

\ CONTRACT NO: SHIPACQ036

Effective Date 1 April 2015

THE SECRETARY OF STATE FOR DEFENCE OF THE UNITED KINGDOM OF GREAT BRITAIN AND  
NORTHERN IRELAND

and

BAE SYSTEMS SURFACE SHIPS LIMITED

DEMONSTRATION PHASE CONTRACT

relating to The Type 26 Programme

Linklaters LLP

This Contract is effective on 1 April 2015 between:

- (1) THE SECRETARY OF STATE FOR DEFENCE OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND (the "Authority"); and
- (2) BAE SYSTEMS SURFACE SHIPS LIMITED (Company No. 06160534), whose registered office is at Warwick House, PO Box 87, Farnborough Aerospace Centre, Farnborough, Hampshire GU14 6YU (the "Contractor").

Recitals:

- (A) An Assessment Phase Contract (Ref: SC/049) in relation to the initial design of the Vessel (as defined below) was entered into on 25 March 2010 and subsequently varied (the "Assessment Phase Contract"). The Parties agree that, subject to Clause 4 (Status of Assessment Phase Contract), this Contract is a new contract which will replace the Assessment Phase Contract for the purposes of the Type 26 Programme, and the Assessment Phase Contract shall terminate from the Effective Date.
- (B) The Parties are entering into this Contract in consideration of the Authority purchasing and the Contractor supplying the Demonstration Activities on the terms and conditions set out below.
- (C) The Parties acknowledge that this Contract is being entered into by the Parties in order to preserve the Type 26 schedule and to deliver a well-founded Type 26 Programme.
- (D) The Parties intend that this Contract shall enable the demonstration of readiness for the Manufacture Phase as assessed by the Readiness for Manufacture Criteria (as defined below), pending placement of a manufacture contract in respect of a certain number of Type 26 Vessels (the "Type 26 Manufacture Contract"), the placement of which remains subject to agreement between the Parties.
- (E) The Parties recognise that this Contract does not represent any contractual obligation on either Party to enter into the Type 26 Manufacture Contract or set any precedent as to the content of any such Type 26 Manufacture Contract.

## Part 1

### Mechanics

It is agreed as follows:

#### 1 Definitions

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

"Acceptance" means acceptance of a Data Item in accordance with Clause 68 (Acceptance/Rejection), and "Accept" and "Accepted" means that Acceptance has occurred in relation to such Data Item, as applicable;

“Acceptance Form” means the acceptance form set out in Part 8 of Schedule 1 (Schedule of Requirements);

“Accounting Period” means the period between the calendar dates indicated as “Period End” in Annex 2 (Accounting Periods) of (Payment Process);

“Act” has the meaning given to it in Schedule 4 (Payment Process);

“Affiliate(s)” 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 meanings given to them in Section 1159 of the Companies Act 2006;

“Allowable Costs” has the meaning given to it in Clause 29.1 (Costs);

“Ally” or “Allies” means defence forces and government departments of countries with whom the United Kingdom has a defence treaty;

“Approved Status” means a Data Item that has been approved by the Authority in accordance with Clause 68.4.2(ii) or 68.4.7 (as applicable);

“Articles” means all goods (excluding data and documentation) which the Contractor is required under this Contract to supply pursuant to the Demonstration Activities;

“Assessment Phase Contract” has the meaning given to it in Recital (A);

“Authority Confidential Information” means any information received by the Contractor from the Authority, however it is conveyed, that relates to the business, affairs, politics, security, developments, trade secrets, know-how, personnel and suppliers of the Authority, together with all information derived from any of the above or obtained by examination, testing or analysis in any way from such confidential information, and any other information clearly designated as being confidential (whether or not it is marked “confidential”, “official”, “official sensitive” or “secret”) or which ought reasonably to be considered to be confidential;

“Authority Data” means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are supplied to the Contractor by or on behalf of the Authority; or
- (b) any Personal Data for which the Authority is the Data Controller;

“Authority Default” has the meaning given to that term in Clause 64.1;

“Authority Equipment Supply Chain Contract Manager” has the meaning given to it in Clause 24.1.2(ii)(a);

“Authority Export Option Proposal” has the meaning given to that term in Clause 11.1.2(x);

“Authority Project Manager” means the person described in Box 2 of Schedule 23 (DEFFORM 111), being DES Ships Acq-T26-DepHd;

“Authority Representative” has the meaning given to that term in Schedule 10 (Representatives);

“Authority Special Jigs and Tools Etc.” means Special Jigs, Tools Etc. that have become the property of the Authority in accordance with Clauses 13.5 and 55.1;

“Baseline Personnel Security Standard” means the HMG Baseline Personnel Security Standard v 4.0 (April 2014) as the standard is amended or updated from time to time;

“Batch 1” means the first three Vessels;

[REDACTED]

“Best for Project” means best for the achievement of the Demonstration Activities, the Governance Objectives and the Type 26 Programme;

“Business Case” has the meaning given to it in Clause 43.10;

“Business Day” means any day excluding:

- (a) Saturdays, Sundays and public and statutory holidays in the jurisdiction of either Party;
- (b) privilege days notified in writing by the Authority to the Contractor at least ten (10) Business Days in advance; and
- (c) such periods of holiday closure of the Contractor’s premises of which the Authority is given written notice by the Contractor at least ten (10) Business Days in advance;

“CAAS” means the Authority’s Cost Assurance and Analysis Service;

[REDACTED]

“CDRL” means the Contract Data Requirements List set out in Annex A (Contract Data Requirements List) of Part 2 (Scope of Work) of Schedule 1 (Schedule of Requirements);

“Central Government Body” means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

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

“Certificate of Conformity” means a certificate provided by the Contractor in accordance with the Schedule of Requirements and any applicable Quality Management Plan;

“Change” has the meaning given to that term in Schedule 8 (Change Control Procedure);

“Change Control Procedure” means the procedure for a change as set out in Clause 39.2.3(i)(a)(XIII), Clause 39.5 (Design Management Arrangements and Referenced Documents), Clause 52 (Changes) and Schedule 8 (Change Control Procedure);

“Change of Control” has the meaning given to that term in Clause 73.2;

“Change Request” has the meaning given to that term in Schedule 8 (Change Control Procedure);

“Child Labour Legislation” means those International Labour Law Conventions concerning economic exploitation of children through the performance of work which is likely to be hazardous or to interfere with a child’s health or development, including, but not limited to, slavery, trafficking, debt bondage or forced labour, which are ratified and enacted into domestic law and directly applicable to the Contractor in the jurisdiction(s) in which it performs the Contract;

[REDACTED]

“Commercially Sensitive Information” means the information set out in Schedule 20 (List of Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to the Contractor or its business which the Contractor has indicated for the purposes of Clause 79 (Confidentiality) to the Authority that, if disclosed by the Authority, would cause the Contractor significant commercial disadvantage or material financial loss;

“Conditions Precedent” has the meaning given to that term in Clause 5.3.1 (Conditions Precedent);

“Confidential Information” means the Authority Confidential Information and/or the Contractor Confidential Information, provided that information that is SSCR Information shall not be “Confidential Information”;

“consolidated version” means a version of the Contract which incorporates into the body of the Contract all amendments made to the Contract;

“consolidated version date” means:

- (a) where one or more consolidated versions have been issued, the date on which the latest consolidated version was issued; or
- (b) where a consolidated version has not been issued, the date on which the Contract was entered into;

“Contract” means the main body of this contract together with its schedules and annexes, and any DEFCONS and DEFFORMS incorporated into the Contract pursuant to Clause 2 (Interpretation);

“Contract Limit of Liability” means the aggregate of the Demonstration Phase Spend Limit and the Equipment Supply Chain Contract Termination Cap;

“Contract Limits” means any one or more of the:

- (a) Overall Contract Commitment;
- (b) Demonstration Phase Cost Limit;
- (c) Demonstration Phase Spend Limit;
- (d) Equipment Supply Chain Contract Demonstration Phase Cost Limit;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“Contract Management Board” means the body described in Clause 39.2.1(ii);

“Contract Payments” means the aggregate of:

- (a) payments of Allowable Costs payable in accordance with Clause 29.1 (Costs); and
- (b) Fee Payments due in accordance with Clause 29.2 (Fee);

“Contract Price” has the meaning given to it in Clause 29.2 (Fee);

“Contract Pricing Statement” means the statement set out in Schedule 2 (Contract Pricing Statement);

“Contractor Confidential Information” means any information received by the Authority from the Contractor in connection with this Contract, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Contractor, together with all information derived from the above or obtained by examination, testing or analysis in any way from such confidential information, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information, provided that information that is SSCR Information shall not be “Contractor Confidential Information”;

“Contractor Default” has the meaning given to it in Clause 61.1 (Events);

“Contractor Employee” means any person who is an employee, staff, director or officer of the Contractor or who occupies the position of director or officer of the Contractor, by whatever title

given, or anyone engaged by the Contractor, and involved with performing obligations under this Contract;

“Contractor Equipment Supply Chain Contract Manager” has the meaning given to it in Clause 24.1.2(i)(a);

“Contractor Export Option Design Development Costs” has the meaning given to that term in Clause 11.1.2(i);

“Contractor Export Option Proposal” has the meaning given to that term in Clause 11.1.2(i);

“Contractor Internal Supply Chain Contracts” means the contracts set out in Table 1 of Part 3 (List of Contractor Internal Supply Chain Contracts) of Schedule 1 (Schedule of Requirements);

“Contractor Representative” has the meaning given to that term in Schedule 10 (Representatives);

[REDACTED]

[REDACTED]

“Contractor’s Personnel” shall be deemed to include the Contractor Employees, agents and sub-contractors;

“Contractor’s Sites” means the Contractor’s naval ships business’ sites, within which work is being carried out in relation to this Contract;

“Control Account” means an element of the work described in Schedule 1 (Schedule of Requirements) and the resources allocated for the execution of that element of work;

“Control Account Manager” means the person nominated by the Contractor to manage the Control Accounts in accordance with the Control Account Plan;

“Control Account Plan” means a plan in respect of a Control Account, describing the information set out in Clause 39.7.1;

[REDACTED]

[REDACTED]

“Core Governance Members” has the meaning given to it in Clause 39.2.2(ii);

[REDACTED]

[REDACTED]

“Data Controller” shall have the same meaning as in the Data Protection Act 1998 (the “Data Protection Act”) in which it is defined in section 1 but used in lower-case letters;

“Data Item” means a deliverable document or item of data listed in Table A1 and Table A2 of Part 2 (Scope of Work) of Schedule 1 (Schedule of Requirements);

“Data Item Rectification Proposal” has the meaning given to it in Clause 68.4.3;

“Data Protection Legislation” means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including, where applicable, the guidance and codes of practice issued by the Information Commissioner;

“Data Subject” shall have the same meaning as set out in the Data Protection Act 1998;

“DDA” means a design development agreement between the Contractor and a Sub-Contractor, which is not an Equipment Supply Chain Contract;

“DEFFORM 111” means the completed DEFFORM 111 appended to this Contract at Schedule 23 (DEFFORM 111);

“DEFFORM 177 Agreement” means the form of agreement, proposed to be entered into between the Authority and certain Sub-Contractors, set out in Schedule 21 (Form of DEFFORM 177 Agreement);

“Deliverable” means any design, report, analysis, chart, diagram, model or other documentary deliverable (in both hard and electronic form) supplied or contracted to be supplied by or on behalf of the Contractor as part of the Services;

“Demonstration Activities” means those Services, activities and deliverables set out in Schedule 1 (Schedule of Requirements);

[REDACTED]

[REDACTED]

“Demonstration Phase Cost Limit” has the meaning given to it in Clause 28.2.1(i);

“Demonstration Phase Spend Limit” has the meaning given to it in Clause 28.2.1;

[REDACTED]

[REDACTED]

[REDACTED]

“Design and Programme Management Activities” means the activities conducted by the Contractor described in the Scope of Work, excluding: (i) Section 5; and (ii) that work which is conducted under the Equipment Supply Chain Contracts;

“Design Management Arrangements” means the arrangements referred to in Clause 39.5 (Design Management Arrangements and Referenced Documents) and Schedule 18 (Referenced Documents);

“Detailed Equipment Supply Chain Contract Management Arrangements” has the meaning given to it in Clause 24.1.2(i)(b)(I);



“DID” means the Data Item Description referenced in Part 2 (Scope of Work) of Schedule 1 (Schedule of Requirements);

“DII” means the Authority’s Defence Information Infrastructure;

“Direct Losses” means Losses that are not Indirect Losses;

“Disclosing Party” means a Party which discloses any Confidential Information to the Receiving Party;

“Dispute” means any failure to agree, dispute or claim arising out of, or in relation to, this Contract;

“Dispute Notification” has the meaning given to that term in Clause 91.1;

“Dispute Resolution Procedure” has the meaning given to that term in Clause 91 (Dispute Resolution Procedure);

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

- (a) tell HM Revenue & Customs of any specified notifiable arrangements or proposals; and
- (b) provide prescribed information on those arrangements or proposals within set time limits as:
  - (i) contained in Part 7 of the Finance Act 2004 and in secondary legislation made under powers contained in Part 7 of the Finance Act 2004; and
  - (ii) extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;

“DRA” means the Defence Reform Act 2014;

“EAR” has the meaning given to it in Clause 10.15;



“Electronic Transaction Agreement” means the Electronic Transaction Agreement reference MES/BVT/DEFFORM30/CORP EDN 01/02/26/06/08 dated 2 July 2008;

“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;

“Equipment Supply Chain Contract” means any sub-contract set out in Part 4 (List of Provisionally Priced Equipment Supply Chain Contracts) and Part 5 (List of Equipment Supply Chain Contracts) of Schedule 1 (Schedule of Requirements);

“Equipment Supply Chain Contract Activities” means the activities undertaken by Sub-Contractors during the Term within the scope of the Equipment Supply Chain Contracts;

“Equipment Supply Chain Contract Baseline” means Part 4 (List of Provisionally Priced Equipment Supply Chain Contracts) and Part 5 (List of Equipment Supply Chain Contracts) of Schedule 1 (Schedule of Requirements) including the information set out in and referred to from the Equipment Supply Chain Contract Data Sheets;

“Equipment Supply Chain Contract Data Sheet” means each data sheet set out in the Annexes to Part 4 (List of Provisionally Priced Equipment Supply Chain Contracts) and Part 5 (List of Equipment Supply Chain Contracts) of Schedule 1 (Schedule of Requirements) for each Equipment Supply Chain Contract;

“Equipment Supply Chain Contract Demonstration Phase Cost Limit” has the meaning given to it in Clause 28.3.1;

[REDACTED]

“Equipment Supply Chain Contract Review Panel” means the Equipment Supply Chain Contract review panel created in accordance with Clause 39.2.3(vi) and with the mandate described in the Detailed Equipment Supply Chain Contract Management Arrangements in accordance with Clause 24.9.5;

[REDACTED]

[REDACTED]

[REDACTED]

“Excess Cost Termination Event” has the meaning given to it in Clause 61.3 (Excess Cost);

“Export Options” has the meaning given to that term in Clause 11.1.2;

“Extension Costs” has the meaning given to that term in Clause 5.2;

“Extension Notice” has the meaning given to that term in Clause 5.2;

“Facilities Activities” means the activities conducted by the Contractor described in Clause 37.8 (Facilities Milestones) and in Section 5 of the Scope of Work set out at Part 2 (Scope of Work) of Schedule 1 (Schedule of Requirements);

“Fee Payments” means the fee payment payable by the Authority to the Contractor and calculated pursuant to Clause 31 (Fee Payment), Clause 37 (Milestones), Clause 38 (Readiness for Manufacture) and Schedule 6 (Milestones);

“Final Business Case” has the meaning given to it in Clause 43.17;

[REDACTED]

[REDACTED]

[REDACTED]

“Finance Director” means the person appointed as finance director of the Contractor from time to time;

“Financial Management Information” means the information set out in Schedule 15 (Form of Financial and Forecasting Report);

“Financial and Forecasting Reports” means the financial reports submitted by the Contractor to the Authority in accordance with Clause 47 (Financial and Forecasting Reports) and Schedule 15 (Form of Financial and Forecasting Report) or in such other form or frequency as the Authority may specify, pursuant to DEFCON 605;

“First Referral” has the meaning given to that term in Clause 91.2;

“FOI Information” has the meaning given to “Information” under section 84 of the FOIA;

“FOIA” means the Freedom of Information Act 2000;

“Form, Fit and Function” means, in respect of each of its elements:

- (a) Form: The shape, size, dimensions and other physically measurable parameters that uniquely characterise an article. For software, form denotes the language and media;
- (b) Fit: The characteristics of an article to enable it to interface or interconnect with a part of another article, including the dimensional relationship between mating parts and the limits of tolerances; and
- (c) Function: The actions that a product is designed to perform in normal use or operation;

“General Anti-Abuse Rule” means:

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

“Good Industry Practice” means, at any time, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected at such time from a skilled and experienced designer of naval vessels, seeking in good faith to comply with its contractual obligations and complying with relevant Legislation;

“Governance Objectives” has the meaning given to that term in Clause 39.1 (Governance Objectives);

“Government Establishment” means those sites that are in the control or ownership of the Authority, excluding the Vessels but shall be deemed to include any of Her Majesty’s other ships or vessels and service stations;

“Government Furnished Asset” or “GFA” means Authority-owned assets to be supplied to the Contractor in the performance of this Contract and includes all equipment, facilities, information, resources, access, services, personnel or any other resource provided to the Contractor by the Authority for the purposes of this Contract;

“Government Furnished Equipment” or “GFE” means Authority-owned equipment supplied to the Contractor in the performance of this Contract, as set out in Schedule 9 (Government Furnished Assets);

“Government Furnished Information” or “GFI” means Authority-owned information supplied to the Contractor in the performance of this Contract, as set out in Schedule 9 (Government Furnished Assets);

“Group” means, in relation to any company, that company and any and all holding companies and subsidiaries of that company and any and all subsidiaries of such holding companies, and “holding company” and “subsidiary” shall have the meanings given to them in Section 1159 of the Companies Act 2006;

“Group undertaking” has the meaning given to it by section 1161 of the Companies Act 2006;

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

“HM Government” means Her Britannic Majesty’s Government of the United Kingdom of Great Britain and Northern Ireland;

“Indirect Losses” means any of the following types of losses:

- (a) loss of profits, loss of business, loss of revenue, loss of contract, loss or depletion of goodwill or business opportunity, loss of use of equipment or associated equipment, loss of anticipated earnings or savings or like loss (whether, in each case, such losses arise directly or indirectly); or
- (b) any other indirect or consequential losses;

“Intellectual Property Rights” or “IPRs” means patents, rights to inventions, trade marks and related goodwill, service marks, domain names, design rights (whether registrable or otherwise), applications for any of the foregoing, rights in computer software, copyright and related rights, database rights, confidential information (including know-how and trade secrets), trade or business names and other similar rights or obligations, whether registrable or not, in any country (including, but not limited to, the United Kingdom) for the full term of the rights together with any applications, extensions and renewals;

“Interim Deliverables” means Data Items identified as “Interim” deliverables in Table A-2 (Interim Deliverables) of Annex A (Contract Data Requirements List) of Part 2 (Scope of Work) of Schedule 1 (Schedule of Requirements);

[REDACTED]

“Invention” has the meaning given to that term in paragraph 2.1 of Schedule 19 (Intellectual Property Rights);

“Invoice Paying Authority” shall be determined by reference to Box 11 in DEFFORM 111;

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

“ISTL” means BAE Systems Integrated System Technologies Limited with company number 03456325;

“ITAR” has the meaning given to it in Clause 10.15;

“ITT” has the meaning given to it in Clause 23.6;

“Joint Project Board” or “JPB” means the body described in Clause 39.2.1(i);

“Legislation” means any statute, statutory provision, subordinate or delegated legislation, regulation, by-law, directive, directly applicable EU law or any treaty or international convention, in each case, which is legally binding;

“Level 1 Maintenance” means daily or periodic checks of equipment, visual inspection, condition monitoring, operational checkout, minor servicing, replacing consumables, general cleaning tasks and other tasks performed by the ship operator either at sea or in the harbour;

“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 judgments, proceedings, internal costs or demands;

“Main Gate Approval” means the Main Gate Business Case having completed all stages of the MOD Category A approvals process and receiving final signoff by the Investment Approvals Committee, Ministers of Her Majesty’s Government and Her Majesty’s Treasury;

“Main Gate Business Case” means the submission to seek Main Gate Approval to progress the Type 26 Programme to the Manufacture Phase;

[REDACTED]

“Manufacture Phase” means that part of the Type 26 Programme occurring during the period of the Type 26 Manufacture Contract;

“Material Single Source Sub-Contract (Non-Qualifying)” means a sub-contract entered into by the Contractor where:

- (a) the sub-contract is entered into at the same time as, or after, the Contract was entered into;
- (b) the sub-contract is entered into for the purposes of the Contract;
- (c) the award of the sub-contract is not the result of a “competitive process” as defined in Regulation 59 of the Single Source Contract Regulations 2014 (“SSCR”) for Qualifying Sub-Contracts (“QSC”);
- (d) the value of the sub-contract is of, or above, one million pounds (£1,000,000);
- (e) at least fifty (50) per cent. of the sub-contract (by value) is required either:
  - (i) to enable performance of the Contract; or
  - (ii) to enable the combined performance of the Contract and any other Qualifying Defence Contract (“QDC”), or prospective contract, under the SSCR, to which the Contractor or any Group undertaking of the Contractor is a party, or might become a party; and
- (f) the sub-contract is not a QSC as defined in the DRA and SSCR;

“Maximum Fee” has the meaning given to it in Clause 31.1 (Fee);

“Milestone” means each milestone set out in Schedule 6 (Milestones);

“Milestone Acceptance Criteria” has the meaning given to it in Clause (v);

“Milestone Certificate” means a certificate in the form set out in Part 3 (Form of Milestone Certificate) of Schedule 6 (Milestones), completed in accordance with Clause 37.7 (Assessment of Milestone Achievement) and submitted by the Contractor and Authority Project Manager pursuant to paragraph 3.3 (Fee Payment for Milestones) of Schedule 4 (Payment Process);

“Milestone Date” means the date by which a Milestone is to be achieved, as set out in Schedule 6 (Milestones);

**[REDACTED]**

“Minutes” has the meaning given to that term in Clause 39.2.4(ii);

“Monthly Payments” has the meaning given to it in Clause 30.1.1 (Calculation of Monthly Payments);

“Non-Disclosable Information” means information which the Contractor considers, in its reasonable opinion (and having consulted the Authority Representative on a confidential basis), that, if disclosed, could result in significant commercial disadvantage, financial loss of a material nature to any member of the Contractor Group or BAE Systems plc and/or a materially adverse impact on the share price of BAE Systems plc;

“Notice” has the meaning given to that term in Clause 77.1;

“Notice of Arbitration” has the meaning given to that term in Clause 91.5;

“Notional Exchange Rate” has the meaning given to it in Clause 28.10.1;

“NRE” means non-recurring engineering costs;

“Objectives” means the objectives set out at Clause 24.1.1;

“Occasion Of Tax Non-Compliance” or “OOTNC” means:

(a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:

(i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; or

(ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; or

(b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax-related offences which is not spent at the date this Contract comes into effect or to a civil penalty for fraud or evasion;

“Officer in Charge” shall be deemed to include officers commanding service stations, ships’ masters or senior officers and heads of Government Establishments;

“Overall Contract Commitment” has the meaning given to it in Clause 28.1 (Overall Contract Commitment);

“P2P” has the meaning given to that term in paragraph 1.1 of Schedule 4 (Payment Process);

“Parent Company Guarantee” means a guarantee given pursuant to Clause 6.1.2 in the form set out in Schedule 17 (Form of Parent Company Guarantee);

“Parties” means the Contractor and the Authority;

“Personal Data” shall have the same meaning as in the Data Protection Act in which it is defined in section 1 but used in lower-case letters;

“Pre-Contractual Statements” has the meaning given to that term in Clause 87.3;

“Primary Requirements” has the meaning given to that term in Clause 11.1.2;

“Progress Report” has the meaning given to that term in Clause 40.1;

“Prohibited Acts” has the meaning given to it in Clause 63 (Corrupt Gifts and Payments);

“Project Baseline” has the meaning given to it in paragraph 1 (Definitions) of Schedule 8 (Change Control Procedure);

"Project Management Plan" means the project management plan referenced in Schedule 18 (Referenced Documents);

[REDACTED]

[REDACTED]

"Provisionally Priced Equipment Supply Chain Contracts" means those Equipment Supply Chain Contracts identified as such in the table set out at Part 4 (List of Provisionally Priced Equipment Supply Chain Contracts) of Schedule 1 (Schedule of Requirements);

"PSA" means a Public Store Account as defined in DEFSTAN 05-99, namely the primary record for accounting for receipts, usage and disposal or return of GFE of all loan types held under contract which may be a manual stock-record-card system or a computer system consistent with the contractor's normal accounting system to be agreed with the DE&S Fin-Asset Management Enabling Team;

"Quality Assurance Representative" shall be such person as is notified to the Contractor by the Authority Representative from time to time;

"Quality Management Plan" means the Quality Management Plan provided by the Contractor pursuant to Clause 41.3.3;

[REDACTED]

[REDACTED]

"Receiving Party" means a Party which receives any Confidential Information from the Disclosing Party;

"Redundant Materiel" means materiel that is identified and agreed between the Parties as surplus to the requirement of the Contract for whatever reason;

"Referenced Documents" means the documents listed in Schedule 18 (Referenced Documents) which, save as otherwise specified in this Contract, do not impose legally binding obligations on the Parties and do not form part of this Contract;

"Regulation" means any applicable standard, guidance, regulation, DEFCON, DEFSTAN, AQAP, IMO guideline or JSP with which the Contractor is bound to comply in order to meet any obligation under this Contract;

"Regulatory Bodies" means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate or influence parties to and/or the matters dealt with in this Contract or any other affairs of the Authority, and "Regulatory Body" shall be construed accordingly;

"Relevant Day" means the day which is thirty (30) days after the later of:

- (a) the day upon which a valid delivery label is received by the Authority in accordance with paragraph 4.7 of Schedule 4 (Payment Process); and



(b) the date of completion or performance of the part of the Contract to which the delivery label relates;

“Relevant Tax Authority” means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established;

“Relief Event” has the meaning given to it in Clause 20.1;

“Representatives” means the Authority Representative and the Contractor Representative;

“Request for Information” shall have the meaning set out in the Freedom of Information Act 2000 or the Environmental Information Regulations, as relevant (where the meaning set out for the term “request” shall apply);

“Required Insurances” has the meaning given to that term in Clause 54.1.1;

“Revised Business Case” has the meaning given to it in Clause 43.15;

[REDACTED]

“RIDDOR” means the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995;

“Schedule of Requirements” means the schedule of requirements set out in Schedule 1 (Schedule of Requirements);

“Scope of Work” means the document set out in Part 2 (Scope of Work) of Schedule 1 (Schedule of Requirements);

“Second Referral” has the meaning given to that term in Clause 91.3;

“Secret Matter” means any matter connected with the Contract or its performance which is designated in writing by the Authority as “Top Secret”, “Secret”, “Confidential” or “Official

Sensitive”, and shall include any information concerning the content of such matter and anything which contains or may reveal that matter;

“Security Policy Framework” means the HMG Security Policy Framework v 2.0 as such framework is amended or updated from time to time;

“Security Requirements” means the requirements as set out in Schedule 14 (Security Measures) and the security aspects letter;

“Senior Commercial Representatives” means the Authority and Contractor senior commercial representatives set out in Annex 2 to Schedule 10 (Representatives);

“Senior Representatives” means the Authority and Contractor senior representatives set out in Annex 3 to Schedule 10 (Representatives);

“Services” means the services which the Contractor is required under this Contract to supply pursuant to the Demonstration Activities;

“Shared Data Environment” or “SDE” has the meaning given to that term in Clause 51 (Shared Data Environment);

“Shore Based Testing Facilities Activities” means the activities described in Line Item 3 of Part 1 (DEFFORM 110) of Schedule 1 (Schedule of Requirements);

“Single Source Contract Regulations Information” and “SSCR Information” mean any confidential information in any written or other tangible form, which relates to the Contract, disclosed by the Contractor to the Authority or obtained by the Authority, and being of a type specified in Regulation 56(1) (but not including information described in Regulation 56(3)(h) to (n)) of the Single Source Contract Regulations 2014 (“SSCR”), relating to the Contract. It shall not include information that:

(a) is or becomes generally available to the public other than as a result of its disclosure by the Authority or a Central Government Body, or the professional advisers or consultants of the Authority, in breach of the provisions of the Contract, the DRA, the SSCR or of any other obligation of confidence owed to the party to whom the information relates;

(b) was, is or becomes available to the Authority on a non-confidential basis from a person who, to the Authority’s knowledge, is not bound by a confidentiality agreement with the Contractor or otherwise prohibited from disclosing the information to the Authority;

(c) was lawfully in the possession of the Authority before the information was disclosed to it by the Contractor; or

(d) the parties agree in writing is not confidential or may be disclosed;

“Single Source Item” has the meaning given to it in Clause 27.1;

“Sites” means the Contractor’s Sites and/or the Sub-Contractor Sites, as the case may be;

“Special Jigs, Tools Etc.” means all special jigs, tools, patterns, moulds, dies, manufacturing gauges and test equipment, together with any associated fixtures, fittings and software necessary for the

manufacture of the Vessels or for the performance of any other work, which are not tools of the trade, as used by the Contractor in the performance of this Contract;

“Specification” means any document or item which, individually or collectively, is referenced in the Schedule of Requirements;

“SSCR” means the Single Source Contract Regulations 2014;

“SSCR Contract Reports” means those reports to be provided by the Contractor pursuant to Clause 49 (SSCR Contract Reports) and Schedule 16 (SSCR Contract Reports);

“SSCR Pricing Dispute” means a pricing dispute under or in connection with this Contract in respect of which either Party is entitled to make a referral to the SSRO in accordance with the SSCR;

“SSRO” means the Single Source Regulations Office, being the executive non-departmental public body set up pursuant to the SSCR;

“Sub-Contract” means any contract placed by the Contractor with a Sub-Contractor in connection with, or for the purposes of, this Contract including, but not limited to, the Equipment Supply Chain Contracts;

“Sub-Contractor” means any company, firm or person with whom the Contractor places a sub-contract in connection with, or for the purposes of, this Contract;

“Sub-Contractor Sites” means the business premises of any sub-contractor of the Contractor on or in which any work is being conducted in relation to this Contract;

“TDP” has the meaning given to it in Clause 27.5;

“Technical Assistance Agreement” means the form of United States export licence by means of which technical data and technical assistance can be obtained in respect of defence products which are subject to ITAR;

“Term” means the period from and including the Effective Date to and including 31 March 2016, unless: (a) terminated earlier; or (b) extended in accordance with the terms of this Contract;

“Termination Notice” has the meaning set out in Clause 61.4.1;

“the consignee”, “the Authority’s Transport Officer” and “the Bill Paying Branch” shall be determined by reference, respectively, to boxes 9, 10 and 11 of Schedule 23 (DEFFORM 111);

“Third Party Claim” means a claim of which either the Contractor Representative or the Authority Representative becomes aware that is made or threatened by a third party against the Party of which the individual is the Representative;

“Three Ship Set Scope” shall, for the purposes of identifying the component parts of the Three Ship Set Supply Chain Overall Capped Value only, comprise the aggregate of the following with respect to all of the Equipment Supply Chain Contracts listed in Part 5 (List of Equipment Supply Chain Contract) of Schedule 1 (Schedule of Requirements):

- (i) the equipment scope as described in the “Purchaser Specification”, “Supplier Specification” and “Acknowledgement Sheets” and data deliverables, each as referred to in the Equipment Data Sheets;
- (ii) the activities identified in Part 6 (Three Ship Set Scope) of Schedule 1 (Schedule of Requirements); and
- (iii) risks and omissions as identified in the TACM reference detailed in the Equipment Supply Chain Contract Data Sheets;

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“Transparency Information” means the content of this Contract in its entirety and details of any payments made by the Authority to the Contractor under this Contract;

“Type 26 Manufacture Contract” has the meaning given to it in Recital (D);

“Type 26 Programme” means the design and the proposed development, construction, delivery, introduction into service, support and operation of a certain number of Type 26 Vessels;

“UK Customs and Excise” means any duties levied by the United Kingdom, including customs duties, excise duties and/or any other indirect taxes;

“Unique Identifier” means, for the purposes of Schedule 4 (Payment Process), those Unique Identifiers set out in DEFCON 5J, comprising the following:

- (a) a UOI generated by P2P for non-inventory purchase orders; and
- (b) a URRR generated by P2P for inventory purchase orders;

“UOI” means a unique order identifier;

“URRI” means a unique receipt reference identifier;

“Variation of Price” or “VOP” means any escalation of price related to inflation;

“VAT” means value added tax, charged on transactions, acquisitions and imports as set out in Section 1 of the Value Added Tax Act 1994;

“Version 1” has the meaning given to it in paragraph 2 of Part 5 (List of Equipment Supply Chain Contracts) of Schedule 1 (Schedule of Requirements);

“Version 2” has the meaning given to it in paragraph 3 of Part 5 (List of Equipment Supply Chain Contracts) of Schedule 1 (Schedule of Requirements); and

“Vessels” means up to thirteen (13) Type 26 Vessels.

## 2 Interpretation

2.1 Reference to any gender includes the other.

2.2 The singular includes the plural and vice versa.

2.3 A reference to a person includes any individual, company, corporation, firm, partnership, joint venture, association, organisation or trust (in each case, whether or not having separate legal personality) and includes reference to that person’s successors and permitted assignees or transferees.

2.4 Any reference to the “Authority” shall be deemed to include any department or committee thereof, including CAAS.

2.5 Unless stated to the contrary, any reference to this Contract or to any other agreement or document referred to in this Contract means this Contract or such other agreement or document as amended, varied, supplemented, modified or novated from time to time and includes the Schedules and any other document expressly made part of this Contract.

2.6 Any reference to Legislation: (i) shall be deemed to include any by-laws, licences, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made under that Legislation; and (ii) shall be construed as referring to any Legislation which replaces, re-enacts, amends or consolidates such Legislation (with or without modification) at any time.

2.7 Any reference to Regulations shall be deemed to refer to the edition/date/issue of such Regulation as specified in this Contract or, if none specified, the Regulation extant as at the Effective Date.

2.8 References to Clauses, Parts, Schedules and Annexes are references to clauses, parts, schedules and annexes of and to this Contract.

2.9 References to a Party include its successors and permitted assigns.

2.10 References to a time of day are references to London time.

2.11 The words "other" and "otherwise" shall not be construed ejusdem generis with any foregoing words where a wider construction is possible. The words after "include", "including" and "in particular" shall be construed as being by way of illustration or emphasis and shall not limit or prejudice the generality of any foregoing words.

Defence conditions and defence forms

2.12 The following DEFCONs shall apply to this Contract in relation to Schedule 4 (Payment Process):

DEFCON 5J (Edn 03/15) Unique Identifiers

DEFCON 129J (Edn 07/08) The Use of the Electronic Business Delivery Form

DEFCON 522 (Edn 07/99) Payment

2.13 The headings, numberings and notes to the Clauses and Schedules are for the convenience of the Parties and are not intended to affect the interpretation of that provision.

2.14 In addition to the list above, to the extent that any other DEFCON is required for the proper comprehension and/or implementation of any DEFCON listed above or called up elsewhere in this Contract, that other DEFCON shall apply to this Contract.

2.15 This is not an exhaustive list and other DEFCONs as called up in this Contract shall also apply.

2.16 The following DEFFORMs shall apply to this Contract:

DEFFORM 10 (Edn 12/13) Acceptance Of Offer Of Contract

DEFFORM 10B (Edn 03/14) Acceptance Of Offer Of Amendment To Contract

DEFFORM 30 (Edn 02/14) The Electronic Transactions Agreement

DEFFORM 43 (Edn 11/98) Memorandum To Contractor On Disposal Of Materials Etc. Made Surplus By The Termination, Amendment Or Reduction Of Ministry Of Defence Contracts

DEFFORM 68 (Edn 11/14) Hazardous Articles, Deliverables, Materials or Substances Statement by the Contractor

DEFFORM 111 (Edn 08/14) Appendix – Addresses And Other Information

DEFFORM 129J (Edn 07/08) The Use Of The Electronic Business Delivery Form

DEFFORM 522A (Edn 09/99) Relevant Form Details For DEFCON 522 Payment Condition

2.17 This is not an exhaustive list and other DEFFORMs as called up in this Contract shall also apply.

### 3 Precedence

3.1 If there is any inconsistency between the provisions of the main body of this Contract and the Schedules, the following descending order of precedence shall apply to the extent required to resolve the inconsistency:

3.1.1 the provisions of the main body of this Contract and Schedule 8 (Change Control Procedure);

3.1.2 Schedule 1 (Schedule of Requirements) and Schedule 19 (Intellectual Property Rights);

3.1.3 Schedule 2 (Contract Pricing Statement), Schedule 3 (Sub-Contract Provision Flow Down), Schedule 4 (Payment Process), Schedule 6 (Milestones) and Schedule 7 (Readiness for Manufacture); and

3.1.4 the Schedules other than the Schedules listed at Clauses 3.1.1 to 3.1.3 above.

3.2 If there is any inconsistency between the provisions of this Contract, any DEFCON and any DEFSTANs, AQAPs and/or JSPs incorporated or referred to herein, then the following descending order of precedence shall apply to the extent required to resolve the inconsistency:

3.2.1 the provisions of this Contract;

3.2.2 the DEFCONs incorporated by reference; and

3.2.3 the DEFSTAN, AQAP and/or JSP.

### 4 Status of Assessment Phase Contract

4.1 The Parties agree that, with effect from the Effective Date:

4.1.1 the Assessment Phase Contract has been terminated;

4.1.2 subject to Clauses 4.1.3 and 4.1.4 below, all work performed under the Assessment Phase Contract shall be deemed to have been performed under and required to be in accordance with the terms of this Contract;

4.1.3 in respect of that work performed under, and the outturn costs of, the Assessment Phase Contract, the Parties shall continue to be bound by the pricing agreed between the Parties in the Assessment Phase Contract; and

4.1.4 any certification, concession, approval, consent or other permit and/or acceptance of any works or services or any part thereof which has been issued, granted or otherwise carried out under the Assessment Phase Contract shall constitute valid certification, grant of concession, approval, consent, grant of permit and/or acceptance of such works or services for the purposes of this Contract.

4.2 Notwithstanding any other provision of this Contract and save as otherwise agreed in writing between the Parties, if a Claim has been made by either Party or a dispute between the Parties has arisen under the terms of the Assessment Phase Contract, in each case, prior to the Effective Date, such Claim or dispute may continue to be pursued, save that:

4.2.1 it shall be dealt with in accordance with the terms of the Dispute Resolution Procedure contained in this Contract; and

4.2.2 the Parties shall only be entitled to such recourse to proceedings as would be available to them had the Claim or dispute arisen after the Effective Date.

5 Contract Period

5.1 Without prejudice to Clause 70 (Continuing Obligations), this Contract shall be effective from the Effective Date and, unless terminated earlier under the terms of Part 11 (Termination) or extended in accordance with Clauses 5.2 and 5.3 below, shall continue for the Term.

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[REDACTED]

6 Conditions Precedent

6.1 This Contract is conditional upon the delivery by the Contractor to the Authority of:

6.1.1 a CD-ROM containing copies of the documents listed in Schedule 18 (Referenced Documents) at the version current as at the date of this Contract;

6.1.2 an original, duly executed Parent Company Guarantee in the form set out in Schedule 17 (Form of Parent Company Guarantee) along with a certified copy of the board minutes under which the Parent Company Guarantee is executed; and

6.1.3 a DEFFORM 10 issued by the Authority and unconditionally signed by the Contractor, the above items in aggregate being the "Conditions Precedent".

6.2 If the Conditions Precedent are not fulfilled to the satisfaction of the Authority or otherwise waived by the Authority within ten (10) Business Days of the date of this Contract, this Contract shall cease to be effective and this Contract shall terminate from such date. Each Party shall bear its own costs and any Losses arising from or connected with this Contract where it is terminated pursuant to this Clause 6.2.

Part 2

Scope

7 Contractor's Obligations

7.1 The Contractor shall carry out Demonstration Activities (including the Scope of Work), in accordance with the terms of this Contract.

7.2 The Contractor shall act with due efficiency and economy and in a timely manner and shall ensure the Demonstration Activities shall be provided by appropriately experienced, qualified and trained personnel and shall provide the same with such level of skill, care, foresight and diligence that could reasonably be expected of an experienced designer, shipbuilder, defence maritime engineering contractor, systems integrator and/or ship support contractor and in accordance with Good Industry Practice.

8 Authority's Obligations

The Authority shall comply with its obligations under this Contract.

9 Government Furnished Assets

9.1 In support of the Contractor's obligations under this Contract, the Authority shall provide free of charge to the Contractor the Government Furnished Assets in accordance with Schedule 9 (Government Furnished Assets).

9.2 On being given thirty (30) Business Days' Notice, the Contractor shall permit and co-operate with the Authority to conduct audits of the Government Furnished Assets in a manner to be determined by the Authority.

#### Requests for Additional GFA Items

9.3 Subject to Clause 9.4 below, if the Contractor requires the Authority to provide any GFA in addition to those listed in Schedule 9 (Government Furnished Assets), then unless:

9.3.1 the Authority agrees to provide such additional GFA; and

9.3.2 the item of GFA can be sourced by the Authority and cannot be sourced by the Contractor or any member of its Group,

the Authority shall have no obligation to supply any such GFA that is not listed in Schedule 9 (Government Furnished Assets). If Clauses 9.3.1 and 9.3.2 apply or if Clause 9.4 applies, the Authority's obligation to supply the GFA shall be subject to the Contractor issuing a Change Request as soon as reasonably practical after the Contractor becomes aware of the requirement for such additional GFA, requesting the Authority to provide such GFA.

9.4 With respect to any request by the Contractor for Government Furnished Information in addition to that listed in Schedule 9 (Government Furnished Assets), the Authority shall use reasonable endeavours to provide such Government Furnished Information as soon as reasonably practicable if the item of Government Furnished Information can be sourced by the Authority and such Government Furnished Information cannot be sourced by the Contractor or any member of its Group.

#### General

9.5 All GFA shall remain the property of the Authority. All such GFA shall be used in the performance of the Contractor's obligations under this Contract and for no other purpose, without the prior approval in writing of the Authority.

9.6 None of the Contractor, any sub-contractor or any other person shall have a lien on 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 any such lien, are brought to the notice of all sub-contractors and other persons dealing with any Government Furnished Assets.

9.7 On request by the Contractor, the Authority shall use reasonable endeavours to facilitate any reasonably required consultation between the Contractor and the original manufacturer of any GFA in order to resolve and clarify any technical issues with respect to the relevant GFA, but subject to any confidentiality or IPR restrictions as between the Authority and the original manufacturer of such GFA.

9.8 If the GFA supplied under Clause 9.1 above is updated by or on behalf of the Authority, the Contractor shall assess whether such update requires a Change. If the Contractor assesses that a Change is required, Schedule 8 (Change Control Procedure) shall apply.

#### Receipt

9.9 Subject to Clauses 9.10 and 9.12, the Contractor shall:

9.9.1 within fourteen (14) days of receipt of any Government Furnished Equipment pursuant to Clause 9.1:

- (i) check the Government Furnished Equipment to verify that it corresponds with the Government Furnished Equipment listed in Schedule 9 (Government Furnished Assets);
- (ii) conduct a reasonable visual inspection; and
- (iii) conduct any additional inspection and testing as may be necessary and practicable to check that none of the Government Furnished Equipment is defective or deficient for the purpose for which it has been provided; and

9.9.2 following receipt of any Government Furnished Information pursuant to Clause 9.1:

- (i) within fourteen (14) days' check the Government Furnished Information to verify that it corresponds with the description of the Government Furnished Information set out in Schedule 9 (Government Furnished Assets); and
- (ii) as soon as reasonably possible taking into account the nature and accessibility of the relevant Government Furnished Information, conduct such further inspection and testing as may be necessary and practicable in accordance with its obligations under Clause 7.2, including with such level of skill, care, foresight and diligence that could reasonably be expected of an experienced designer and shipbuilder, to check that none of the Government Furnished Information is defective or deficient for the purpose for which it has been provided,

and notify the Authority in writing of any defects, deficiencies or discrepancies discovered.

9.10 Where Government Furnished Assets are packaged, they shall not be unpacked earlier than is necessary. The period identified at Clause 9.9 shall count from the date on which packages are opened.

9.11 The Authority shall, within a reasonable time after receipt of any Notice under Clause 9.9, replace, reissue or authorise the repair of any Government Furnished Assets agreed to be defective or deficient. If appropriate, it shall also issue written instructions for the return or disposal of the defective or deficient Government Furnished Assets. Pending replacement, reissue or repair under this Clause 9.11, the Contractor shall take reasonable steps to mitigate the effect (if any) of the defective or deficient GFA.

9.12 Clauses 9.9 to 9.11 shall not apply where:

9.12.1 the Contractor can show that the Government Furnished Assets cannot be fully tested until they have been integrated with other items; or

9.12.2 Authority Special Jigs, Tools Etc. become Government Furnished Assets in accordance with Clause 13 (Special Jigs, Tooling and Test Equipment),

and, in such cases, inspection of such property shall be as agreed between the Parties.

#### Custody

9.13 Subject to Clause 9.16, the Contractor shall be responsible for the safe custody and due return of Government Furnished Assets, and shall be responsible for all loss or damage thereto, until redelivered in accordance with the Authority's instructions.

9.14 Subject to receipt from the Authority of the requisite technical maintenance information, the Contractor shall be responsible for undertaking Level 1 Maintenance in respect of each item of GFA.

9.15 If requested, the Authority shall, within a reasonable time, and where practicable before delivery of the Government Furnished Assets, notify the Contractor of the value of the Government Furnished Assets.

9.16 The Contractor shall not be liable in respect of:

9.16.1 defects or deficiencies notified to the Authority in accordance with Clause 9.9 or latent defects which the Contractor can show could not reasonably have been discovered by means of the activities described at Clause 9.9;

9.16.2 fair wear and tear in Government Furnished Assets resulting from their normal and proper use in the performance of this Contract (except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance by the Contractor, any member of its Group, any sub-contractor, any member of a sub-contractor's Group or any agent of the Contractor or any sub-contractor);

9.16.3 Government Furnished Assets rendered unserviceable as a direct result of ordinary performance of this Contract; or

9.16.4 any loss or damage to Government Furnished Assets arising from:

(i) aircraft or other aerial devices or objects dropped from them, including pressure waves caused by aircraft or such devices whether travelling at sonic or supersonic speeds;

(ii) ionising radiation or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel;

(iii) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof; or

(iv) riot, civil commotion, civil war, rebellion, revolution, insurrection, military or usurped power or acts of the Queen's enemies.

10 Import/Export Controls

## Overseas Expenditure

10.1 In this Clause 10, “foreign” and “overseas” shall be understood from the position of the Authority and be regarded as “non-UK”.

10.2 The Contractor shall report, in writing, to the Authority Representative details of any direct overseas expenditure valued over one million pounds (£1,000,000) likely to be incurred in the execution of this Contract within thirty (30) Business Days of the Effective Date. The details to be provided are as follows:

10.2.1 contract number (or invitation to tender number where the contract number is not available);

10.2.2 country in which sub-contract placed/to be placed;

10.2.3 name, division and full postal address of sub-contractor;

10.2.4 value of sub-contract as applicable to main contract; and

10.2.5 date placed/to be placed.

10.3 If no overseas orders valued over one million pounds (£1,000,000) are to be placed, or are placed, the Contractor shall advise the Authority to this effect within thirty (30) Business Days of the Effective Date.

10.4 For the purpose of Clauses 10.2 and 10.3, overseas expenditure comprises only those direct payments made by the Contractor to overseas firms and to UK firms, including UK branches or subsidiaries of overseas firms, for the supply of finished or semi-finished manufactured products imported directly into the UK by the Contractor or by such UK firms.

## Import Licence

10.5 If, in the performance of this Contract, the Contractor needs to import material into the UK for which an import licence is required, the responsibility for applying for the licence shall rest with the Contractor. The Authority shall provide the Contractor with all reasonable assistance in obtaining any necessary import licence with regard to any defence or security issue that may arise.

## Export Licence

10.6 The Contractor shall notify the Authority promptly if the Contractor becomes aware that all or part of any item (including information and software) or service to be delivered under this Contract is or will be subject to:

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

10.6.2 any other related transfer control,

that imposes or will impose end use, end user or re-transfer or re-export restrictions, or restrictions on disclosure to individuals based upon their nationality.

10.7 If requested by the Authority, the Contractor shall give the Authority a summary of every existing or expected licence and restriction referred to in Clause 10.6 and any related obligation or restriction to the extent that they place an obligation or restriction on the Authority with which the Authority must comply, including, to the extent applicable to such obligations or restrictions:

10.7.1 the exporting nation, including the export licence number (where known);

10.7.2 the item (including information and software) or service affected;

10.7.3 the nature of the restriction and obligation;

10.7.4 the authorised end use and end users;

10.7.5 any specific restrictions on access by third parties, or by individuals based upon their nationality, to anything delivered or used in the performance or fulfilment of this Contract including the services provided; and

10.7.6 any specific restrictions on the end user or on re-transfer or re-export to third parties of anything delivered or used in the performance or fulfilment of this Contract including the services provided.

The Contractor shall not be required to disclose any of the provisos to a licence (or even the existence of them) to the extent that they do not relate to an obligation or constraint with which the Authority must comply.

10.8 When an export licence is required from a foreign government for the performance of this Contract, the Contractor shall promptly consult with the Authority on the licence requirements and, where the Contractor is the applicant for the licence:

10.8.1 ensure that, when end use or end user restrictions, or both, apply to all or part of any item to be delivered under this Contract or any service to be provided, the Contractor, unless otherwise agreed with the Authority, identifies in the licence application:

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

(ii) the end use as: For the purposes of HM Government – Royal Navy Type 26 programme; and

10.8.2 include in the submission for the licence a statement that "information on the status of processing this licence application may be shared with the Ministry of Defence of the United Kingdom".

10.9 If the information required under Clauses 10.6 and 10.7 has been provided previously to the Authority by the Contractor, the Contractor may satisfy these requirements by giving details of the previous notification and confirming they remain valid and satisfy the provisions of Clauses 10.6 and 10.7.

10.10 If the Contractor becomes aware of any changes in the information notified previously under Clause 10.6, 10.7 or 10.9 that would affect the Authority's ability to use, disclose, re-transfer or re-

export an item or part of it as is referred to in those Clauses, the Contractor shall notify the Authority promptly of the change.

10.11 If the Contractor or any Sub-Contractor in the performance of this Contract needs to export material for which an export licence from a foreign government is required, the responsibility for instituting expeditious action to apply for and obtain the licence shall rest with the Contractor or that Sub-Contractor. The Authority shall provide all reasonable assistance in obtaining and maintaining any export licence from the foreign government with regard to any defence or security issue that may arise.

10.12 Where the performance of this Contract requires the export of items for which a foreign export licence is required, the Contractor shall include the dependencies for the export licence application, grant and maintenance in the Contract risk register and in the risk management plan for this Contract with appropriate review points.

10.13 The Authority may, prior to the end of the Term, make a written request to the Contractor to seek a variation to the licence conditions to a foreign export licence to enable the Authority to re-export or re-transfer a licensed item or licensed information from the UK to a non-licensed third party. If the Authority makes such a request:

10.13.1 the Contractor shall, or shall procure that the Contractor's Sub-Contractor shall, expeditiously consider whether or not there is any reason why it should object to making the request and, where it has no objection, file an application to seek a variation of the applicable export licence in accordance with the procedures of the licensing authority;

10.13.2 the Authority shall in a timely manner provide sufficient information, certification and other documentation necessary to support the application for the requested variation; and

10.13.3 any reasonable costs which the Contractor seeks to recover in respect of its services for the application for the requested variation shall be deemed a Change to the Contract Price and shall be treated as such under the Change Control Procedure.

10.14 Where the Contractor sub-contracts work under this Contract, which is likely to be subject to foreign export control, the Contractor shall use reasonable endeavours to incorporate in each sub-contract the terms set out in the Appendix to DEFCON 528. Where it is not practicable to include the terms set out in the Appendix, the Contractor shall report that fact and the circumstances to the Authority.

10.15 It is acknowledged that the Contractor must comply with certain non-UK laws and regulations (especially the US International Traffic in Arms Regulations ("ITAR") and the US Export Administration Regulations ("EAR")) in relation to its receipt, use and tracking of controlled hardware, software, technical data or technical services. In order to comply with such laws and regulations, the Contractor must understand the extent to which any such controls apply to items such as Government Furnished Assets prior to making use of the same. In this connection, where the Authority provides Government Furnished Assets that are subject to a non-UK export licence or other related transfer control as described in Clause 10.6:

10.15.1 the Authority may, or at the request of the Contractor undertakes to, give the Contractor a copy or a summary (the choice of which shall be at the discretion of the Authority) of every non-UK export licence or other related transfer control document which the Authority knows or believes to be required for the Contractor's performance of this Contract:

- (i) the exporting nations, including the export licence number (where known);
- (ii) the items or information affected, and wherever reasonably possible the part reference number for the ITAR/EAR controlled material and the ITAR US Munitions List category and paragraph number (and any special designations 'Significant Military Equipment' or 'Major Defense Equipment') or, as the case may be, 'EAR Commerce Control List Export Control Classification Number' (or other EAR designation);
- (iii) the nature of the restriction and obligation;
- (iv) the authorised end use, end users and, wherever reasonably possible, intermediate consignees and locations of use;
- (v) any specific restrictions on access or use by third parties, or by individuals based upon their nationality, to the items or information affected; and
- (vi) any specific restrictions on re-transfer or re-export to third parties of the items or information affected.

10.15.2 The Contractor and its sub-contractors, where access by these restrictions is also authorised, shall abide by the lawful restrictions so notified by the Authority.

10.15.3 The Contractor shall notify the Authority immediately if it is unable for whatever reason to abide by any restriction advised by the Authority to the Contractor under this Clause 10.15.

10.16 Where restrictions are advised by the Authority to the Contractor under Clause 10.15, the Authority and the Contractor shall act promptly to mitigate their impact. If these restrictions adversely affect performance of this Contract, the restrictions shall be deemed to form a Change Request under Schedule 8 (Change Control Procedure). If the Contractor is unable to perform this Contract as a result of these restrictions or the lack of sufficient information as to the nature and extent of any applicable restrictions, then the Authority shall consult with the Contractor on alternative solution, (such as the Contractor being authorised to seek relevant information from the Authority's GFA suppliers), which may require amendment of this Contract under Clauses 52 (Changes) and 53 (Variations) and the Change Control Procedure. If no alternative solution satisfies the essential terms of this Contract, either:

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10.17 Without prejudice to HM Government's position on the validity of any claim by a foreign government to extra-territoriality, the Authority undertakes to provide the Contractor with all reasonable assistance to facilitate the granting of an export licence by a foreign government in respect of performance of this Contract.

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12 Accounting for Authority Property

12.1 The Contractor shall:

12.1.1 maintain a PSA which shall include a complete list of all property of the Authority, and, in respect of that property, record all transactions or other accounting information specified in Schedule 9 (Government Furnished Assets);

12.1.2 supply to the Authority quarterly reports on the current PSA holdings. At least one (1) report in any twelve (12) month accounting period or part thereof shall be a reconciled report. This shall be submitted with the Annual Certificate Form AAC 32 as required in DEFSTAN 05-99. The other three (3) reports submitted in the period may be un-reconciled advisory reports. The submission by the Contractor and receipt by the Authority of these reports shall not prejudice any rights or obligations of the Authority or the Contractor under this Contract;

12.1.3 ensure that the PSA is available for inspection by the Authority at any reasonable time;

12.1.4 on being given thirty (30) Business Days' Notice, co-operate with the Authority to conduct audits of the PSA in a manner to be determined by the Authority. Where the Authority has reasonable grounds to doubt the integrity of the PSA to the extent that the Authority is not satisfied of the proper use of property of the Authority, an audit may be conducted without notice;

12.1.5 retain the PSA for a period of three (3) years after the disposal of the last item of the property of the Authority, or for any other period as may be specified in this Contract;

12.1.6 if the Authority agrees that a sub-contractor at whatever level of sub-contracting shall have responsibility in the sub-contractor's PSA for property of the Authority issued for the purposes of this Contract, the Contractor shall include in any sub-contract with those sub-contractors only the provisions corresponding to those set out in this Clause 12 that apply to property of the Authority issued for the purposes of the sub-contract, in particular Clauses 12.1, 12.2, 12.4 and 12.7; and

12.1.7 manage the GFA component of the PSA in accordance with the provisions of DEFSTAN 05-99; and implement any new edition of or amendment to DEFSTAN 05-99 subject to Clauses 52 (Changes) and 53 (Variations) and the Change Control Procedure within three (3) months of the publication date of the new edition. These amendments shall not have retrospective effect.

12.2 For the purposes of this Clause 12, "property of the Authority" means GFE and fixed assets, including property issued under Clause 9 (Government Furnished Assets) and property of the Authority issued to the Contractor under any other authorising document except for property vested in the Authority under Clause 55 (Title and Risk).

12.3 It is a condition of this Contract that this Clause 12 shall apply to all property issued to the Contractor from the Effective Date. Property of the Authority issued prior to the Effective Date may be subject to separate contractual arrangements.

12.4 The obligations of the Contractor arising under this Clause 12 in respect of property of the Authority issued in aid of this Contract shall survive completion of this Contract and shall not be completed until all such obligations are fulfilled, including the provisions of Clause 12.1.5.

12.5 The obligations of the Contractor arising under this Clause 12 in respect of property of the Authority unconnected with this Contract shall survive completion of this Contract and shall not be completed until all those obligations are fulfilled including the provisions of Clause 12.1.5 unless and until a subsequent contract containing DEFCON 694 is placed with the Contractor at which time obligations in respect of any remaining property of the Authority unconnected with this Contract shall be subsumed in the subsequent contract.

12.6 If, after completion of this Contract, no subsequent contract is placed containing DEFCON 694 within the period detailed at Clause 12.1.5, then the obligations of the Contractor arising under this Clause 12 in respect of property of the Authority unconnected with this Contract shall cease on expiry of the period detailed at Clause 12.1.5.

12.7 The Authority reserves the right to amend Schedule 9 (Government Furnished Assets) without further consultation where the amendments arise from the Authority's proper and reasonable accounting requirements and to the extent that they do not significantly alter the specification of the Government Furnished Assets. If the Authority exercises this right:

12.7.1 the Contractor shall implement the amendment to Schedule 9 (Government Furnished Assets) at the commencement of the Authority's next accounting year, provided that a notice of six (6) months, or such other period as may expressly be agreed between the Authority and Contractor, is given to the Contractor. These amendments shall not have retrospective effect; and

12.7.2 the Contractor shall inform the Authority as soon as practicable, but in any event within three (3) months of notice having been given, if the Contractor cannot comply with the amendment to Schedule 9 (Government Furnished Assets).

### 13 Special Jigs, Tooling and Test Equipment

13.1 The Contractor shall provide all jigs, tools, patterns, moulds, dies, manufacturing gauges and test equipment, together with any associated fixtures, fittings and software necessary for the manufacture of the Articles or for the performance of any other work in accordance with Schedule 1 (Schedule of Requirements), unless supplied by the Authority under the terms of Clause 9 (Government Furnished Assets).

13.2 The cost of Special Jigs, Tools Etc. will not be accepted by the Authority as a direct charge to the Contract unless approved in writing as a Change and recorded in Schedule 12 (Authority Special Jigs and Tools Etc.). The Contractor may make a written application to the Authority that certain hardware or software, or both, are special to the requirements of the Contract and that their provision should be met as a direct charge to the Contract as Special Jigs, Tools Etc. If the Authority accepts the application, it shall do so in writing. The Contractor shall not seek approval for where these are available under other contracts it already holds from the Authority, either under equivalent terms to DEFCON 23 or as Issued Property under DEFCON 611. This Clause 13 shall not apply to the refurbishment of any Special Jigs, Tools Etc. already held as Issued Property. With respect to the Equipment Supply Chain Contracts, provided that: (i) the Authority has approved, pursuant to Clause 24 (Equipment Supply Chain Contract Management), the inclusion of the Special Jigs, Tools Etc. within the scope of the relevant Equipment Supply Chain Contract; and (ii) the cost of such Special Jigs, Tools Etc. is included within the Three Ship Set Supply Chain Overall Capped Value, then such Special Jigs, Tools Etc. shall be deemed approved.

13.3 Unless specified otherwise in the Contract, the Estimated Base Cost shall include an appropriate amount to enable the Contractor to recover its expenditure on Special Jigs, Tools Etc. including the cost of maintenance and calibration under Clause 13.8.

13.4 The Contractor shall not claim assistance from other HM Government funds (e.g. regional development grants or selective financial assistance) or other third parties towards the cost of any Special Jigs, Tools Etc.

13.5 The Authority Special Jigs and Tools Etc. shall become the property of the Authority in accordance with Clause 55.1 (Title).

13.6 Where property in the Authority Special Jigs and Tools Etc. passes to the Authority under Clause 13.5, and they are still required to complete this Contract, they shall be transferred to the PSA and treated thereafter as Government Furnished Assets under the terms of Clause 9 (Government Furnished Assets) by way of formal contract amendment in accordance with Clauses 52 (Changes) and 53 (Variations) and Schedule 8 (Change Control Procedure) and recorded in Schedule 12 (Authority Special Jigs and Tools Etc.).

13.7 The Contractor shall account for and control the Authority Special Jigs and Tools Etc. in accordance with the provisions of Clause 13.6. Pending the transfer to the PSA, the Contractor shall:

13.7.1 maintain a list of the Authority Special Jigs and Tools Etc. procured or manufactured by the Contractor;

13.7.2 make the list available to the Authority;

13.7.3 maintain the list for three (3) years, or for such other period as is specified in this Contract, after any disposal of the Authority Special Jigs and Tools Etc. where not transferred to the PSA in accordance with Clause 13.6; and

13.7.4 forward the list to the Authority Representative prior to transfer of the Authority Special Jigs and Tools Etc. to the PSA.

The Contractor shall remove from the list any Authority Special Jigs and Tools Etc. transferred to the PSA under Clause 13.6.

13.8 The Contractor shall be responsible for safe custody, maintenance and calibration necessary to retain the Authority Special Jigs and Tools Etc. in good order, until transferred to the PSA, delivered or disposed of in accordance with written disposal instructions given by the Authority.

13.9 Once property in the Authority Special Jigs and Tools Etc. has passed to the Authority in accordance with Clause 13.5, the Contractor shall, if required, deliver the Authority Special Jigs and Tools Etc. to the Authority's order. The Contractor shall not be entitled to any further payment for delivering the Authority Special Jigs and Tools Etc. other than for the recovery of packing and carriage costs reasonably incurred.

13.10 The Contractor shall not use the Authority Special Jigs and Tools Etc. for any purposes other than those of the Authority without first obtaining the written approval of the Authority and in accordance with the terms, including payment, for that other use as stated in a commercial exploitation, or other, agreement between the Contractor and the Authority.

#### 14 Attendance at Sites

14.1 The Contractor shall procure that the Authority and its representatives shall have the right at all times to enter any of the Contractor's Sites in order to inspect the state and progress of the Type 26 Programme and/or participate in or review any activities related to this Contract. The Contractor shall additionally procure that the Authority and its representatives shall have the right to enter any of the Sub-Contractor Sites in order to inspect the state and progress of the Type 26 Programme and/or participate in or review any activities related to this Contract, subject to the Authority providing reasonable notice to the Contractor of its (or its representative's or Lloyd's) intention to undertake such inspection.

14.2 In exercising any right under Clause 14.1 or attending a Site generally, the Authority and its representatives shall comply with all relevant rules applicable to the Contractor and/or Sub-Contractor (as applicable), safety procedures (which shall include any relevant health and safety plans for the Sites' 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 or Sub-Contractor (as applicable) to the Authority or its representatives from time to time. This Clause 14.2 shall apply to the Authority and its representatives only to the extent that the Contractor or Sub-Contractor (as applicable) has notified the Authority and its representatives (as applicable) of such rules, procedures or directions.

14.3 The Contractor shall, at no additional cost to the Authority, provide: (i) full access passes to the Contractor's Sites; and (ii) such accommodation and facilities at the Contractor's Sites, for the Authority's staff as the Authority may reasonably require. As and when reasonably required by the Authority, such accommodation and facilities shall comprise:

14.3.1 washing facilities, toilets and showers;

14.3.2 suitable accommodation and appropriate office and catering facilities;

14.3.3 reasonable personal protective equipment for all of the Authority's project staff attending the Contractor's Sites, and a lockable room for storage of such equipment;

14.3.4 car parking spaces; and

14.3.5 access to the Contractor's canteen facilities.

14.4 Notwithstanding and without prejudice to the provisions detailed elsewhere in this Contract, the Contractor shall ensure that all personnel having legitimate cause to be on the Contractor's Site in connection with this Contract, whether or not they are Contractor Employees, are made fully aware of any health and safety issues and procedures, and of any precautions they need to take whilst on Site.

14.5 Notwithstanding and without prejudice to the provisions detailed elsewhere in this Contract, the Authority shall ensure that all Contractor's personnel, agents, employees and any Sub-Contractors and their personnel having legitimate cause to be on the Authority's premises in connection with this Contract, are made fully aware of any health and safety issues and procedures, and of any precautions they need to take whilst on the Authority's site.

## 15 Attendance at Government Establishments

### Contractor's Personnel and Observance of Regulations

15.1 Whenever it is necessary, in connection with this Contract, for the Contractor or any employee or agent or Sub-Contractor(s) of his to be within the boundaries of any Government Establishment at any time, they shall comply with the rules, regulations and requirements in force for the time being at that establishment, including the Government's Baseline Personnel Security Standard, and, where applicable, be cleared to the appropriate level of security and their presence shall be subject to the provisions of Clauses 15.2 to 15.4 (inclusive). Copies of the ship's regulations and other relevant rules and regulations shall, on request, be provided by the Officer in Charge.

15.2 The Contractor shall, on request, submit in writing to the Officer in Charge for approval, initially and as necessary from time to time, a list of the Contractor's representatives who may need to enter a Government Establishment for the purposes of, or in connection with, work under this Contract, giving such particulars as the Officer in Charge may require, including full details of birthplace and parentage of any representative who was not born in the United Kingdom or if born within the United Kingdom was born of parents either or both of whom were not born in the United Kingdom.

15.3 The Authority will issue passes for those representatives who are approved by it in accordance with Clause 15.2 for admission to the Government Establishment and a representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Authority and shall be surrendered on demand or on completion of the work.

15.4 Notwithstanding the provisions of Clauses 15.2 and 15.3, if, in the opinion of the Authority (whose decision on this matter shall be final and conclusive):

15.4.1 any employee or agent or sub-contractor(s) of the Contractor shall misconduct himself; or

15.4.2 it shall not be in the public interest for any person to be employed or engaged by the Contractor,

the Contractor shall remove or cause to be removed such person forthwith on being required to do so and shall cause the work to be performed by such other person as may be necessary.

#### Injuries, Disease and Dangerous Occurrences

15.5 Injury, disease or dangerous occurrences involving the Contractor's employees or agents or Sub-Contractor(s) at a Government Establishment which ordinarily require to be reported in accordance with the Health and Safety at Work Act 1974 shall also be reported to the Officer in Charge. This is in addition to any report, which the Contractor may be required to submit under RIDDOR to the relevant enforcing authority (e.g. Health and Safety Executive or Local Authority).

#### Liability in Respect of Damage to Government Property

15.6 The Contractor shall make good or, at the option of the Authority, pay compensation for all direct loss or damage occurring to any Government Establishment caused or contributed to by the Contractor or by any employee or agent or sub-contractor(s) of the Contractor in connection with the performance of its obligations under this Contract, provided that, if any such loss or damage was not caused or contributed to by any circumstances within the Contractor or his employees' or agents' or sub-contractor(s)' control, then this Clause 15.6 shall not apply.



#### General

15.8 The Contractor shall be responsible for the living accommodation and maintenance of his representatives while they are working at or attending a Government Establishment. Sleeping accommodation and messing facilities, if required, may be provided wherever possible by the Government Establishment, at the discretion of the Officer in Charge, at a cost fixed in accordance with current Authority regulations. The status to be accorded to the Contractor's employees for messing purposes will be at the discretion of the Officer in Charge who will, wherever possible, give his decision before the work commences where so asked by the Contractor.

#### Health and Safety Hazard Control

15.9 Where the Contractor enters a Government Establishment for the purposes of performing work under this Contract:

15.9.1 The Contractor shall notify the Officer in Charge of:

- (i) any health and safety hazards associated with the work to be performed by him or any of his representatives;
  - (ii) any foreseeable risks to the health and safety of all persons associated with such hazards;
- and



(iii) any precautions to be taken by him as well as any precautions which, in his opinion, ought to be taken by the Authority, in order to control such risks.

15.9.2 The Authority shall notify the Contractor of:

(i) any health and safety hazards which are associated with the work to be performed by the Contractor or any of his representatives on the Government Establishment;

(ii) any foreseeable risks to the health and safety of the Contractor or any of his representatives associated with such hazards; and

(iii) any precaution to be taken by the Authority as well as any precautions which, in its opinion, ought to be taken by the Contractor in order to control such risks.

15.9.3 The Contractor shall notify his representatives (any sub-contractors and/or representatives thereof) of and, where appropriate, provide adequate instruction in relation to:

(i) the hazards, risks and precautions notified by him to the Authority under Clause 15.9.1;

(ii) the hazards, risks and precautions notified to him by the Authority under Clause 15.9.2; and

(iii) the precautions which, in his opinion, ought to be taken by his representatives in order to control those risks.

15.9.4 The Contractor shall provide the Officer in Charge with:

(i) copies of those sections of his own and, where appropriate, his representatives' safety policies which are relevant to the risks;

(ii) copies of any related risk assessments; and

(iii) copies of any notifications and instructions issued by him to his representatives.

15.9.5 The Authority shall provide the Contractor with:

(i) copies of those sections of its own safety policies which are relevant to the risks notified;

(ii) copies of any related risk assessments; and

(iii) copies of any notifications and instructions issued by it to its employees similar to those called for from the Contractor.

#### Contractor's Property

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

15.10.1 where any such loss or damage was caused or contributed to by any act, neglect or default of any HM Government servant, agent or contractor (other than the Contractor and/or the Contractor's Personnel), then the Authority shall accept liability therefor to the extent to which such loss or damage is so caused or contributed to as aforesaid; and

15.10.2 where any property of the Contractor has been taken on charge by the Officer in Charge, and a proper receipt has been given therefor, then the Authority shall be liable for any loss or damage occurring to that property while held on such charge as aforesaid.

#### Transport Overseas

15.11 Where the Contractor's Personnel are required under this Contract to join or visit a Government Establishment overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided free of charge by the Authority whenever possible, normally by Royal Air Force or by Authority chartered aircraft. The Contractor shall make such arrangements through the Project Manager/Equipment Support Manager notified by the Authority Representative from time to time. When such transport is not available within a reasonable time, or in circumstances where the Contractor wishes the Contractor's Personnel to accompany materiel for installation which the Contractor is to arrange to be delivered, the Contractor shall make his own transport arrangements. The Authority shall reimburse the Contractor's costs for such transport of those Contractor's Personnel on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Contractor's Personnel locally overseas which is necessary for the purposes of this Contract shall be provided wherever possible by the Authority and, where so provided, will be free of charge.

#### Medical Treatment Overseas

15.12 Out-patient medical treatment given to the Contractor's Personnel by a Service Medical Officer or other Government Medical Officer at a Government Establishment overseas shall be free of charge. Treatment in a service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Government Establishment, and transportation of the Contractor's Personnel back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Contractor at the appropriate local rate.

#### Dependants of Contractor's Personnel

15.13 No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Contractor's Personnel. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Authority rates.

#### Provision Of Funds Overseas

15.14 The Contractor shall, wherever possible, arrange for funds to be provided to the Contractor's Personnel overseas through normal banking channels (e.g. by travellers cheques). If banking or other suitable facilities are not available, the Authority shall, upon request by the Contractor and subject to any reasonable limitation required by the Contractor, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made by the Government Establishment to which the Contractor's Personnel are attached. All such advances made by the Authority shall be recovered from the Contractor.

#### 16 Radio Transmissions

16.1 Where in the UK it is necessary for the Contractor to make radio transmissions for the purposes of test and development of electronic equipment under this Contract, the Contractor shall obtain an appropriate licence from the UK Regulatory Authority, OFCOM, in accordance with the Wireless Telegraphy Act 2006.

16.2 The Contractor shall ensure that, prior to making any transmission, a licence exists that covers the particular transmissions of this Contract in all respects.

16.3 The Contractor shall agree with the Authority the frequencies to be used for this Contract.

## 17 Redundant Materiel

17.1 All Redundant Materiel resulting from work carried out under, or procured for the purposes of this Contract, the costs of which have been paid by the Authority under this Contract, or which is otherwise owned by the Authority, shall be disposed of as follows:

17.1.1 On completion of this Contract or earlier if appropriate, the Contractor shall prepare:

- (i) a list of those items of the Redundant Materiel referred to above which are considered to be serviceable or repairable. The list shall record the condition of each item, its actual cost or estimated value and, in the case of repairable items, the estimated price of repair; and
- (ii) a list of those items of the Redundant Materiel which are considered to be unserviceable and which cannot be economically repaired or are otherwise considered to be scrap.

17.1.2 The Contractor shall send the lists referred to in Clauses 17.1.1(i) and 17.1.1(ii) above to the Authority Representative named in this Contract.

17.1.3 Within three (3) months of the date of receipt of the lists, the Authority shall issue disposal instructions to the Contractor. Such disposal instructions shall require that the items of materiel are either:

- (i) transferred to other subsisting contracts;
- (ii) subject to contract, retained by the Contractor for use in the performance of future contracts placed with the Contractor;
- (iii) subject to contract, repaired by the Contractor; or
- (iv) at the direction of the Authority, sold by the Contractor, acting on behalf of the Authority, for the best price reasonably obtainable. Redundant Materiel designated in accordance with Clause 17.1.1(ii) shall be dismantled and disposed of in such a manner as to preclude the possibility of resale in its existing form.

17.2 The proceeds of the sale of items of Redundant Materiel sold pursuant to Clause 17.1.3(iv) shall be credited to the Authority in accordance with arrangements made between the Contractor and the Authority.

17.3 A list of the items sold by the Contractor shall be sent to the Authority Representative specified in this Contract together with a statement of the proceeds of sale.

18 Sustainability

18.1 The Authority is committed to Sustainable Procurement as detailed in its Sustainable Development Strategy (12/08). The Contractor also supports the principles of sustainability as expressed in the Authority's Sustainable Procurement Policy Version 1.3 dated 1 December 2014 (the "Sustainable Procurement Policy") and shall maintain its commitment to the Sustainable Procurement Charter (as referenced in paragraph 72 (Supplier Management) of the Sustainable Procurement Policy) to which the Authority and BAE Systems plc are party (the "Sustainable Procurement Charter").

18.2 For the avoidance of doubt, this Contract does not create any additional obligations on either Party with regard to sustainability by virtue of this Clause 18.

19 Design Risk

19.1 The Authority shall, to the extent allowed by Legislation, hold all legal and financial responsibility for any Direct Losses of the Contractor which arise as a result of any part of the design for the Vessels created under the Assessment Phase Contract or this Contract being used or incorporated by the Authority (or by a third party pursuant to a licence, assignment or transfer of rights by the Authority) in the design and build of any Royal Navy vessel, save to the extent that such Direct Losses are recoverable from a third party.

19.2 The Contractor shall, to the extent allowed by Legislation, hold all legal and financial responsibility for any Direct Losses of the Authority which arise as a result of any part of the design for the Vessel created under the Assessment Phase Contract or this Contract being used or incorporated by the Contractor (or by a third party pursuant to a licence, assignment or transfer of rights by the Contractor) in the design and build of any vessel other than a Royal Navy vessel, save to the extent that such Direct Losses are recoverable from a third party.

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33.1 The Overall Contract Commitment excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the supplies of Articles and/or Services by the Contractor to the Authority.

33.2 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 Overall Contract Commitment (or any other sum due to the Contractor) a sum equal to the output VAT chargeable on the tax value of the supplies of Articles and/or Services, and all other payments under this Contract according to the law at the relevant tax point. In the event of any doubt about the applicability of the tax in such cases, the Authority may require the Contractor to obtain and pass to the Authority a formal ruling from HMRC.

33.3 The Contractor is responsible for the determination of VAT liability. The Contractor is to consult his local VAT office (and not the Authority Representative) in cases of doubt. The Contractor shall notify the Authority Representative of the Authority's VAT liability under this Contract, and any changes to it, when the liability is other than at the standard rate of VAT.

33.4 Where supplies of Articles and/or 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.

33.5 Where Articles and/or 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 Overall Contract Commitment (and any other sum due to the Contractor under this Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Articles and/or Services.

33.6 In relation to the Articles and/or Services supplied under this Contract, 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). However, these input taxes will be allowed where it is proven to the Authority that, despite the Contractor having taken all reasonable steps to recover them, it has not been possible to do so.

#### 34 Customs Duty Drawback

The Overall Contract Commitment shall be inclusive of any UK Customs and Excise or other duty payable. The Contractor shall not make any claim for drawback of UK import duty on any portion of the Articles supplied which may be for shipment overseas.

#### 35 Prompt Payment to Sub-Contractors

Where the Contractor enters into any Sub-Contract, the Contractor shall procure that a term be included in such Sub-Contract which requires payment to be made to the supplier or Sub-Contractor

within a specified period not exceeding thirty (30) days from receipt of a valid invoice as defined by the Sub-Contract requirements.

36 Tax

#### Warranty

36.1 The Contractor represents and warrants that, at the date this Contract came into effect, it has notified the Authority in writing of any OOTNC or any litigation that it is involved in that is in connection with any OOTNC.

#### Duty of the Contractor to notify OOTNC

36.2 If, at any point during the performance of this Contract, an OOTNC occurs, the Contractor shall:

36.2.1 notify the Authority in writing of such fact within twenty (20) Business Days of its occurrence; and

36.2.2 promptly provide to the Authority:

(i) details of the steps which the Contractor is taking to address the OOTNC and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

(ii) such other information in relation to the OOTNC as the Authority may reasonably require.

36.3 For the avoidance of doubt, the obligation at Clause 36.2 also applies to OOTNC in non-UK jurisdictions. If the OOTNC occurred in non-UK jurisdictions, the notification must be accompanied by a full explanation of the OOTNC and any relevant tax laws and administrative provisions so the Authority can understand the nature and seriousness of the OOTNC.

36.4 The duty to notify does not substitute the Contractor's obligations under Clause 47 (Financial and Forecasting Reports) when used.

#### Default

36.5 The Authority shall be entitled to terminate this Contract in the event that:

36.5.1 the warranty given by the Contractor pursuant to Clause 36.1 (Warranty) is materially untrue;

36.5.2 the Contractor commits a material breach of its obligation to notify the Authority of any OOTNC as required by Clause 36.2 (Duty of the Contractor to notify OOTNC); or

36.5.3 the Contractor fails to provide details of proposed mitigating factors which, in the reasonable opinion of the Authority, are acceptable.

36.6 In the event that the Authority terminates this Contract under Clause 36.5 (Default), the Authority shall be entitled to recover from the Contractor:

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

36.6.2 any other loss sustained in consequence of any breach of this Clause 36, where this Contract has not been terminated.

#### Duties of the Authority

36.7 In exercising its rights or remedies under this Clause 36, the Authority shall:

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

- (i) the gravity and duration of the OOTNC and any sanctions imposed by a court or tribunal; and
- (ii) any remedial action taken by the Contractor to prevent reoccurrence of the OOTNC; and

36.7.2 without prejudice to Clause 36.6, seriously consider, where appropriate, action other than termination of this Contract to deal with the failure by the Contractor to comply with this Clause 36.

#### Equipment Supply Chain Contracts

36.8 The Contractor shall procure that the provisions equivalent to this Clause 36 are included in any Equipment Supply Chain Contracts entered into in respect of this Contract, save that:

36.8.1 in the case of Clauses 36.1, 36.2, 36.8 and 36.9, references to the "Contractor" shall be replaced with the relevant "Sub-Contractor";

36.8.2 in the case of Clauses 36.5, 36.6 and 36.7, references to the "Authority" shall be replaced with the "Contractor", and references to the "Contractor" shall be replaced with the relevant "Sub-Contractor"; and

36.8.3 Clause 36.4 shall not be included.

36.9 If, at any point during the performance of this Contract, an OOTNC by a Sub-Contractor occurs, the Contractor shall notify the Authority in writing of such fact within twenty (20) Business Days of becoming aware of its occurrence.

#### Part 5

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Part 6

Contract Management

39 Governance

39.1 Governance Objectives

39.1.1 Without prejudice to any of the rights or obligations of either Party under this Contract, the purpose of this Clause 39.1 is to ensure the effective operation and management of this Contract and the Type 26 Programme generally, including:

(i) strategic management of the Type 26 Programme insofar as it relates to the currently defined and potential future involvement of the Contractor;

[REDACTED]

(iii) ensuring that relevant and timely discussions and decisions relating to this Contract and the Manufacture Phase are carried out at appropriate levels of seniority and at nominated intervals;

(iv) monitoring of the Contractor's obligations and performance;

(v) monitoring of the Equipment Supply Chain Contract Activities;

(vi) monitoring of quality;

[REDACTED]

(viii) management of the Change Control Procedure; and

(ix) providing effective decision-making and escalation processes in the event of a disagreement between the Parties as well as the management of Disputes in accordance with the Dispute Resolution Procedure,

(together, the "Governance Objectives").

## 39.2 Governance Arrangements

### 39.2.1 Governance Bodies

Governance of this Contract shall be exercised through the following management bodies:

- (i) the Joint Project Board (the "JPB"); and
- (ii) the Contract Management Board (the "CMB"),

(together, the "Governance Bodies").

### 39.2.2 Joint Project Board

#### (i) Function

(a) The JPB shall be the most senior strategic joint forum under this Contract. It shall provide the overall high-level governance in relation to this Contract (in order to maximise the extent to which the obligations of the Parties are achieved) and the Type 26 Programme (insofar as it relates to the currently defined and potential future involvement of the Contractor). The functions of the JPB include, but are not limited to:

- (I) providing direction and prioritisation in respect of the Type 26 Programme insofar as they relate to the current and planned activities of the Contractor as agreed with the Authority taking account of performance, schedule and cost;
- (II) making key decisions in respect of the Type 26 Programme insofar as they relate to the current and planned activities of the Contractor as agreed with the Authority;
- (III) the consideration of any Change to the Project Baseline or any change which, although it may not result in a Change to this Contract or the Demonstration Activities being performed under it, may impact the wider Type 26 Programme and/or the Manufacture Phase;
- (IV) determining the criteria and process for managing any changes where not explicitly set out in the Contract;
- (V) considering any dispute relating to an Equipment Supply Chain Contract referred to it by the Equipment Supply Chain Contract Review Panel or the CMB under Clause 24.9 (Equipment Supply Chain Contract Disputes);
- (VI) determining any matter which does not fall within the remit of any other Governance Body;

[REDACTED]

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(b) The JPB may perform such other function as it may determine.

(c) The JPB may determine its own organisation and the responsibility of its members.

(d) The JPB may require from the Contract Management Board and any sub-committees formed under its direction such information as it determines necessary in order to carry out its functions.

(e) The JPB may change its functions and the functions of the Contract Management Board and any sub-committees formed under its direction.

(ii) Composition

The JPB shall consist of the following core members (or an authorised representative of such person):

(a) Contractor:

Senior T26 Project Manager – [REDACTED]

Senior T26 Commercial Manager – [REDACTED];

Senior T26 Finance Manager – [REDACTED]

(b) Authority:

Senior T26 Project Manager [REDACTED]

Senior T26 Commercial Manager - [REDACTED]

Senior T26 Finance Manager - [REDACTED]

(the “Core Governance Members”).

(iii) Quorum

The quorum for a meeting of the JPB shall be each Core Governance Member (or the authorised representative of such Core Governance Member).

(iv) Frequency

The JPB shall determine the frequency of its meetings, provided it meets at least once per month. Either Party may call an extraordinary JPB meeting by giving at least one (1) Business Day’s notice in writing to the other Core Governance Members.

(v) Decision Making

The Authority may, within the forum of the JPB, consult with the Contractor but, except in relation to Clause 39.2.2(i)(a)(V), shall retain absolute discretion in the making of any decision being considered by the JPB, provided that any decision that amounts to a Change shall be dealt with in

accordance with Clauses 52 (Changes) and 53 (Variations) and Schedule 8 (Change Control Procedure).

### 39.2.3 Contract Management Board

(i) Function

(a) The CMB shall be responsible for the management and monitoring of performance of the Contract. The functions of the CMB include, but are not limited to:

- (I) ensuring that the Parties' obligations under this Contract are monitored and managed;
- (II) providing a report to the JPB at least three (3) Business Days prior to any scheduled meeting of the JPB;
- (III) giving advice to the JPB as may be required on the performance and status of this Contract;
- (IV) monitoring achievement of the Milestones;
- (V) consideration of the Progress Reports provided by the Contractor;
- (VI) monitoring the Contractor's performance with respect to the Demonstration Transformation Activities;
- (VII) monitoring the provision of GFA in accordance with Schedule 9 (Government Furnished Assets);
- (VIII) reviewing the Financial and Forecasting Report (including Financial Management Information) provided in the format given in Schedule 15 (Form of Financial and Forecasting Report) pursuant to Clause 47 (Financial and Forecasting Reports) and the SSCR Contract Reports provided pursuant to Clause 49 (SSCR Contract Reports), and any other information required by the CMB;
- (IX) monitoring and reporting progress of placement of the Equipment Supply Chain Contracts against the Equipment Supply Chain Contract Baseline;
- (X) considering any dispute relating to an Equipment Supply Chain Contract referred to it by the Equipment Supply Chain Contract Review Panel under Clause 24.9 (Equipment Supply Chain Contract Disputes);
- (XI) implementation of any direction given to it by the JPB;
- (XII) consideration and approval of any Major Change;
- (XIII) where relevant, implementation of any Change agreed in accordance with Clauses 52 (Changes) and 53 (Variations) and Schedule 8 (Change Control Procedure); and



(b) If there is any doubt as to whether a decision falls within the remit of the CMB, such matter shall be promptly referred to the JPB for determination.

(ii) Composition

The CMB shall consist of the Core Governance Members (or the authorised representative of such Core Governance Member).

(iii) Quorum

The quorum for a meeting of the CMB shall be each Core Governance Member (or the authorised representative of such Core Governance Member).

(iv) Frequency

The Contract Management Board shall determine the frequency of its meetings, provided it meets:

- (a) at least once per month; and
- (b) prior to each meeting of the JPB in order to provide its report to the JPB in accordance with its functions.

Either Party may call an extraordinary meeting of the CMB by giving at least one (1) Business Day's notice in writing to the other Core Governance Members.

(v) Decision Making

The Authority may, within the forum of the Contract Management Board, consult with the Contractor but, except in relation to Clause 39.2.3(i)(a)(X), shall retain absolute discretion in the making of any decision being considered by the Contract Management Board, provided that any decision that amounts to a Change shall be dealt with in accordance with Clauses 52 (Changes) and 53 (Variations) and Schedule 8 (Change Control Procedure).

(vi) Equipment Supply Chain Contract Review Panel

The CMB shall create, and delegate responsibility for certain matters in Clause 24 (Equipment Supply Chain Contract Management) to, the Equipment Supply Chain Contract Review Panel. The composition, mandate, functions and detailed working processes of the Equipment Supply Chain Contract Review Panel shall, pursuant to Clauses 24.1.2(i)(b)(II) and 24.1.2(ii)(b)(II), be determined by the Parties within the Detailed Equipment Supply Chain Contract Management Arrangements.

#### 39.2.4 General

- (i) The Authority and the Contractor shall ensure that each member it appoints to a Governance Body:
  - (a) has the seniority and authority to represent it on the matters relevant to that Governance Body;
  - (b) dedicates a reasonable amount of their time and efforts to the performance of this Contract;
  - (c) responds to any enquiries made to him or her within a reasonable period of time having regard to the nature of the enquiry; and

(d) remains a member of the relevant Governance Body for the duration of the Term, or otherwise provides the other Party with prior notice in the event that it proposes to replace that member.

(ii) No later than five (5) Business Days following any meeting of a Governance Body, the Contractor shall deliver written minutes of that meeting and the actions arising therefrom (the "Minutes") and the Authority shall within five (5) Business Days following service of the Minutes provide written notification of its agreement with or any comments that it may have in relation to those Minutes. Where comments are provided by the Authority, the Contractor shall reflect such comments and deliver the updated Minutes within a further five (5) Business Days. The Minutes of that Governance Body meeting shall then be agreed at the start of the next meeting of that Governance Body.

### 39.3 Partnering

39.3.1 In respect of this Contract, "Partnering" does not constitute an intent to create a legal "Partnership" as defined in the Partnership Act 1890.

39.3.2 The Parties believe that more can be achieved through joint working and teamwork than otherwise and will therefore work in collaboration, encouraging co-operation, openness, honesty and trust among their respective teams and stakeholders both internally and externally.

39.3.3 The Parties intend to operate collaboratively through the Core Governance Members supported by other team members and the Sub-Contractors.

39.3.4 Throughout the Term, the Parties shall jointly develop and evolve a management process for resolving day-to-day problems at the lowest level. The Parties will actively promote a no-blame and no-surprises culture.

39.3.5 The Parties will strive at all times to ensure that the direction of work under this Contract remains consistent with the Governance Objective of achieving the Demonstration Activities.

### 39.4 Relationship Management Plan

39.4.1 If the JPB decides that a relationship management plan shall be required, the Parties shall agree such plan as soon as reasonably practicable and shall upload such plan to the Shared Data Environment.

### 39.5 Design Management Arrangements and Referenced Documents

39.5.1 The Design Management Arrangements which are to apply to this Contract reside in the Shared Data Environment under the reference stated at Schedule 18 (Referenced Documents) and provide details of the process by which and by whom design decisions are to be taken under this Contract. They shall be applied by the Parties at all times in carrying out work under this Contract.

39.5.2 Any changes to the Design Management Arrangements (and any other Referenced Document) required by either Party will be subject to agreement by CMB in consultation with the Parties' heads of Engineering.



39.5.3 Once agreed by CMB in consultation with the Parties' heads of Engineering, the revised Design Management Arrangements (and any other Referenced Documents) shall be lodged by the Contractor in the Shared Data Environment, and the current version of the document shall be the latest agreed version resident therein.

#### 39.6 Technical Assistance Agreements

In the event that the Contractor requires access to any ITAR controlled technical data or technical services (other than as is provided as GFI) in order to satisfy the requirements of this Contract, the Contractor shall be responsible for obtaining a Technical Assistance Agreement (subject to obtaining US state department approvals) and shall promptly inform the Authority of this requirement.

#### 39.7 Control Account Plans

39.7.1 The Contractor shall manage the work under this Contract through a process based on a number of Control Account Plans which shall describe to the level required:

- (i) the tasks within the Control Account;
- (ii) the resources allocated for the Control Account;
- (iii) the schedule of activities within the Control Account; and
- (iv) the outputs provided by the Control Account.

39.7.2 The Contractor shall ensure that the scope of work and budget within the Control Account Plans is consistent with Part 2 (Scope of Work) of Schedule 1 (Schedule of Requirements) and the other provisions of this Contract.

39.7.3 A Control Account Manager shall be appointed by the Contractor to manage each Control Account Plan. Progress against each Control Account Plan shall be reviewed on a monthly basis. The Authority may nominate an Authority counterpart to each Control Account Manager who may attend such a review. The Authority counterpart may raise with the Control Account Manager any concerns regarding the scope of activities being undertaken or the manner in which they are being conducted on a monthly basis. If the Authority counterpart believes that the concerns have not been adequately addressed by the Control Account Manager the Authority counterpart may refer the matter to the CMB. The management information used at the reviews shall be consistent with the Progress Report.

#### 40 Progress Reports

40.1 Monthly progress reports (each, a "Progress Report") shall be prepared by the Contractor in the form agreed by the Parties from time to time and shall be submitted monthly, at least two (2) Business Days (or such other period as the CMB may require) prior to a meeting of the CMB following the period to which it relates.

40.2 Each Progress Report shall include:

- 40.2.1 details of actual progress of the Demonstration Activities (with details of any events or circumstances which may jeopardise the completion in accordance with this Contract, and the measures being (or to be) adopted to overcome delays);
- 40.2.2 a list of any Changes submitted or proposed under Schedule 8 (Change Control Procedure) (including copies of any Change Requests and Formal Proposals (if applicable));
- 40.2.3 details of activities planned for the next month period;
- 40.2.4 details of the Contractor's performance under this Contract as against the Milestones;
- 40.2.5 details of any health, safety and environment issues in respect of the performance of obligations under this Contract;
- 40.2.6 details of the status, timing and issues (if any) in relation to any GFI;
- 40.2.7 details of Financial Management Information provided pursuant to Clause 47 (Financial and Forecasting Reports); and
- 40.2.8 a monthly status report in respect of the Equipment Supply Chain Contracts currently being negotiated by the Contractor (showing equipment, supplier and value) including any deviations from the Equipment Supply Chain Contract Baseline.

#### 41 Quality Assurance

##### 41.1 General Standard

The Contractor shall comply with the general standard set out in Clause 7 (Contractor's Obligations).

##### 41.2 Specific Standards

41.2.1 Without prejudice to Clause 41.1 (General Standard), the Contractor shall ensure its ongoing certification against BS EN ISO 9001:2008, and that the Services and Demonstration Activities under this Contract are carried out in accordance with:

- (i) AQAP 2110 edition 2 (NATO Quality Assurance Requirements for Design, Development & Production); and
- (ii) the Project Management Plan.

41.2.2 If required, the Contractor shall demonstrate to the Quality Assurance Representative that there is a system in place that provides objective evidence that delivery of the Services in accordance with the requirements of this Contract can be achieved.

##### 41.3 Quality Assurance

41.3.1 The following DEFSTANs and AQAPs shall apply to this Contract (subject always to Clause 3.2) and the Contractor shall procure that such DEFSTANs and AQAPs apply to its sub-contracts to the extent possible:

- (i) "AQAP 2070" (Edition 2) NATO Mutual Government Quality Assurance Process;

- (ii) "AQAP 2110" (Edition 3 November 2009) NATO Quality Assurance Requirements for Design, Development and Production;
- (iii) "DEFSTAN 05-61 Part 1" (Issue 5 August 2010) Quality Assurance Procedural Requirements Part 1 Concessions;
- (iv) "AQAP 2105" (Edition 2 November 2009) NATO Requirements for Deliverable Quality Plans;
- (v) "AQAP 2210" (Edition 3 November 2009) NATO Supplementary Software Quality Assurance Requirements to AQAP 2110;
- (vi) "DEFSTAN 02-41" (Issue 3 May 2012, as amended December 2012) Requirements For Configuration Management of Surface Warships;
- (vii) "DEFSTAN 05-57" (Issue 6 March 2014) Configuration Management of Defence Materiel;
- (viii) "DEFSTAN 05-61 Part 4" (Issue 3 October 2002, as amended 28 January 2011) Quality Assurance Procedural Requirements Part 4 Contractor Working Parties;
- (ix) "DEFSTAN 05-61 Part 9" (Issue 4 May 2010) Quality Assurance Procedural Requirements Part 9 Independent Inspection Requirements for Safety Critical Items; and
- (x) "DEFSTAN 05-99" (Issue 4 December 2010, as amended 31 October 2011) Managing Government Furnished Equipment in Industry.

41.3.2 This is not an exhaustive list and other DEFSTANs as called up in this Contract shall also apply.

41.3.3 The Quality Management Plan provided by the Contractor under Schedule 18 (Referenced Documents) shall comply with AQAP 2105 (and such Quality Management Plan shall be the "Deliverable Quality Plan" referred to in AQAP 2105). Notwithstanding that the Quality Management Plan will have been seen and agreed by the Authority, the Contractor shall be solely responsible for the accuracy, suitability and applicability of the Quality Management Plan.

## 42 Quality Assurance – Requirement for a Certificate of Conformity

42.1 The Contractor shall provide a Certificate of Conformity ("CofC") in accordance with the Schedule of Requirements and any applicable Quality Management Plan for any Article. One copy of the CofC shall be sent to the Authority Project Manager upon delivery and one copy shall be provided with the Articles.

42.2 The CofC shall be considered by the Contractor as a record and Clause 48 (Contractor's Records) shall apply.

42.3 The information provided on the CofC shall include:

42.3.1 Contractor name and address;

42.3.2 Contractor unique CofC reference number;

42.3.3 Contract number and where applicable contract amendment number;

- 42.3.4 Details of any approved concessions;
  - 42.3.5 Acquirer name and organisation;
  - 42.3.6 Delivery address;
  - 42.3.7 Contract Item Number from the Schedule of Requirements;
  - 42.3.8 Description of Article including part number, Specification and configuration status;
  - 42.3.9 Identification marks, batch and serial number(s) in accordance with the Specification;
  - 42.3.10 Quantities; and
  - 42.3.11 A signed and dated statement by the Contractor that the Articles provided comply with the requirements of this Contract, and approved concessions; and
  - 42.3.12 Exceptions or additions to the above are to be documented.
- 42.4 Where the Schedule of Requirements and any applicable Quality Management Plan requires demonstration of traceability and design provenance through the supply chain, the Contractor shall include in any relevant sub-contract the requirement for the information called for at Clause 42.3. The Contractor shall ensure that this information is available to the Authority through the supply chain, upon request in accordance with Clause 48 (Contractor's Records).

Part 7

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46 Open Book Accounting and Records

46.1 During the Term and for a period of two (2) years from expiry of the Term, the Contractor will maintain and provide on reasonable notice of a request from the Authority, CAAS, the National Audit Office or its or their representatives, on an open book basis, current and accurate books of account and other records (in whatever form they may be kept, whether written, electronic or other) which, together with any assistance provided pursuant to this Clause 46, will be sufficient in all respects to allow the Authority, CAAS, the National Audit Office and its or their representatives to effectively:

46.1.1 verify any actual costs incurred by the Contractor;

46.1.2 determine any compensation payable under Clause 62 (Voluntary Termination); and

46.1.3 monitor the performance by the Contractor of its obligations to perform the Services and Demonstration Activities,



each under this Contract.

46.2 The Contractor will provide such assistance as the Authority, CAAS, the National Audit Office or its or their representatives may reasonably require at any time upon reasonable notice for its representatives to obtain access to the information referred to in Clause 46.1 and to take copies of that information.

46.3 The Contractor will provide, at the request of the Authority, CAAS, the National Audit Office or its or their representatives, all assistance reasonably required by the Authority or its representatives to understand or interpret the information to be maintained pursuant to Clause 46.1. This may include allowing the Authority, CAAS, the National Audit Office or its or their representatives to engage directly with the relevant personnel of the Contractor or any sub-contractor.

46.4 The Authority agrees that, where the exercise of the rights granted at Clause 46.1, 46.2 or 46.3 would cause significant time and effort to be incurred by personnel of the Contractor and/or other significant disruption to the Contractor, the Authority's exercise of those rights will be proportionate, having regard to the benefit which may be achieved through the exercise of the rights and the disruption caused to the Contractor.

46.5 Subject to Clause 46.4, all costs incurred by the Contractor in the performance of its obligations under this Clause 46 shall be deemed to be included in the Estimated Base Cost.

#### Access for National Audit Office

46.6 The Contractor shall permit records provided under this Clause 46 to be examined and copied by the Comptroller and Auditor General and his representatives.

#### 47 Financial and Forecasting Reports

47.1 The Contractor shall submit to the Authority Financial and Forecasting Reports (including Financial Management Information) in the form set out in Schedule 15 (Form of Financial and Forecasting Report) as part of the monthly Progress Reports.

47.2 The Financial and Forecasting Reports provided under Clause 47.1 above shall be copied to the Authority Representative and Authority Project Manager.

47.3 Without prejudice to Clauses 47.1 and 47.2 above, if requested by the Authority, the Contractor shall provide Financial Management Information to the Authority Representative and Authority Project Manager:

47.3.1 within twenty (20) Business Days of the Effective Date; and

[REDACTED]

47.4 These Financial and Forecasting Reports shall not prejudice any rights of the Authority or the Contractor under this Contract.

#### 48 Contractor's Records

48.1 The Contractor shall maintain all records specified in and in connection with this Contract (expressly or otherwise), and make them available to the Authority when requested on reasonable notice.

48.2 Subject to the provisions of Clause 79 (Confidentiality), the Contractor shall permit all records referred to in Clause 48.1 to be examined, and if necessary copied, by the Authority, or Authority Representative, as the Authority may require.

48.3 Unless this Contract specifies otherwise, the records referred to in Clause 48.1 above shall be retained for a period of at least six (6) years from:

48.3.1 the end of the Contract term;

48.3.2 the termination of the Contract; or

48.3.3 the final payment,

whichever occurs latest.

#### 49 SSCR Contract Reports

The Contractor shall provide those records set out in Schedule 16 (SSCR Contract Reports) by the dates stipulated therein. The Parties acknowledge and agree that the records set out in Schedule 16 (SSCR Contract Reports) are not exhaustive and that the Contractor shall provide any and all such records required by Legislation or Regulation.

#### 50 Protection of Personal Data

50.1 The Contractor shall, in relation to Personal Data it receives from the Authority pursuant to this Contract, and the Authority shall, in relation to Personal Data it receives from the Contractor pursuant to this Contract:

50.1.1 process any Personal Data obtained pursuant to this Contract only to the extent, and in such manner, as is necessary for the carrying out of its obligations under or in connection with this Contract or as is required by Legislation or any Regulatory Body;

50.1.2 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures 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;

50.1.3 take reasonable steps to ensure the reliability of any personnel who have access to any Personal Data;

50.1.4 ensure that all employees 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 50.1;

50.1.5 notify the other (within five (5) 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 either Party's obligations under the Data Protection Legislation;

50.1.6 provide the other with full co-operation and assistance in relation to any complaint or request made, including by:

- (i) providing the other with full details of the complaint or request;
- (ii) complying with a data access request within the relevant timescales set out in the Data Protection Legislation; and
- (iii) providing the other with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and

50.1.7 not process such Personal Data outside the European Economic Area without the prior written consent of the other and, where consent is given, to comply with the obligations of a Data Controller under the Eighth Data Protection Principle set out in schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred.

50.2 Both the Contractor and the Authority shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the other party to breach any of its applicable obligations under the Data Protection Legislation.

[REDACTED]

[REDACTED]

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Part 9

Change

52 Changes

Any Change shall be made in accordance with Schedule 8 (Change Control Procedure).

53 Variations

53.1 This Contract may not be amended except by written agreement of the duly authorised representatives of the Parties, following the process set out in Schedule 8 (Change Control Procedure).

53.2 For the purposes of Clause 53.1, the written agreement of the Parties shall be obtained only by:

53.2.1 a serially numbered amendment being issued to the Contractor by the Authority Representative. The amendment shall come into force only when the Contractor has despatched to the Authority Representative on a DEFFORM 10B an unqualified acceptance of the Authority's offer; or

53.2.2 the despatch by the Authority Representative of a serially numbered amendment letter as an unqualified acceptance of an offer from the Contractor.

53.3 Any purported amendment to this Contract which does not satisfy the terms of this Clause 53 shall be of no effect.

## Part 10

### Insurance and Liability

#### 54 Insurance

##### 54.1 Requirement to maintain

54.1.1 The Contractor shall, for the Term, take out and maintain, or procure the taking out and maintenance of, in full force and effect, the required insurances in accordance with the requirements specified [REDACTED] and any other insurances as may be required by law (together, the "Required Insurances").

54.1.2 The Required Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the United Kingdom insurance market.

54.1.3 The Contractor shall not take, or fail to take, any action, or permit anything to occur, or not occur, in relation to it, which would entitle any insurer to refuse to pay any claim under any of the Required Insurances or cancel, suspend or terminate any of the Required Insurances.

##### 54.2 Evidence of the Required Insurances

54.2.1 The Contractor shall provide, on request, to the Authority reasonably acceptable evidence, in the form of an insurance certificate or insurance broker letter, that the premiums payable under the Required Insurances have been paid and that the Required Insurances are in full force and effect and meet the insurance requirements of this Contract and the Contractor in respect thereof.

54.2.2 Neither inspection nor receipt of such evidence shall constitute acceptance by the Authority of the terms thereof, nor be a waiver of the Contractor's liability under this Contract.

54.3 Cancellation

54.3.1 Where the insurers purport to cancel, suspend or terminate the Required Insurances, the Contractor shall procure that the insurers shall, as soon as is reasonably practicable, notify the Contractor in writing in the event of any such proposed suspension, cancellation or termination.

54.3.2 Where the Contractor receives notification from insurers pursuant to Clause 54.3.1, the Contractor shall promptly notify the Authority in writing of receipt of such proposed suspension, cancellation or termination.

[REDACTED]

55 Title and Risk

Title

55.1 Subject to the following provisions of this Clause 55:

55.1.1 all material which the Contractor acquires for the purposes of this Contract or allocates for incorporation in any Vessels (including all spares);

55.1.2 the Special Jigs, Tools Etc.; and

55.1.3 any Article and/or Demonstration Activity paid for by the Authority pursuant to this Contract,

shall vest in and become the absolute property of the Authority (and any Special Jigs, Tools Etc. shall become Authority Special Jigs and Tools Etc.) on the earlier of the date on which:

(i) the material or part is acquired by the Contractor for the purposes of this Contract, or is allocated for incorporation in any of the Vessels, and shall from that time be in the possession of the Contractor for the sole purpose of completing each Vessel and delivering it when completed to the Authority, and shall not be within the control or disposition of the Contractor other than for that purpose;

(ii) the Contractor acquires title to the relevant material or part; and

(iii) the Authority pays for any Article, Special Jigs, Tools Etc. and/or Demonstration Activity pursuant to this Contract.

55.2 Certain equipment being procured or manufactured by the Contractor or its Sub-Contractors pursuant to this Contract is intended to be incorporated in the Vessels which are intended to be delivered to the Authority at Portsmouth Naval Base.

55.3 The Contractor shall ensure that neither it nor any Sub-Contractor shall have a lien on any Vessel, material or part which has vested in the Authority under Clause 55.1 for any sum due to the Contractor, Sub-Contractor or other person.

55.4 Without prejudice to Clause 55.1, the Contractor shall ensure that, when any material or items are acquired for the purposes of this Contract, or are allocated for incorporation in any of the Vessels, they are marked or recorded so that they are readily identifiable as the property of the Authority (and, in the case of any Special Jigs, Tools Etc. that become Authority Special Jigs and Tools Etc., such items are recorded in Schedule 12 (Authority Special Jigs and Tools Etc.) by way of formal contract amendment in accordance with Clauses 52 (Changes) and 53 (Variations) and Schedule 8 (Change Control Procedure)). The Contractor shall comply with any direction given by the Authority in respect of steps to be taken to ensure the materials or items are so identifiable.

#### Risk

55.5 The risk for loss or damage in any component parts and equipment and all material acquired under this Contract which the Contractor has acquired for the purposes of this Contract or allocated for incorporation into a Vessel shall remain with the Contractor.

55.6 The risk for loss or damage in any Authority Special Jigs and Tools Etc. shall transfer to the Authority on actual delivery of such Authority Special Jigs, Tools Etc. to the Authority in accordance with Clause 13 (Special Jigs, Tooling and Test Equipment) (the "Authority Special Jigs Risk Transfer Date").

55.7 Prior to the Authority Special Jigs Risk Transfer Date, the risk for loss or damage in any Authority Special Jigs and Tools Etc. shall, notwithstanding that such Authority Special Jigs and Tools Etc. may have been inspected by the Authority, remain with the Contractor. The Contractor shall make good any such loss or damage howsoever caused or occasioned prior to the Authority Special Jigs Risk Transfer Date.

#### 56 Indemnity

##### Contractor Indemnity

56.1 Subject to Clause 19 (Design Risk), the Contractor shall indemnify the Authority against all claims and Direct Losses arising under or in connection with this Contract or in the performance of the Demonstration Activities in respect of:

56.1.1 any sickness, disease, death or personal injury of any person; and

56.1.2 any loss or damage to any third-party property, real or personal,

arising from the act, error, omission or default of the Contractor or any Contractor's Personnel.



##### Authority Indemnity

56.3 The Authority shall indemnify the Contractor against all claims and Direct Losses arising in respect of any sickness, disease, death or personal injury of any person arising from the act, error, omission or default of the Authority or its employees, contractors or agents (other than the Contractor or any Contractor's Personnel).

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63 Corrupt Gifts and Payments

63.1 The Contractor shall not do, and warrants that in entering this Contract it or any member of its Group or any of its or their employees, agents or Sub-Contractors (or anyone acting on behalf of such persons) has not done, any of the following:

63.1.1 offer, give or agree to give to any Crown servant 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 or any other contract with the Crown; or
- (ii) for showing or not showing favour or disfavour to any person in relation to this or any other contract with the Crown;

63.1.2 enter 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;

63.1.3 commit any offence:

- (i) under the Prevention of Corruption Acts 1889-1916;
- (ii) under sub-sections 108-109 of the Anti-Terrorism, Crime and Security Act 2001;
- (iii) under the Bribery Act 2010;
- (iv) under Legislation creating offences in respect of fraudulent acts; or
- (v) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Crown; or

63.1.4 defraud or attempt to defraud or conspire to defraud the Crown,

(the circumstances identified in Clauses 63.1.1 to 63.1.4 above being "Prohibited Acts").

63.2 If 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, then the Authority shall be entitled to act in accordance with Clauses 63.2.1 to 63.2.4 below:

63.2.1 if a Prohibited Act is committed by a Contractor Employee not acting independently, then this shall be treated as a Contractor Default for the purposes of Clause 61.1.3 (Corrupt Gifts and Payments) and the Authority shall be entitled to terminate this Contract in its entirety in accordance with Clause 61.4 (Termination of this Contract);

63.2.2 if the Prohibited Act is committed by a Contractor Employee acting independently of the Contractor, then this shall be treated as a Contractor Default for the purposes of Clause 61.1.3 (Corrupt Gifts and Payments) and the Authority shall be entitled to terminate this Contract in its entirety in accordance with Clause 61.4 (Termination of this Contract), unless, within thirty (30) Business Days of receipt of a Termination Notice under Clause 61.4 (Termination of this Contract), the Contractor terminates the employee's employment;

63.2.3 if the Prohibited Act is committed by a Sub-Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor, then this shall be treated as a

Contractor Default for the purposes of Clause 61.1.3 (Corrupt Gifts and Payments) and the Authority shall be entitled to terminate this Contract in its entirety in accordance with Clause 61.4 (Termination of this Contract), unless, within thirty (30) Business Days of receipt of a Termination Notice under Clause 61.4 (Termination of this Contract), the Contractor terminates the relevant sub-contract; and

63.2.4 if the Prohibited Act is committed by an employee of a sub-contractor acting independently of that sub-contractor, then this shall be treated as a Contractor Default for the purposes of Clause 61.1.3 (Corrupt Gifts and Payments) and the Authority shall be entitled to terminate this Contract in its entirety in accordance with Clause 61.4.2 (Contents and effect of Termination Notice), unless, within thirty (30) Business Days of receipt of a Termination Notice under Clause 61.4 (Termination of this Contract), the sub-contractor terminates the employee's employment.

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67 Decoupling Clause – Sub-Contracting with the Crown

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

67.1.1 give the Contractor any right under this Contract to an extension of time or additional payment or damages or any other relief or remedy whatsoever against the Authority;

67.1.2 affect, modify, reduce or extinguish either the obligations of the Contractor or the rights or remedies of the Authority; or

67.1.3 be taken to amend, add to, delete or waive any term or condition of this Contract.

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Part 12

General

69 Contractor Warranties and Representations

69.1 The Contractor warrants and represents to the Authority on the date of this Contract that:

69.1.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate capacity, power and authority to own its assets and to carry on its business as it is now being conducted;

69.1.2 it has the corporate capacity, power and authority to enter into and to exercise its rights and perform its obligations under, and as contemplated by, this Contract;

69.1.3 all action necessary on the part of the Contractor to authorise the execution and the performance of its obligations under this Contract has been taken;

69.1.4 the obligations expressed to be assumed by the Contractor under this Contract are legal, valid, binding and enforceable to the extent permitted by English law;

69.1.5 the execution, delivery and performance by the Contractor of this Contract:

- (i) does not constitute a default under any document which is binding upon the Contractor;
- (ii) does not conflict with the memorandum and articles of association of the Contractor; and
- (iii) does not conflict with any judicial order applicable to the Contractor;

69.1.6 no claim is presently being assessed (as far as the Contractor is aware) and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which might have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract which have not been notified to the Authority prior to the Effective Date;

69.1.7 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

69.1.8 it or any member of its Group shall not commit, and in entering into this Contract it has not committed, any Prohibited Act,

and the Authority relies upon such warranties and representations.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

71 Transfer by the Authority

The rights and obligations of the Authority under this Contract may be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise), provided that it is in respect of the whole of this Contract:

71.1 to any UK public body (being a single entity) acquiring the whole of this 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:

71.1.1 to a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975 (as amended or replaced from time to time); or

71.1.2 to any other UK public body whose obligations under this Contract 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.

72 Transfer by the Contractor

The Contractor shall not give, bargain, sell, assign, novate or otherwise dispose of this Contract or any part thereof, or the burden, benefit or advantage of this Contract or any part thereof, without the prior consent in writing of the Authority.

73 Change of Control of the Contractor

73.1 The Contractor shall inform the Authority, as soon as practicable (but in any event not less than thirty (30) Business Days in advance), in writing of any proposed Change of Control of the Contractor. The Contractor shall not be required to submit any advice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Contractor in the UK or other jurisdictions where the Contractor may be subject to legal sanction arising from issue of such advice.

73.2 For the purposes of this Clause 73, "Control" means the power of a person to secure that the affairs of the Contractor or subsidiary of the Contractor are conducted in accordance with the wishes of that person:

73.2.1 by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or

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

and a "Change of Control" occurs if a person who Controls the Contractor ceases to do so or if another person acquires Control of the Contractor.

73.3 The notification referred to in Clause 73.1 should be submitted to the Authority Representative and to:

Mergers and Acquisitions Section

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

73.4 Advice by the Contractor of any Change of Control shall not prejudice the existing rights of the Authority or the Contractor under this Contract nor create or imply any rights of either the Contractor or the Authority additional to the Authority's right to receive that information.

73.5 Where the Authority considers that a proposed Change of Control would be contrary to the defence, national security or national interest of the UK or where the Change of Control would result in increased cost to the Authority in the provision of the Services, then the Change of Control shall not proceed until agreement with the Authority is established. The Authority shall without delay engage with the Contractor in detailed discussions to enable the Contractor to understand the Authority's rationale in the event that the Authority does not agree to the proposed Change of Control.

74 Change in the Contractor Representative



#### 74.1 Change in the Contractor Representative

74.1.1 The Contractor may, by notice to the Authority and with the Authority's approval (such approval not to be unreasonably withheld or delayed), change the Contractor Representative or appoint more than one Contractor Representative (provided that, if more than one Contractor Representative is proposed, the Contractor shall provide written confirmation to the Authority Representative of the extent of each person's authority). Where the Contractor wishes to do so, it shall by written notice to the Authority propose a substitute for approval, taking into account the need for liaison and continuity in relation to the performance of the Contractor's obligations under this Contract. If the Authority approves the change to the Contractor Representative, Annex 1 (Authority and Contractor Representatives) of Schedule 10 (Representatives) shall be updated accordingly.

74.1.2 During any period when the Contractor Representative is unable through illness, incapacity, holidays or any other reason to carry out or exercise his functions under this Contract, the Contractor Representative may, with the Authority Representative's approval, delegate his functions to another person by giving the Authority Representative written notice of the identity of such person and the extent of his authority. The Authority Representative shall not unreasonably withhold or delay his approval of the delegate under this Clause 74.1.2.

#### 75 Waiver

75.1 No act or omission of either Party shall by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.

75.2 No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

#### 76 Rights and Remedies are Cumulative

The rights and remedies arising from this Contract are cumulative. They are not exclusive of any other rights or remedies provided by law or otherwise except to the extent this Contract expressly states otherwise.

#### 77 Notices

77.1 All notices, orders or other forms of communication required to be given in writing (a "Notice") under or in connection with this Contract shall:

77.1.1 be given in writing;

77.1.2 be authenticated by signature or by such other method as agreed between the Parties;

77.1.3 be marked for the attention of the appropriate department, officer or representative and copied to the Contractor Representative or Authority Representative (as appropriate); and

77.1.4 be marked in a prominent position with the relevant contract number.

77.2 Notices should be delivered by:

77.2.1 hand;

77.2.2 registered (signed for on delivery) pre-paid post (or airmail in the case of Notices from overseas);

77.2.3 facsimile; or

77.2.4 electronic mail.

77.3 Notices shall be deemed to have been received:

77.3.1 if delivered by hand, on the day of delivery if it is a Business Day and otherwise on the first (1st) Business Day immediately following the day of delivery;

77.3.2 if sent by registered (signed for on delivery) prepaid post (or airmail, if appropriate), on the third (3rd) Business Day (or on the tenth (10th) Business Day, in the case of airmail) after the day of posting; and

77.3.3 if sent by facsimile, or other electronic means:

(i) if transmitted between 09:00 and 17:00 on a Business Day (recipient's time), on completion of receipt by the sender of verification of the transmission from the receiving instrument; or

(ii) if transmitted at any other time, at 09:00 on the first Business Day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument.

77.4 The addresses (including electronic addresses) of each Party to which all Notices shall be sent are those specified below, or such other address as either Party may by notice specify to the other for the purpose of this Clause 77.4:

77.4.1 Authority Representative:

[REDACTED]

[REDACTED]

Defence Equipment and Support,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

77.4.2 Contractor Representative:

[REDACTED]

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BAE Systems Surface Ships Limited – Naval Ships

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77.6 Where either Party requests written confirmation of any communication which does not constitute a Notice, such request shall not unreasonably be refused.

78 Publicity, Communications with the Media and Announcements

Publicity and Communications with the Media

78.1 The Contractor shall not by itself, its employees or agents communicate with representatives of the press, television, radio or other communications media on any matter concerning this Contract (unless it has consulted and obtained the prior written consent of the Authority Representative).

Announcements

78.2 No announcement or communication concerning the existence or provisions of this Contract, or any matter related to or contemplated by this Contract, will be made or issued by or on behalf of the Contractor without the prior written approval of the Authority Representative (such approval not to be unreasonably withheld or delayed). This will not affect any announcement or communication required by law or any governmental or regulatory body, but the Contractor will consult with the Authority Representative insofar as is reasonably practicable before complying with such obligation.

## 79 Confidentiality

### 79.1 SSCR Information

79.1.1 The Authority shall keep SSCR Information confidential and, except with the prior written consent of the Contractor, shall not disclose or make available the SSCR Information in whole or in part to any person, except as expressly permitted by this Clause 79.1.

79.1.2 The Authority may disclose the SSCR Information in all circumstances which would be permitted disclosures under Section 5(1) of Schedule 5 of the DRA.

79.1.3 Where the Authority discloses SSCR Information to any Central Government Body under Clause 79.1.2, the Authority shall ensure that the recipient of the SSCR Information is made aware of and asked to respect its confidentiality.

79.1.4 Where the Authority discloses SSCR Information to its professional advisers or consultants under Clause 79.1.2, the Authority shall inform them of the confidential nature of the SSCR Information before disclosure and shall obtain from them enforceable obligations to keep the SSCR Information confidential in terms at least as extensive and binding on them as the terms of this Clause 79.1 are on the Authority.

79.1.5 To the extent permitted by the time for compliance under the FOIA, the Authority shall consult the Contractor where the Authority is considering the disclosure of SSCR Information under the FOIA, and, in any event, shall provide prior notification to the Contractor of any decision to disclose the SSCR Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose SSCR Information in order to comply with the FOIA is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the FOIA. For the avoidance of doubt, nothing in this Clause 79.1 shall affect the Contractor's rights at law.

79.1.6 If, for the purposes of this Contract, the Contractor enters into a sub-contract which it has assessed to be a 'Qualifying Sub-Contract' for the purpose of the DRA and SSCR, it shall include in that sub-contract the terms set out in Part 2 (Provisions To Be Included In Qualifying Sub-Contracts) of Schedule 3 (Sub-Contract Provision Flow Down) (inserting relevant party names and/or definitions where appropriate).

79.1.7 The obligations set out in this Clause 79.1 shall be the Authority's sole contractual obligations of confidentiality regarding the SSCR Information. Any other provision of this Contract (including Clause 79.2 (Confidentiality and Freedom of Information) below) relating to the confidentiality of information provided under or in connection with this Contract, including, but not

limited to, Clause 79.2 (Confidentiality and Freedom of Information), shall be construed in such a way as to exclude the SSCR Information from their application.

79.1.8 Nothing in this Clause 79.1 shall affect the Authority's obligations of confidentiality where information is disclosed orally in confidence.

## 79.2 Confidentiality and Freedom of Information

79.2.1 Subject to Clause 79.1 (SSCR Information) and except to the extent set out in this Clause 79.2 and Clause 82 (Transparency), each Party agrees, for itself and its respective directors, officers, employees and agents, to keep confidential and not to disclose to any person any of the other's Confidential Information.

79.2.2 The Contractor shall take all reasonable precautions necessary to ensure that all Authority Confidential Information is:

- (i) disclosed to its employees and sub-contractors, only to the extent necessary for the performance of this Contract; and
- (ii) treated in confidence by them and not disclosed except with the prior written consent of the Authority or used otherwise than for the purpose of performing work or having work performed for the Authority under this Contract or any sub-contract under it.

79.2.3 The Contractor shall ensure that its directors, officers, employees and agents are aware of the arrangements for discharging the obligations under this Clause 79.2 before they receive Confidential Information and take such steps as may be reasonably practical to enforce such arrangements.

79.2.4 Notwithstanding Clauses 79.2.1 and 79.2.2, and subject to Clause 79.2.5, the following disclosures of Confidential Information shall be permitted:

- (i) any disclosure of Confidential Information by the Contractor that is reasonably required by persons engaged in the performance of their obligations under this Contract, including disclosure to its professional advisers, Affiliates incorporated in the United Kingdom and Sub-Contractors, in all cases to the extent necessary in connection with this Contract;
- (ii) any matter which a Party can demonstrate is already in the public domain otherwise than as a result of a breach of this Contract or any other agreement between the Parties;
- (iii) any disclosure to enable a determination to be made under the Dispute Resolution Procedure;
- (iv) any disclosure which is required by any law (including any order of a court of competent jurisdiction), any regulatory or parliamentary obligation or the rules of any relevant stock exchange or governmental or regulatory authority having the force of law, provided that, where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Confidential Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this Clause 79.2;

- (v) any disclosure of Confidential Information which is already in the possession of the receiving party and is not subject to obligations of confidentiality prior to its disclosure by the disclosing party;
- (vi) any disclosure by either Party as may be reasonably required:
  - (a) to any consultant engaged by a Party in connection with this Contract, provided the other party has been consulted in advance and the relevant consultant has, if required, entered into a confidentiality agreement in a form required by the other party (acting reasonably); or
  - (b) to any person conducting an Office of Government Commerce gateway review;
- (vii) any disclosure of the Contractor Confidential Information by the Authority to any other department, office or agency of HM Government or any Ally;
- (viii) any disclosure by the Authority of any document related to this Contract to which it is a party and which the Contractor (acting reasonably) has agreed in writing with the Authority contains no Contractor Confidential Information;
- (ix) any disclosure for the purposes of:
  - (a) the examination and certification of the Authority's or the Contractor's accounts; or
  - (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;
- (x) any disclosure to the extent that either Party can show from its records that the same information was derived independently of that received under or in connection with this Contract, provided that the relationship to any other Confidential Information is not revealed; and
- (xi) any use or disclosure of Confidential Information that is otherwise expressly permitted under this Contract.

79.2.5 Where disclosure is permitted under Clause 79.2.4, other than Clauses 79.2.4(ii), 79.2.4(iv), 79.2.4(v), 79.2.4(vii) (only insofar as Clause 79.2.4(vii) relates to HM Government, and not insofar as it relates to any Ally), 79.2.4(viii), 79.2.4(ix), 79.2.4(x) and 79.2.4(xi), the relevant party shall provide a confidentiality undertaking that contains the same level of obligations as contained in this Clause 79.2 and will, if required, sign a confidentiality agreement.

79.2.6 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. For the avoidance of doubt, 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.

79.2.7 Clause 79.2.5 shall not prevent the Authority or any other department, office or agency of HM Government from using or disclosing any information about this Contract as necessary to secure

improvements in value for money across HM Government and in any reports as necessary to comply with the objectives of the relevant department, office or agency.

79.2.8 The Contractor shall not, and shall procure that no Contractor Employee shall, make use of or copy any Authority Confidential Information otherwise than for the purposes of this Contract and the Contractor's performance of its obligations under this Contract.

79.2.9 The Contractor acknowledges that the Authority is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations and shall assist the Authority's compliance with its FOI Information disclosure requirements pursuant to the same in the manner provided for in Clauses 79.2.10 to 79.2.14 (inclusive) below.

79.2.10 Where the Authority receives a Request for Information in relation to FOI Information that the Contractor is holding on its behalf under this Contract, the Contractor shall, at the Authority's request to the Contractor Representative and as soon as is practicable, provide an estimate of the total time for complying with the request to enable the Authority, in compliance with the FOIA, to assess the extent to which it wishes the Contractor to provide the Authority with support as set out in Clause 79.2.9. The Contractor shall then:

- (i) provide the Authority Representative with a copy of all such FOI Information in the form that the Authority Representative requires; and
- (ii) provide all necessary assistance as reasonably requested by the Authority Representative in connection with any such FOI 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.

79.2.11 The Authority shall notify the Contractor of any FOIA request which relates to any Commercially Sensitive Information which it holds.

79.2.12 Following notification under Clause 79.2.10 or 79.2.11, and up until such time as the Contractor has provided the Authority Representative with all the FOI Information specified in Clause 79.2.10(i), the Contractor may make representations to the Authority Representative as to whether or not or on what basis FOI 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:

- (i) whether any Confidential Information and/or any other FOI Information is exempt from disclosure under the FOIA and the Environmental Information Regulations;
- (ii) whether FOI 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 Representative.

79.2.13 The Contractor acknowledges that any lists provided by them listing or outlining Commercially Sensitive Information are of indicative value only and that the Authority may

nevertheless be obliged to disclose Commercially Sensitive Information in accordance with the requirements of the FOIA and the Environmental Information Regulations.

79.2.14 The Contractor acknowledges that (notwithstanding the provisions of Clauses 79.2.9 to 79.2.13) 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 1 of the FOIA (the "Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose FOI Information concerning the Contractor:

- (i) in certain circumstances without consulting with the Contractor; or
- (ii) following consultation with the Contractor and having taken its views into account, provided always that, where Clause 79.2.14(i) applies, the Authority Representative shall, in accordance with the recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or, failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

79.2.15 The provisions of this Clause 79.2 are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

79.2.16 Nothing in this Clause 79.2 shall affect the Parties' obligations of confidentiality where information is disclosed orally in confidence as long as it is not recorded in any way and both Parties are aware, or except where such information is subject to the provisions of the Data Protection Act 1998.

## 80 Child Labour and Employment Law

80.1 The Contractor shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where this Contract is being performed.

80.2 The Contractor agrees to take reasonable efforts to reflect this Clause 80 in any sub-contract that it enters into to satisfy the requirements of this Contract and to require its sub-contractors to reflect this Clause 80 in their sub-contracts that they enter into to satisfy the requirements of this Contract.

## 81 Employee Transfer Regulations

The provisions of Schedule 22 (Transfer Regulations) shall apply to this Contract.

## 82 Transparency

82.1 Notwithstanding any other terms of this Contract, including Clause 79 (Confidentiality) where applicable, the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information.

82.2 Before publishing the Transparency Information to the general public in accordance with Clause 82.1, the Authority shall redact any information that would be exempt from disclosure if it was the subject of a Request for Information under the FOIA or the Environmental Information



Regulations and shall notify the Contractor of any Transparency Information which relates to any Commercially Sensitive Information which it holds, in which case, Clauses 79.2.12 and 79.2.13 shall apply.

82.3 The Authority may consult with the Contractor before redacting any information from the Transparency Information in accordance with Clause 82.2. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the FOIA or the Environmental Information Regulations.

82.4 For the avoidance of doubt, nothing in this Clause 82 shall affect the Contractor's rights at law.

### 83 Security Measures

The provisions of Schedule 14 (Security Measures) shall apply to this Contract.

### 84 Equality

84.1 The Contractor shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including reassignment), sex or sexual orientation, marital status (including civil partnerships), pregnancy and maternity, race, or religion or belief.

84.2 Without prejudice to the generality of the obligation in Clause 84.1, the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent legislation in the country where this Contract is being performed.

84.3 The Contractor agrees to take reasonable efforts to secure the observance of the provisions of this Clause 84 by any of its employees, agents or other persons acting under its direction or control who are engaged in the performance of this Contract.

84.4 The Contractor agrees to take reasonable efforts to reflect this Clause 84 in any sub-contract that it enters into to satisfy the requirements of this Contract and to require its sub-contractors to reflect this Clause 84 in their sub-contracts that they enter into to satisfy the requirements of this Contract.

### 85 Contract Status

85.1 Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Authority and the Contractor.

85.2 Save as expressly provided otherwise in this Contract, neither Party shall be, nor be deemed to be, an agent of the other Party, and neither Party shall hold itself out as having authority or power to bind the other Party in any way.

85.3 Neither Party shall place or cause to be placed any order with suppliers or otherwise incur liabilities in the name of the other Party or any representative of the other Party.

85.4 The Contractor shall at all times be an independent contractor and nothing in this Contract shall be construed as creating the relationship of employer and employee between the Authority and the Contractor or any of the Contractor's employees. Neither the Contractor nor any of its Sub-Contractors nor its or their respective employees shall at any time hold itself or themselves out to be the employee of the Authority and neither the Contractor nor any of its or its Sub-Contractors' employees shall be entitled to any of the benefits provided by the Authority to its established or unestablished officers and staff.

85.5 No provision of this Contract shall be construed as a delegation by the Authority of any of the Authority's statutory authority to the Contractor.

#### 86 Third Party Rights

Except as otherwise as expressly set out in this Contract, no right is granted to any person who is not a Party to this Contract to enforce any term of this Contract in its own right and the Parties declare that they have no intention to grant any such right.

#### 87 Entire Agreement

87.1 This Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes and extinguishes all prior agreements, draft agreements, arrangements, undertakings, representations, communications, negotiations and understandings of any nature made by the Parties, whether oral or written, concerning the subject matter of this Contract (including, for the avoidance of doubt, all material supplied to the Authority as referred to in Clause 87.2).

[REDACTED]

[REDACTED]

87.2.2 the Assessment Phase Contract; and

87.2.3 all documents generated pursuant to such documents and communications relating to them.

87.3 Each Party acknowledges that, in entering into this Contract, it has not relied upon any oral or written statements, collateral or other warranties, assurances, representations or undertakings which were made by or on behalf of the other Party in relation to the subject matter of this Contract at any time before its signature (together, the "Pre-Contractual Statements"), other than those which are set out in this Contract.

87.4 Each Party hereby waives all rights and remedies which might otherwise be available to it in relation to such Pre-Contractual Statements but for Clause 87.1.

87.5 Nothing in this Clause 87 shall exclude or restrict the liability of either Party arising out of its pre-contract fraudulent misrepresentation or fraudulent concealment:

#### 88 Severability

88.1 If any provision, or part of a provision, of this Contract is held to be invalid, illegal or unenforceable by any court or authority of competent jurisdiction to any extent, then:

88.1.1 such provision (or part thereof) 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 this Contract, unless otherwise required by operation of applicable law; and

88.1.2 the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision (or part thereof) with a valid, legal and enforceable substitute provision (or part thereof), the effect of which is as close as possible to the intended commercial effect of the invalid, illegal or unenforceable provision (or part thereof).

## 89 Counterparts

This Contract may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Contract.

## 90 Further Assurance

Each of the Parties shall execute and deliver to the other such other instruments and documents and take such other similar action as may be required in order to create legally binding obligations to fulfil the provisions of this Contract in accordance with its terms.

## 91 Dispute Resolution Procedure

Without prejudice to Clause 91.10 in relation to an SSCR Pricing Dispute, this Clause 91 sets out the dispute-resolution procedure in relation to any Dispute, including (pursuant to Clause 4.2) any dispute under or in connection with the Assessment Phase Contract in respect of any work performed thereunder (the "Dispute Resolution Procedure").

91.1 The Parties shall attempt to resolve in good faith any Dispute which is notified by one Party to the other Party in writing (a "Dispute Notification") through negotiations between the Authority Representative and the Contractor Representative.

91.2 In the event that the Dispute is not resolved by negotiation between the Representatives within ten (10) Business Days of the date of the Dispute Notification, the Dispute shall be immediately referred to the Senior Commercial Representatives (the "First Referral").

91.3 The Senior Commercial Representatives shall attempt to resolve the Dispute in good faith. In the event that the Senior Commercial Representatives are unable to resolve the Dispute within ten (10) Business Days of the date of the First Referral, the Dispute shall be immediately referred to the Senior Representatives (the "Second Referral").

91.4 The Senior Representatives shall attempt to resolve the Dispute in good faith. In the event that the Senior Representatives are unable to resolve the Dispute within ten (10) Business Days of the date of the Second Referral, the Dispute may be referred to arbitration in accordance with Clauses 91.5 to 91.8 (inclusive).

91.5 If the Senior Representatives are unable to resolve the Dispute in accordance with Clause 91.4, either Party may initiate the arbitration by giving a Notice (the "Notice of Arbitration") to the other Party. The Notice of Arbitration shall specifically state:

91.5.1 that the Dispute is referred to arbitration; and

91.5.2 the particulars of this Contract out of or in relation to which the Dispute arises.

91.6 Unless otherwise agreed in writing by the Parties, the arbitration shall be governed by the provisions of the Arbitration Act 1996.

91.7 It is agreed between the Parties that, for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided for in Section 39 of the Arbitration Act 1996.

91.8 The Parties acknowledge and agree that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the Parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the Parties to the arbitration, acting reasonably.

91.9 Without prejudice to any right of the Authority to withhold or recover a disputed payment under Clause 31 (Fee Payment) and Schedule 4 (Payment Process), the Parties shall continue to comply with, observe and perform all their obligations under this Contract, notwithstanding the referral of the Dispute for resolution under the Dispute Resolution Procedure.

91.10 SSCR Pricing Dispute

This Clause 91 shall not prevent either Party referring any SSCR Pricing Dispute to the SSRO, provided that both Parties agree that, prior to any such referred to the SSRO, they shall first undertake the Dispute Resolution Procedure set out in Clauses 91.1 to 91.9 (inclusive) above.

92 Governing Law

92.1 This Contract and any Dispute or claim arising out of, or in connection with, it or its subject matter or formation (including any Dispute or claim relating to non-contractual obligations) shall be governed by and construed in accordance with English law.

92.2 Subject to and without prejudice to Clause 91 (Dispute Resolution Procedure), the courts of England have jurisdiction to settle any Dispute or claim arising out of, or in connection with, this Contract or its subject matter or formation (including any dispute or claim relating to non-contractual obligations).

92.3 Other jurisdictions may apply solely for the purposes of giving effect to this Clause 92 and for the enforcement of any judgment, order or award given under English jurisdiction.

**Schedule Three Pages 330-335**

Sub-Contract Provision Flow Down

This Schedule 3 comprises the following Parts:

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**Schedule 19 Pages 467-493**

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