the Contract in accordance with the terms of the Contract or if the Authority has received a Termination Notice, then subject to the provisions of this Deed, the Authority may notify the Sub-contractor (a "**Step-in Notice**") of the intention of the Authority to issue a Step-in Undertaking on a specified date (the "**Proposed Step-in Date**") provided that such Proposed Step-in Date shall be:

- (a) no later than five Business Days after termination of the Contract where this has been terminated by the Authority; and
- (b) no earlier than the date falling five days prior to the date of expiry of the Termination Notice and no later than the date of expiry of the Termination Notice where a Termination Notice has been given by the Sub-contractor, the Authority shall provide a copy of any Step-in Notice to the Security Trustee at the same time as the Step-in Notice is given to the Sub-contractor.

3.1.2 Unless the Sub-contractor otherwise consents, only one Step-in Notice may be given during the period of this Deed. Subject to paragraph 5.1 (Rights of Termination), the Sub-contractor shall not be entitled to terminate the Sub-contract until after the Proposed Step-in Date.

3.2 **Notice of Obligations and Step-in Undertaking**

3.2.1 Within three Business Days of receipt of any Step-in Notice, the Sub-contractor shall notify the Authority of any sums of which the Sub-contractor has actual knowledge which are due and payable but unpaid by the Contractor and of any other material obligations or liabilities, of which the Sub-contractor has actual knowledge, which should have been performed or discharged by the Contractor under the Sub-contract, in each case, as at the date of the Step-in Notice.

3.2.2 The Sub-contractor shall inform the Authority in writing as soon as reasonably practicable of:

- (a) any change in such sums, obligations or liabilities referred to in paragraph 3.2.1; and
- (b) any further sums, obligations or liabilities thereafter falling due and payable but unpaid or falling due for performance or discharge and unperformed or undischarged (as the case may be),

in each case of which the Sub-contractor has actual knowledge, before the Step-in Date.

3.2.3 The Sub-contractor shall give the Authority the information referred to in paragraphs 3.2.1 and 3.2.2 in good faith and may not give any further notifications pursuant to paragraph 3.2.2 less than two Business Days prior to the Proposed Step-in Date. The Authority shall not be required to assume any liability under a Step-in Undertaking for any outstanding obligations or liabilities of the Contractor to the Sub-contractor which are not notified to the Authority pursuant to paragraphs 3.2.1 or 3.2.2.

3.2.4 Not later than the Proposed Step-in Date the Authority shall decide if it is prepared to issue a Step-in Undertaking. If it does so decide, the Authority shall promptly give the Sub-contractor written notification of such decision and, at the same time, provide a copy of such notification to the Security Trustee. The Authority shall deliver to the Sub-contractor on the Proposed Step-in Date, a written undertaking in form and substance agreed with the Sub-contractor (both the Authority and the Sub-contractor acting reasonably) (the "**Step-in Undertaking**"), incorporating a clause in terms similar to paragraph 9.4 (Default Interest) (but only to the extent that there will not be double counting of default interest accruing under the Sub-contract and this Deed), and undertaking to the Sub-contractor:

- (a) to pay or procure the payment to the Sub-contractor, within fifteen Business Days of demand by the Sub-contractor, of any sum due and payable but unpaid by the Contractor to the Sub-contractor under the Sub-contract before the Step-in Date and which has been notified by the Sub-contractor to the Authority in accordance with paragraphs 3.2.1 or 3.2.2 provided that this sub-paragraph shall not require the Authority to undertake to pay or procure the payment of any amount:
 - (i) which has been notified by the Sub-contractor to the Authority in accordance with paragraphs 3.2.1 or 3.2.2 if such amount is due to be paid as part of the Authority's obligations under PART 26 (Compensation on Termination) of the Contract; and/or
 - (ii) which is due and payable, but unpaid, by the Sub-contractor to the Contractor, whether before or after the Step-In Date; and
- (b) to perform or discharge or procure the performance or discharge of any unperformed or undischarged obligations of Contractor under the Sub-contract which shall have fallen due for performance or discharge before the Step-in Date and which have been notified by the Sub-contractor to the Authority in

accordance with paragraphs 3.2.1 or 3.2.2 within such period as the Sub-contractor may reasonably require;

- (c) to pay or procure the payment of any sum due and payable by Contractor under the Sub-contract as a result of any act or omission occurring during the Step-in Period which shall arise from any act or omission occurring after the Step-in Date (but subject to paragraphs 3.4 (Step-Out) and 4.5.2(b)) but not, to avoid doubt, any sum due in respect of any Services provided before the Step-in Date; and
- (d) to perform or discharge or procure the performance or discharge of any obligations of Contractor under the Sub-contract as a result of any act or omission occurring during the Step-in Period which shall arise from any act or omission occurring after the Step-in Date (but subject to paragraphs 3.4 (Step-Out) and 4.5.2(b)) but not, to avoid doubt, to perform or discharge or to procure the performance or discharge of any obligations in respect of any Services provided before the Step-in Date.

3.2.5 Following notification of the Authority's decision pursuant to paragraph 3.2.4, the Security Trustee shall, on or before the Proposed Step-in Date, take any action which is necessary unconditionally and irrevocably to release the Sub-contract from the security constituted by the Security Documents.

3.2.6 If the Authority has not issued the Step-in Undertaking on or before the Proposed Step-in Date the Step-in Notice shall be deemed to have been withdrawn and the rights and obligations of the Parties shall be construed as if the Step-in Notice had not been given.

3.3 **Restriction of Right of Termination**

3.3.1 During or in respect of the Step-in Period, the Sub-contractor confirms to the Authority that the Sub-contractor shall continue to observe and perform its duties and obligations under the Sub-contract and shall, without prejudice to paragraph 5.1 (Rights of Termination), only be entitled to exercise its rights of termination under the Sub-contract:

- (a) by reference to an Event of Contractor Default arising during the Step-in Period provided that no event of default by the Contractor under the Contract (whether resulting in termination of the Contract or otherwise, and notwithstanding that it has occurred during the Step-in Period) shall entitle the Sub-contractor to exercise such rights of termination during the Step-in Period; or
- (b) if the Authority fails to pay when due any amount owed to the Sub-contractor or fails to perform or discharge when falling due for performance or discharge any obligation under the Step-in Undertaking or fails to procure such payment or performance or discharge; or
- (c) if such rights of termination arise in circumstances where there is no default under the Sub-contract by the Authority or the Sub-contractor.

3.4 Step-Out

3.4.1 The Authority may, at any time, give the Sub-contractor at least thirty days' prior written notice to terminate the Step-in Period on a date specified in the notice (the "**Step-out Date**"); and

3.4.2 the Authority shall give the Sub-contractor at least thirty days' prior written notice that (subject to paragraph 4.4.1(b)) the Step-in Period will end due to the occurrence (subject to paragraph 4.7 (Extension of Step-In Period)) of the first anniversary of the Step-in Date;

and, provided that

(a) the Authority has performed and discharged in full or procured the performance and discharge in full of any obligations of Contractor under the Sub-contract in relation to the maintenance of records and the provision of reports during the Step-in Period so as to permit the Sub-contractor to monitor the performance of Contractor's other obligations under the Sub-contract; and

(b) all liability under the Step-in Undertaking pursuant to any claims made up to the date specified in either paragraph 3.4.1 or paragraph 3.4.2 (as the case may be) shall have been fully and unconditionally discharged,

the Authority shall be released from the Step-in Undertaking on the expiry of the Step-in Period in accordance with paragraphs 3.4.1 and 3.4.2. Such release shall not affect the continuation of Contractor's obligations towards the Sub-contractor under the Sub-contract.

3.5 Security Trustee

3.5.1 The Security Trustee is a party to this Deed solely for the purposes of taking the benefit of its rights under paragraphs 3 (Step-In and Step-Out), 4.1.1, 4.3 (Grant of Consent) and 11 (Expiry) and, subject to paragraphs 3.2.5, 4.5.1, 7.2.1(a) and 10.1 (Security Trustee's Warranty and Undertaking), shall have no rights or obligations or liabilities hereunder.

4. NOVATION

4.1 Proposed Substitute

4.1.1 At any time that the Authority is entitled to give a Step-in Notice pursuant to paragraph 3.1 or at any time during the Step-in Period the Authority may give notice (a "**Proposed Novation Notice**") to the Sub-contractor that it wishes itself or another person (a "**Proposed Substitute**") to assume, by way of sale, transfer or other disposal, the rights and obligations of Contractor under the Sub-contract and specifying a date (the "**Proposed Novation Date**");

(a) falling not later than fifteen Business Days after termination of the Contract where this has been terminated by the Authority;

(b) falling not later than the expiry of the Termination Notice where a Proposed Novation Notice is given by the Authority at a time when it is entitled to give a Step-in Notice pursuant to paragraph 3.1; and

- (c) falling not later than twenty-eight Business Days after the date of the Proposed Novation Notice, where a Proposed Novation Notice is given during a Step-in Period,

the Authority shall provide a copy of any Proposed Novation Notice to the Security Trustee at the same time as the Proposed Novation Notice is given to the Sub-contractor. Save as provided in paragraph 4.4 (Consent withheld), only one Proposed Novation Notice may be given during the period of this Deed. Without prejudice to paragraphs 3.3 (Restriction of Right of Termination) and 5.1 (Rights of Termination), the Sub-contractor shall not be entitled to terminate the Sub-contract during the notice period specified in a Proposed Novation Notice.

4.2 Information for Consent to Novation

4.2.1 If the Proposed Novation Notice specifies the Authority as the Proposed Substitute, the Sub-contractor's consent to the novation shall be deemed to have been given automatically. Where the Proposed Substitute is not the Authority, a novation in accordance with a Proposed Novation Notice shall only be effective if the Sub-contractor consents to that novation in writing in accordance with paragraph 4.3 (Grant of Consent) and the Authority shall (as soon as practicable) supply the Sub-contractor with the following information:

- (a) the name and registered address of the Proposed Substitute;
- (b) the names of the shareholders in the Proposed Substitute and the share capital owned by each of them;
- (c) the names of the directors and the secretary of the Proposed Substitute;
- (d) details of the means by which it is proposed to finance the Proposed Substitute (including the extent to which such finance is committed and any conditions precedent as to its availability for drawing) to enable it to perform its obligations under the Sub-contract; and
- (e) the resources (including contractual arrangements) which are to be available to the Proposed Substitute to enable it to perform its obligations under the Sub-contract.

4.3 Grant of Consent

4.3.1 The Sub-contractor may withhold or delay consent to a novation only where the Proposed Substitute is not the Authority and the Authority has failed to show to the Sub-contractor's satisfaction (acting reasonably) that:

- (a) the Proposed Substitute has the legal capacity, power and authorisation to become a party to and perform the obligations of Contractor under the Sub-contract; and
- (b) the technical competence and financial standing of and the technical and financial resources available to the Proposed Substitute are sufficient to perform the obligations of Contractor under the Sub-contract.

The Sub-contractor shall notify the Authority in writing, within **five** Business Days of the later of receipt of a Proposed Novation Notice and all information required under paragraph 4.2 (Information for Consent to Novation), as to whether or not it has decided to grant such consent (together with an explanation of its reasons if it has decided to withhold its consent) and, at the same time, provide a copy of the same to the Security Trustee.

4.4 **Consent Withheld**

4.4.1 If, in accordance with paragraph 4.3, the Sub-contractor withholds its consent to a Proposed Novation Notice, the Authority shall be entitled to give one or more subsequent Proposed Novation Notices, pursuant to the provisions of paragraph 4.1 (Proposed Substitute), containing changed particulars relating to the same Proposed Substitute or particulars relating to another Proposed Substitute which (where the replacement Proposed Substitute is not the Authority) the Authority has good cause to believe would fulfil the requirements of paragraphs 4.3.1(a) and 4.3.1(b), provided that only one Proposed Novation Notice may be outstanding at any one time, and provided further that:

- (a) where a Step-in-Notice has not been issued, any revised Proposed Novation Date shall be a date falling no later than the date specified in paragraphs 4.1.1(a) or 4.1.1(b) as appropriate; and
- (b) if the Proposed Novation Notice was served during the Step-in Period, any revised Proposed Novation Date shall be a date falling not later than twenty-eight Business Days after the date of the revised Proposed Novation Notice.

4.5 **Implementation of Novation**

4.5.1 If the Sub-contractor consents to a novation pursuant to a Proposed Novation Notice (whether automatically or otherwise), then on the Proposed Novation Date and without prejudice to paragraph 5.1 (Rights of Termination):

- (a) following such notification and in the absence of any prior release in accordance with paragraph 3.2.5, the Security Trustee shall, on or before the Proposed Novation Date, take any action which is necessary unconditionally and irrevocably to release the Sub-contract from the security constituted by the Security Documents; and
- (b) subject to the prior performance by the Security Trustee and Contractor of their respective obligations under paragraph 4.5.1(a) the Proposed Substitute shall become a party to the Sub-contract in place of the Contractor and, thereafter, shall be treated as if it was and had always been named as a party to the Sub-contract in place of the Contractor; and
- (c) the Sub-contractor, Contractor and the Proposed Substitute shall enter into a novation agreement (the "**Novation Agreement**") and any other requisite agreements, in form and substance satisfactory to the Sub-contractor (acting reasonably), pursuant to which:

- (i) the Proposed Substitute shall be granted all of the rights of the Contractor under the Sub-contract (including those arising prior to the end of the Step-in Period);
- (ii) subject to the Sub-contractor giving to the Proposed Substitute within three Business Days of receipt of the Proposed Novation Notice such notice as is referred to in paragraph 3.2.1 and to the provisions of paragraphs 3.2.2 and 3.2.3 (with necessary changes), the Proposed Substitute shall assume all of the obligations and liabilities of the Contractor under the Sub-contract (including those arising prior to the end of any Step-in Period and those arising during the period of the Proposed Novation Notice);

provided that the Sub-contractor will not be in breach of any of its obligations under this Deed if the Proposed Substitute does not enter into one or other of such agreements.

4.5.2 On and after the Novation Effective Date:

- (a) the Sub-contractor shall owe its obligations under the Sub-contract (whether arising before, on or after such date) to the Proposed Substitute and the receipt, acknowledgement or acquiescence of the Proposed Substitute shall be a good discharge; and
- (b) if the Authority shall have entered into a Step-in Undertaking, the Authority will be released from the Step-in Undertaking, provided that:
 - (i) all obligations of the Authority under the Step-in Undertaking which have accrued up to the Novation Effective Date and are identifiable as at that date shall have been fully and unconditionally discharged; and
 - (ii) the Authority has performed and discharged in full or procured the performance and discharge in full of the obligations of the Contractor under the Sub-contract in relation to the maintenance of records and the provision of reports during the Step-in Period up to the Novation Effective Date so as to permit the Sub-contractor to monitor the performance of the Contractor's other obligations under the Sub-contract.

4.5.3 The Authority and the Sub-contractor shall use all reasonable endeavours to agree and the Authority shall use reasonable endeavours to procure that the Proposed Substitute agrees any amendments to the Sub-contract necessary to reflect paragraph 3.2.2 and the fact that the Contract may have terminated at the time of the Novation Effective Date.

4.6 Termination After Novation

4.6.1 After the Novation Effective Date the Sub-contractor shall only be entitled to exercise its rights of termination under the Sub-contract:

- (a) in respect of any Event of Contractor Default arising after that date in accordance with the Sub-contract; or
- (b) if the Proposed Substitute does not discharge the obligations and liabilities assumed by it under paragraph 4.5.2(b) which relate to matters arising prior to the end of the Step-in Period within fifteen Business Days following the Novation Effective Date.

4.7 **Extension of Step-In Period**

4.7.1 As at the date of the first anniversary of the Step-in Date, if the Step-in Period has not previously ended, and:

- (a) the Authority is in the course of conducting discussions in good faith with a Proposed Substitute (the novation to whom has been approved by the Sub-contractor whether automatically or otherwise in accordance with paragraph 4.3 (Grant of Consent), the Step-in Period shall be extended and shall continue until such date as is proposed by the Authority and agreed by the Sub-contractor; or
- (b) contracts have been exchanged by the Authority with a Proposed Substitute (which has been approved by the Sub-contractor in accordance with paragraph 4.3 (Grant of Consent)) as at such date,

the Step-in Period shall be extended and shall continue until the date such contracts are completed, provided that such date shall not be later than thirty Business Days after exchange.

5. **RIGHTS AND OBLIGATIONS UNDER THE SUB-CONTRACT**

5.1 **Rights of Termination**

5.1.1 If:

- (a) no Step-in Notice or Proposed Novation Notice is given before a Termination Notice expires or within fifteen Business Days after termination of the Contract by the Authority; or
- (b) a Step-in Undertaking is not issued on the Proposed Step-in Date; or
- (c) the Step-in Notice is withdrawn or, pursuant to paragraph 3.2.6, deemed to have been withdrawn; or
- (d) the Step-in Period ends before the occurrence of the Novation Effective Date; or
- (e) in the absence of a Step-in Undertaking, the Sub-contractor withholds its consent to a novation pursuant to a Proposed Novation Notice, in accordance with paragraph 4.3 (Grant of Consent), and does not subsequently grant consent to a novation in accordance with paragraph 4.4 (Consent Withheld) on or before the Proposed Novation Date; or
- (f) in the absence of a Step-in Undertaking, the obligations of the Proposed Substitute set out in paragraph 4.5 (Implementation

of Novation) are not performed on the Proposed Novation Date;
or

- (g) the Sub-contractor is entitled to terminate the Sub-contract under paragraph 3.3 (Restriction of Right of Termination) or 4.6 (Termination After Novation); or
- (h) the Authority exercises its right to Step-out under paragraph 3.4.1, then on the Step-out Date,

then the Sub-contractor shall be entitled to:

- (i) exercise all of its rights under the Sub-contract and act upon any and all grounds for termination available to it in relation to the Sub-contract whenever occurring; and/or
- (ii) pursue any and all claims and exercise any and all rights and remedies against Contractor.

5.2 Contractor's Obligations to Continue

5.2.1 Until completion of a novation pursuant to paragraph 4.5 (Implementation of Novation) (unless the terms of such novation expressly preserve an obligation or liability of Contractor), the Contractor shall continue to be liable for all its obligations and liabilities, whenever occurring, under or arising from the Sub-contract notwithstanding:

- (a) the service of a Step-in Notice or the issue of a Step-in Undertaking or the expiry of the Step-in Period or the release of a Step-in Undertaking; or
- (b) the service of a Proposed Novation Notice; or
- (c) any other provision of this Deed.

6. REVOCATION OF NOTICES

6.1 A Termination Notice and a Step-in Notice may each be revoked (in writing to the recipient) by the Party giving them before the expiry of their respective notice periods. Upon any such revocation, the rights and obligations of the Parties shall be construed as if the relevant notice had not been given.

7. ASSIGNMENT

7.1 Binding on Successors and Assigns

7.1.1 This Deed shall be binding on and shall enure to the benefit of the Parties and their respective successors and permitted assigns. In the case of the Authority, its successors shall include any person to which the Secretary of State, in exercising his statutory powers to transfer property, rights and liabilities of the Authority upon the Authority ceasing to exist, transfers the rights and obligations of the Authority under this Deed.

7.2 Restriction on Assignment

7.2.1 No Party shall assign or transfer any part of its respective rights or obligations under this Deed without the prior consent of the others (such consent not to be unreasonably withheld or delayed), provided that:

- (a) the Security Trustee may assign or transfer its rights and obligations to a successor trustee of the Senior Lenders under the Senior Financing Agreements without the consent of any other Party and this paragraph 7.2 shall not prevent any Senior Lender assigning or transferring its rights under the Senior Financing Agreements and the Security Documents in accordance with the terms of the Senior Financing Agreements; and
- (b) the Contractor shall not assign this Deed within **five** years from the final Services Commencement Date; and
- (c) the Authority shall be entitled, without the consent of any other Party, to transfer all its rights and obligations hereunder, to any person to whom it assigns or otherwise disposes of the benefit of the Contract in accordance with Clause 147 (Transfer of this Contract by the Authority) of the Contract and, otherwise, with Contractor's and the Sub-contractor's consent (not to be unreasonably withheld or delayed); and
- (d) nothing in this sub-paragraph shall restrict the rights of the Secretary of State to effect a statutory transfer; and
- (e) the Sub-contractor shall assign this Deed to any party to whom it assigns the Sub-contract (in accordance with the terms of that agreement).

8. CONFIDENTIALITY

8.1 The parties shall be bound to comply with the obligations on the part of the Sub-contractor in the Sub-contract corresponding to those on the Contractor contained in Clause 113 (Confidentiality) of the Contract in relation to all information and matters obtained from any other Party under or in connection with the Project.

9. PAYMENTS AND TAXES

9.1 Payments

9.1.1 All payments under this Deed to any Party shall be made in pounds sterling by electronic transfer of funds for value on the day in question to the bank account of the recipient (located in the United Kingdom) specified to the other Parties from time to time.

9.2 VAT

9.2.1 All amounts stated to be payable by any Party under this Deed shall be exclusive of any VAT properly payable in respect of the supplies to which they relate.

9.2.2 Each Party shall pay any VAT properly payable hereunder in respect of any supply made to it under this Deed, in accordance with Clause 68 (VAT on Payments) of the Contract, with necessary changes.

9.3 **Deductions from payments**

9.3.1 All sums payable by a Party to any other Party under this Deed shall be paid free and clear of all deductions or withholdings whatsoever in respect of tax, save as may be required by law.

9.4 **Default Interest**

9.4.1 Each Party shall be entitled, without prejudice to any other right or remedy, to receive interest on any payment not made on the due date calculated from day to day at a rate per annum equal to Default Interest from the day after the date on which payment was due up to and including the date of payment.

10. **AUTHORITY**

10.1 **Security Trustee's Warranty and Undertaking**

10.1.1 The Security Trustee represents and warrants to and undertakes to each of the Authority, the Sub-contractor and the Contractor that the Security Trustee is duly authorised by each of the Senior Lenders to assume the obligations expressed to be assumed by them under this Deed and to undertake on behalf of each Senior Lender in the terms of this Deed so as to bind each Senior Lender as if it were a Party.

10.2 **Authority**

10.2.1 The Authority shall not be obliged to make any enquiry as to the authority of the Security Trustee in doing any act or entering into any document or making any agreement under or in connection with this Deed.

11. **EXPIRY**

11.1.1 The rights of the Security Trustee under this Deed shall be extinguished upon the repayment by Contractor of all sums due and owing to the Senior Lenders by the Contractor under the Senior Financing Agreements or where the Sub-contract is terminated.

12. **AGGREGATE LIABILITY**

12.1 Notwithstanding any other provision of this Deed, the Sub-contractor shall have no greater liability under this Deed as it has under the Sub-contract (as amended or varied).

13. **THIRD PARTY RIGHTS**

13.1 It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this Deed is not intended to, and does not, give to any person who is not a party to this Deed any rights to enforce any provisions contained herein except for any person to whom the benefit of this Deed is assigned or transferred in accordance with paragraph 7 (Assignment).

14. **AGENCY**

14.1 **No Delegation**

14.1.1 No provision of this Deed shall be construed as a delegation by the Authority of any of its statutory authority to any other Party.

14.2 **No Agency**

14.2.1 Save as otherwise provided in this Deed, no other Party shall be or be deemed to be an agent of the other Parties nor shall any Party hold itself out as having authority or power to bind the other parties in any way.

14.3 **Independent Contractor**

14.3.1 The Parties shall, at all times, be independent contractors and nothing in this Deed shall be construed as creating any partnership between the Parties or any relationship of employer and employee between the Parties.

15. **WHOLE AGREEMENT**

15.1 This Deed (when read together with the Contract, the Sub-contract, and the Direct Agreement) contains or expressly refers to the entire agreement between the Parties with respect to the specific subject matter of this Deed and expressly excludes any warranty, condition or other undertaking implied at Law or by custom and supersedes all previous agreements and understandings between the Parties with respect thereto and each of the Parties acknowledges and confirms that it does not enter into this Deed in reliance on any representation, warranty or other undertaking not fully reflected in the terms of this Deed.

15.2 Nothing in this Deed is intended to or shall operate so as to exclude or limit any liability for fraud or fraudulent misrepresentation.

16. **WAIVER**

16.1 Failure by any Party at any time to enforce any provision of this Deed or to require performance by the other Parties of any provision of this Deed shall not be construed as a waiver of such provision and shall not affect the validity of this Deed or any part of it or the right of the relevant Party to enforce any provision in accordance with its terms.

17. **COUNTERPARTS**

17.1 This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full and original instrument for all purposes.

18. **SEVERABILITY**

18.1 If any provision of this Deed is held to be invalid, illegal or unenforceable to any extent then:

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

18.1.2 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.

19. **COSTS AND EXPENSES**

19.1 Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Deed.

20. **AMENDMENTS**

20.1 No amendment to this Deed shall be binding unless in writing and signed by the duly authorised representatives of the Parties.

21. **NOTICES**

21.1 **Form of Notices**

21.1.1 All notices, information, documentation, certificates or written instructions to be provided or submitted under this Deed shall be in writing and authenticated by signature or by such other method as agreed between the Parties and be marked in a prominent position with the number of this Contract and shall be served by sending the same by first class post, facsimile or by hand, and shall be marked for the attention of the relevant person, to the address given in paragraph 21.2 (Addresses).

21.2 **Addresses**

Security Trustee
[insert name]
[insert address]
[insert fax number]

Authority's Representative	Contractor's Representative
[insert name]	[insert name]
[insert address]	[insert address]
[insert fax number]	[insert fax number]

Any party may change its nominated address, facsimile number or telephone number by prior written notice to the other parties.

21.3 **Service of Notices**

21.3.1 Notices given by post shall be effective upon the earlier of actual receipt and five Business Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:

- (a) within two hours after sending, if sent on a Business Day between the hours of 9am and 4pm; or
- (b) by 11am on the next following Business Day, if sent after 4pm on a Business Day but before 9am on that next following Business Day.

22. **GOVERNING LAW AND JURISDICTION**

22.1 **Law**

22.1.1 This Deed shall be governed by and construed in all respects in accordance with English law.

22.2 **Jurisdiction**

22.2.1 The Parties each submit to the jurisdiction of the English Courts as regards any claim or matter arising in relation to this Deed.

IN WITNESS whereof the parties have executed this Deed as a Deed the day and year first written above.

Executed and delivered as a Deed by the affixing of the corporate seal of the **SECRETARY OF STATE FOR DEFENCE**

The corporate seal of the **SECRETARY OF STATE FOR DEFENCE** hereunto affixed is hereby authenticated by:

Authorised Signatory

Authorised Signatory

Executed and delivered as a Deed by **CONTRACTOR LIMITED** acting by:

Director¹³²

¹³² Project teams should ensure that they have received adequate evidence of Contractor signatories authority to sign the Contract. This would normally take the form of a board minute approving the transaction and authorising the named directors to sign the relevant documents.

Director/Secretary

Executed and delivered as a Deed by
SUBCONTRACTOR acting by:

[Director]¹³³

[Director/Secretary]

Executed and delivered as a Deed by
SECURITY TRUSTEE acting by:

Director¹³⁴

Director/Secretary

¹³³ Project teams should ensure that they have received adequate evidence of Contractor signatories authority to sign the Contract. This would normally take the form of a board minute approving the transaction and authorising the named directors to sign the relevant documents.

¹³⁴ Project teams should ensure that they have received adequate evidence of Contractor signatories authority to sign the Contract. This would normally take the form of a board minute approving the transaction and authorising the named directors to sign the relevant documents.

SCHEDULE 21 – THIRD PARTY INCOME REPORT PRO FORMA

THIRD PARTY INCOME REPORT - YEAR ENDING [insert date]

INCOME

INCOME FROM LEASES

1.		0
2.		0
3.		0

OTHER INCOME SUBJECT TO PROFIT SHARE	0
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TOTAL INCOME	0
--------------	---

EXPENDITURE

Direct Costs

Maintenance & Lifecycle	0
Depreciation	0
Mines Management	0
Property Agent	0
Business Rates	0

Overheads

Staff Costs	0
Management Charge	0
Legal Advisor	0
Other Advisors	0
PR & Marketing	0
Financing Costs	0
Other Costs	0
Provisions [analysed separately]	0

TOTAL EXPENDITURE	0
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Brought Forward Losses	0
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NET INCOME	0
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Share payable to the Authority, being the maximum of:

i)	[insert details]% of net income (further to Clause 60.2.1)	0
ii)	[insert details]% of turnover (further to Clause 60.2.2)	0

Amount Payable	
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SCHEDULE 22 – SURVEYS

Signed for and on behalf of
CONTRACTOR LIMITED acting by:

Director

Director/Secretary

Signed for and on behalf of **SECRETARY
OF STATE FOR DEFENCE**

The corporate seal of the **SECRETARY OF
STATE FOR DEFENCE** acting by:

Authorised Signatory

Authorised Signatory

Part 1 - Authority's surveys

Ser	Document	Reference	Date
(a)	(b)	(c)	(d)
1	[insert project specific document name and version number]	[insert project specific document reference]	[insert document date]

Part 2 - Contractor's surveys

Ser	Document	Reference	Date
(a)	(b)	(c)	(d)
1	[insert project specific document name and version number]	[insert project specific document reference]	[insert document date]

Part 3 - Data room contents

Ser	Document	Reference	Date
(a)	(b)	(c)	(d)
1	[insert project specific document name and version number]	[insert project specific document reference]	[insert document date]

SCHEDULE 23 - TIMBER PROCUREMENT POLICY

Signed for and on behalf of
CONTRACTOR LIMITED acting by:

Director

Director/Secretary

Signed for and on behalf of **SECRETARY
OF STATE FOR DEFENCE**

The corporate seal of the **SECRETARY OF
STATE FOR DEFENCE** acting by:

Authorised Signatory

Authorised Signatory

SCHEDULE 23 – TIMBER PROCUREMENT POLICY

Timber and wood-derived products

1 Definitions

"FLEGT" means Forest Law Enforcement, Governance and Trade.

"Recycled Timber" is defined as recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. The term "recycled" is used to cover the following categories:

- (a) Pre consumer recycled wood and wood fibre or industrial by products (from furniture production for example). Sawmill co-products fall within the category of virgin timber and not recycled.
- (b) Post consumer recycled wood and wood fibre (recycled paper for example) and drift wood¹³⁵.
- (c) Reclaimed timber which was abandoned or confiscated at least ten years previously. Evidence of the timber being harvested more than 10 years ago is required and CPET shall be contacted.

In order to meet the UK Government's timber procurement policy, the material must be (i) either legal and sustainable timber or FLEGT-licensed or equivalent timber or alternatively (ii) 'recycled timber'; or (iii) a combination of (i) and (ii). Documentary evidence and independent verification also apply to recycled timber, but focus on the previous timber use rather than the forest source. Recycled timber shall be supported with evidence tracing the timber back to the previous use.

"Timber" means any product that contains wood or wood fibre, with the exception of 'recycled' materials. In this Schedule the terms 'timber' and 'timber and wood derived products' are used interchangeably.

2 Requirements for Timber

2.1 The Authority is required to procure timber and wood-derived products originating from either:

- 2.1.1 legal and sustainable, or;
- 2.1.2 FLEGT-licensed or equivalent sources, or;
- 2.1.3 recycled timber

2.2 All Timber and wood-derived products supplied or used by the Contractor in performance of the Contract (including all Timber and wood-derived products supplied or used by sub-contractors) shall comply with Schedule 1 (Authority's Requirements).

2.3 In addition to the requirements of paragraph 1.1, all Timber and wood-derived products supplied or used by the Contractor in performance of the Contract (including all Timber and wood-derived products supplied or used by sub-contractors) shall originate from a forest source where management of the forest has full regard for:

¹³⁵ The Central Point of Expertise for Timber procurement (CPET) shall be contacted if claims of drift wood are made.

- 2.3.1 Identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
- 2.3.2 Mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
- 2.3.3 Safeguarding the basic labour rights and health and safety of forest workers.

3 Convention On International Trade In Endangered Species (CITES)

- 3.1 The Contractor shall ensure that no virgin timber or wood derived products it procures for supply or use in performance of the contract shall have derived from any species of tree that is protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) unless the supplier can prove, by producing official documentation, that he has complied with the CITES requirements that permit trading in the particular species of tree so listed under that Convention.

4 Legal and Sustainable Timber

- 4.1 All timber and wood derived products procured by the Contractor for supply or use in performance of the contract shall be Legal and Sustainable Timber. The term 'Legal and Sustainable Timber' in the context of this Contract Condition refers to the timber from a forest that meets the requirements set out in the document titled "UK Government Timber Procurement policy- Definition of 'legal' and 'sustainable' for timber procurement" (available from the Authority on request and visible on the UK Government authorised Central Point of Expertise on Timber web site). The edition current on the day the Contract is awarded shall apply. In summary, the organisation or body that felled the trees and provided the timber from which the wood supplied under the Contract derived shall have had legal use rights to the forest, complied with all relevant local and national laws and codes of practice including environmental, labour and health and safety laws and paid all relevant royalties and taxes.

5 Requirements for Proof of Timber Origin

- 5.1 Before delivering any timber or wood derived product under this Contract, the Contractor shall obtain documentary evidence that the timber and wood derived products is 'legal timber'. If requested in writing by the Authority, the Contractor shall submit such documentary evidence to the Authority either prior to delivery or at such other times as the Authority may require. The Contractor shall identify, as part of the evidence submitted, a chain of custody from the forest source of the timber or wood product through to delivery of the final product.
- 5.2 If requested by the Authority the Contractor shall provide to the Authority evidence that the Timber and wood-derived products supplied or used in the performance of the Contract complies with the requirements of the social criteria defined in paragraph 2.3.
- 5.3 The Authority reserves the right at any time during the execution of the Contract and for a period of 6 years from final delivery under the Contract to require the Contractor to produce the evidence required for the Authority's inspection within **14 days** of the Authority's written request.

- 5.4 The Contractor shall maintain records of all Timber and wood derived products delivered to and accepted by the Authority. Such information shall be made available to the Authority if requested, for a period of 6 years from final delivery under the Contract.

6 Independent Verification

- 6.1 The Authority reserves the right to decide whether the evidence submitted to it demonstrates legality and sustainability, or FLEGT-licence or equivalent, and is adequate to satisfy the Authority that the Timber and wood-derived product complies with Schedule 1 (Authority's Requirements). The Authority reserves the right to decide whether the evidence submitted to it is adequate to satisfy the Authority that the Timber and wood-derived products complies with the requirements of the social criteria defined in section 2.3. If the Authority is not satisfied, the Contractor shall commission and meet the costs of an "independent verification" and resulting report that will (a) verify the forest source of the timber or wood and (b) assess whether the source meets the relevant criteria.
- 6.2 In this Contract, "Independent Verification" means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems or equivalent, and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent.
- 6.3 Where the Contractor promises to deliver 'sustainable' timber, as defined in the Variant Specification for Timber from a Sustainable Source, and to submit evidence to demonstrate compliance, the Authority reserves the right to decide whether the evidence of timber production is sufficient to satisfy the Authority that the specification has been fully complied with. If Authority is not so satisfied, the Contractor shall, on written request by the Authority, commission and meet the costs of an 'independent verification' and report to (a) verify the forest source of the timber or wood products and (b) assess whether the source meets the criteria for sustainability (as defined in the UK Government Timber Procurement policy: Definition of legality and sustainability edition current on the day the Contract is awarded
- 6.4 In this context 'independent verification' has the same meaning as defined in paragraph 6.2.

7 Proof of Source of Recycled Timber

- 7.1 The requirements of paragraphs 5 and 6 of this policy for documentary evidence and independent verification shall also apply to recycled timber except that tracking shall be back to the previous use, not the forest source.

8 Authority's Right to Reject Timber

- 8.1 The Authority reserves the right to reject any Timber and wood-derived products that do not comply with Schedule 1 (Authority's Requirements). The Authority reserves the right to reject any Timber and wood-derived products that do not comply with the requirements of the social criteria defined in section 2.3. Where the Authority exercises its right to reject any Timber and wood-derived products, the Contractor shall supply alternative Timber and wood-derived products, which

do so comply, at no additional cost to the Authority and without causing delay to the Contract completion period.