



**Defence Commercial, Commands and Centre – Air,
Nimrod Building, RAF High Wycombe, HP14 4UE**

Tender Number :
ACT/04482

Description:
Provision of Airfield Wildlife Control Services – Southern Region

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The Schedules that apply to this Contract are:

Schedule 1	Definitions of Contract
Schedule 2	Schedule of Requirements
	Annex A to Schedule 2 – Pricing Pages
Schedule 3	Contract Data Sheet
	Annex A to Schedule 3 – DEFFORM 111
	Annex B to Schedule 3 – Contractor Personnel-Related Information to be Released Upon Re-Tendering where TUPE applies
	Annex C to Schedule 3 – Personnel Information to be Released On award of Contract to a New Provider Where TUPE applies
Schedule 4	Contract Change Process Procedure (i.a.w. clause A2.b)
Schedule 5	Specification
Schedule 6	Transfer Regulations
Schedule 7	Contractor's Commercially Sensitive Information Form

MOD Conditions for the Provision of Services:
Contract No: ACT/04482

A General Contract Provisions

A1. Interpretation

- a. The defined terms in the Contract shall be as set out in Schedule 1.
- b. Unless the context otherwise requires:
 - (1) The singular includes the plural and vice versa, and the masculine includes the feminine and vice versa.
 - (2) The words “include”, “includes”, “including” and “included” are to be construed as if they were immediately followed by the words “without limitation”, except where explicitly stated otherwise.
 - (3) The expression “person” means any individual, firm, body corporate, unincorporated association or partnership, government, state or agency of a state or joint venture.
 - (4) References to any statute, enactment, order, regulation, or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, or instrument as amended, supplemented, replaced or consolidated by any subsequent statute, enactment, order, regulation, or instrument.
 - (5) The heading to any Contract provision shall not affect the interpretation of that provision.
 - (6) Any decision, act or thing which the Authority is required or authorised to take or do under the Contract may be taken or done only by the person (or their nominated deputy) authorised in Schedule 3 (Contract Data Sheet) to take or do that decision, act, or thing on behalf of the Authority.
 - (7) Unless excluded within the terms of the Contract or required by law, references to submission of documents in writing shall include electronic submission.

A2. Amendments to Contract

- a. All amendments to this Contract shall be serially numbered, in writing, issued only by the Authority's Representative (Commercial), and agreed by both Parties.
- b. Where the Authority or the Contractor wishes to introduce a change which is not Minor or which is likely to involve a change to the Contract Price, the provisions of Schedule 4 (Change Process) shall apply. The Contractor shall not carry out any work until any necessary change to the Contract Price has been agreed and a written amendment in accordance with clause A2.a above has been issued.

A3. Variations to Specification

- a. The Authority's Representative may, by Notice (following consultation with the Contractor as necessary), alter the Specification as from a date agreed by both Parties and to the extent specified by the Authority, provided that any such variations shall be limited to the extent that they do not alter the fit, form, function or characteristics of the Contractor Deliverables to be supplied under the Contract. The Contractor shall ensure that the Contractor Deliverables take account of any such variations. Such variations shall not require formal amendment of the Contract in accordance with the process set out in condition A2 (Amendments to Contract) and shall be implemented upon receipt, or at the date specified in the Authority's Notice, unless otherwise specified.

- b. Any variations that cause a change to:
- (1) Fit, form, function or characteristics of the Contractor Deliverables;
 - (2) The cost;
 - (3) Delivery Dates;
 - (4) The period required for the production or completion; or
 - (5) Other work caused by the alteration,

shall be the subject to condition A2 (Amendments to Contract). Each amendment under condition A2 shall be classed as a formal change.

A4. Precedence

- a. If there is any inconsistency between the different provisions of the Contract the inconsistency shall be resolved according to the following descending order of precedence:
- (1) Sections A - H (and J - L, if sections J - L are included in this Contract) of the Conditions of the Contract shall be given equal precedence with Schedule 1 (Definitions of Contract) and Schedule 3 (Contract Data Sheet);
 - (2) Schedule 2 (Schedule of Requirements) and, where included, Schedule 8 (Acceptance Procedure);
 - (3) The remaining Schedules; and
 - (4) Any other documents expressly referred to in the Contract.
- b. If either Party becomes aware of any inconsistency, within or between the documents referred to in clause A4.a, such Party shall notify the other Party forthwith and the Parties will seek to resolve that inconsistency on the basis of the order of precedence set out in clause A4.a. Where the Parties fail to reach agreement, and if either Party considers the inconsistency to be material to its rights and obligations under the Contract, then the matter will be referred to the dispute resolution procedure in accordance with condition A21 (Dispute Resolution).

A5. Severability

If any provision of the Contract is held to be invalid, illegal or unenforceable to any extent then:

- a. such provision shall (to the extent that it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in the Contract but without invalidating any of the remaining provisions of the Contract; and
- b. the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

A6. Assignment of Contract

Neither Party shall be entitled to assign the Contract (or any part thereof) without the prior written consent of the other Party.

A7. Waiver

- a. 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.

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

A8. Third Party Rights

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

A9. Governing Law

- a. Subject to clause A9.b, the Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English Law, and subject to clause A9.b and condition A21 (Dispute Resolution) and without prejudice to the dispute resolution procedure set out therein, the Parties submit to the exclusive jurisdiction of the English courts. Other jurisdictions may apply solely for the purpose of giving effect to this clause A9.a and for enforcement of any judgement, order or award given under English jurisdiction. Subject to clause A9.d and A21 (Dispute Resolution) and without prejudice to the dispute resolution process set out therein, each Party submits and agrees to the exclusive jurisdiction of the Courts of England to resolve, and the laws of England to govern, any actions proceedings, controversy or claim of whatever nature arising out of or relating to the Contract or breach thereof.
- b. If the Parties agree pursuant to the Contract that Scots Law should apply, then the following amendments shall apply to the Contract:
- (1) Clause A9.a shall be amended to read:
- “The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with Scots Law, and subject to condition A21 (Dispute Resolution) and without prejudice to the dispute resolution procedure set out therein, the Parties submit to the exclusive jurisdiction of the Scottish courts. Other jurisdictions may apply solely for the purpose of giving effect to this clause A9.a and for enforcement of any judgement, order or award given under Scottish jurisdiction”;
- (2) Clause A21.b shall be amended to read:
- “In the event that the dispute or claim is not resolved pursuant to clause A21.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause A21.b shall be governed by the Arbitration (Scotland) Act 2010. The seat of the arbitration shall be Scotland. For the purposes of the arbitration, for the avoidance of doubt, the tribunal shall have the power to make provisional awards pursuant to Rule 53 of the Scottish Arbitration Rules, as set out in Schedule 1 to the Arbitration (Scotland) Act 2010.” If the Parties agree pursuant to the Contract that Scots Law should apply then the following amendments shall apply to the Contract:
- c. Where the Contractor is an Overseas Contractor, any dispute arising out of or in connection with the Contract shall be determined within the English jurisdiction and to the exclusion of all foreign jurisdictions. However, a foreign jurisdiction may apply solely for the purposes of giving full effect to this condition A9 and for the enforcement of any judgement order or award given under the English jurisdiction. Each Party irrevocably submits to the jurisdiction provided for under this condition.
- d. Each Party warrants to each other that entry into the Contract does not, and the performance of the Contract will not, violate or conflict with any provision of law, statute, rule, regulation, judgement, writ, injunction, decree or order applicable to it. Each Party also warrants that the Contract does not conflict with or result in a breach or termination of any provision of, or constitute a default under any mortgage, contract or other liability, charge or encumbrance upon any of its properties or other assets.

e. The provisions of this condition A9 shall survive any termination of the Contract for any reason whatsoever and shall remain fully enforceable between the Parties notwithstanding such a termination.

f. Where the Contractor is an Overseas Contractor it irrevocably appoints the solicitors or other persons detailed in Schedule 3 (Contract Data Sheet) as its agents to accept on its behalf service of all process and other documents of whatever description to be served on the Contractor in connection with any litigation or arbitration within the English jurisdiction (or Scottish jurisdiction where the Parties agree pursuant to this Contract that Scots Law should apply) arising out of or relating to the Contract or any issue connected therewith.

A10. Entire Agreement

This Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes, and neither Party has relied upon, any prior negotiations, representations and undertakings, whether written or oral, except that this condition shall not exclude liability in respect of any fraudulent misrepresentation.

A11. Disclosure of Information

a. Subject to clauses A11.d, A11.e, A11.h and A14 each Party:

- (1) Shall treat in confidence all Information it receives from the other;
- (2) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, except that the Contractor may disclose Information in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Contract;
- (3) Shall not use any of that Information otherwise than for the purpose of the Contract; and
- (4) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under the Contract.

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

- (1) is disclosed to its employees and Subcontractors, only to the extent necessary for the performance of the Contract; and
- (2) is 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 the Contract or any subcontract.

c. The Contractor shall ensure that its employees are aware of the Contractor's arrangements for discharging the obligations at clauses A11.a and A11.b before receiving Information and shall take such steps as may be reasonably practical to enforce such arrangements.

d. Clauses A11.a and A11.b shall not apply to any Information to the extent that either Party:

- (1) exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract;
- (2) has the right to use or disclose the Information in accordance with other Conditions of the Contract; or
- (3) can show:

OFFICIAL SENSITIVE - COMMERCIAL

- (a) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the Parties;
- (b) that the Information was already known to it (without restrictions on disclosure or use) prior to receiving the Information under or in connection with the Contract;
- (c) that the Information was received without restriction on further disclosure from a third party which lawfully acquired the Information without any restriction on disclosure; or
- (d) from its records that the same Information was derived independently of that received under or in connection with the Contract;

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

e. Neither Party shall be in breach of this condition where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the Parties under this condition.

f. The Authority may disclose the Information:

- (1) on a confidential basis to any central government body for any proper purpose of the Authority or of the relevant central government body, which shall include: disclosure to the Cabinet Office and / or HM Treasury for the purpose of ensuring effective cross-Government procurement processes, including value for money and related purposes;
- (2) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (3) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (4) on a confidential basis to a professional adviser, consultant or other person engaged by any of the entities defined in Schedule 1 (including benchmarking organisations) for any purpose relating to or connected with this Contract;
- (5) on a confidential basis for the purpose of the exercise of its rights under the Contract; or
- (6) on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract;

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this condition.

g. Before sharing any Information in accordance with sub-clause A11.f above, the Authority may redact the Information. Any decision to redact Information made by the Authority shall be final.

h. The Authority shall not be in breach of the Contract where disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 (the "Act") or the Environmental Information Regulations 2004 (the "Regulations"). To the extent permitted by the time for compliance under the Act or the Regulations, the Authority shall consult the Contractor where the Authority is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the Contractor of any decision to disclose the Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Act or the Regulations.

i. Nothing in this condition shall affect the Parties' obligations of confidentiality where Information is disclosed orally in confidence.

A12. Publicity and Communications with the Media

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

A13. Protection of Personal Data

In the performance of the Contract, both Parties shall comply with their obligations as a data controller, as defined in the Data Protection Act 1998.

A14. Transparency

a. Subject to clause A14.b but notwithstanding condition A11, the Contractor understands that the Authority may publish the Transparency Information to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information.

b. Before publishing the Transparency Information to the general public in accordance with clause A14.a, the Authority shall redact any Information that would be exempt from disclosure if it was the subject of a request for Information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, and any Information which has been acknowledged by the Authority at Schedule 6 (Contractor's Commercially Sensitive Information).

c. The Authority may consult with the Contractor before redacting any Information from the Transparency Information in accordance with clause A14.b. The Contractor acknowledges and accepts that its representations on redactions during consultation may not be determinative and that the decision whether to redact Information is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

d. For the avoidance of doubt, nothing in this condition A14 shall affect the Contractor's rights at law.

A15. Equality

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

b. Without prejudice to the generality of the obligation in clause A15.a, 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 the Contract is being performed.

- c. The Contractor agrees to take reasonable efforts to secure the observance of the provisions of this condition A15 by any of its employees, agents, or other persons acting under its direction or Control who are engaged in the performance of the Contract.
- d. The Contractor agrees to take reasonable efforts to reflect this condition A15 in any subcontract that it enters into to satisfy the requirements of the Contract and to require its Subcontractors to reflect this condition A15 in their subcontracts that they enter into to satisfy the requirements of the Contract.

A16. Child Labour and Employment Law

- a. In performing the Contract, the Contractor shall comply in all material respects with Child Labour Legislation and applicable employment legislation of those jurisdiction(s) where the Contract is being performed.
- b. The Contractor agrees to use reasonable efforts to reflect this Condition in any subcontract that it enters into to satisfy the requirements of the Contract and to require its Subcontractors to reflect this Condition in their subcontracts that they enter into to satisfy the requirements of the Contract.

A17. Subcontracting

- a. Subcontracting any part of the Contract shall not relieve the Contractor of any obligation, duty or liability attributable to the Contractor under the Contract.
- b. The Contractor shall ensure, to the extent that they are applicable, that the Conditions of the Contract are reflected in any subcontracts for any part of the Contractor Deliverables.
- c. In all circumstances the Contractor shall ensure that all subcontracts in relation to this Contract include:
 - (1) a requirement that either party to the subcontract may release to the Authority any of those parts of the subcontract documentation as are necessary to demonstrate the Contractor's compliance with the provisions of the Contract and that any such release shall not amount to a breach of any provision of confidentiality contained within the subcontract; and
 - (2) a term which requires payment to be made to the Subcontractor within a specified period not exceeding thirty (30) days from receipt of a valid invoice as defined by the subcontract requirements.
- d. Where the Contractor places any subcontract with a value of more than £50,000 in connection with this Contract, it shall ensure that it has the right to terminate that subcontract for convenience in the event that the Authority exercises its right to terminate this Contract under Condition A22 (Termination for Convenience), with twenty (20) Business Days notice (or such other notice period as the Authority shall give under this Contract).
- e. When placing subcontracts, the Contractor is asked to give consideration, as far as possible, to placing work on a competitive basis with Subcontractors that are Supported Businesses. The Contractor can find details of Supported Businesses in the United Kingdom on the Supported Business Directory that is British Association for Supported Employment at Unit 4, 200 Bury Road, Tottington, Lancashire BL8 3DX (Telephone : 01204 880733) or <http://business.base-uk.org/procurement>.
- f. The Contractor shall secure from any Subcontractor, the prompt notification to the Authority of the Information required by clause D1.a (Third Party Intellectual Property – Rights and Restrictions). On receipt of any such notification, the Authority shall issue a written authorisation to the Subcontractor in accordance with clause D1.g. Any such authorisation shall always be subject to clauses D1.j, D1.k and D1.n as though the Subcontractor was the Contractor. If any claim or action relevant to such authorisation arises, it shall be promptly notified to the Authority. The Contractor is not authorised to enter into any substantive correspondence in such matter nor in any way to act on behalf of the Authority in any such

claim or action. Any arrangement between the Contractor and Subcontractor to enable the Contractor to underwrite their indemnities to the Authority under this Condition is a matter between the Contractor and the Subcontractor.

g. Where the Contractor subcontracts work under the Contract, which is likely to be subject to foreign export control, the Contractor shall use reasonable endeavours to incorporate in each subcontract the terms set out in the relevant parts of SC3 Schedule "Export Licence". Where it is not practicable to include the terms set out in SC3 Schedule "Export Licence", the Contractor shall report that fact and the circumstances to the Authority.

A18. Change of Control of Contractor

a. The Contractor shall inform the Mergers & Acquisitions section, Supplier Relations Team, Poplar Level 1 # 2119, MOD Abbey Wood South, Bristol BS34 8JH as soon as practicable of any intended, planned or actual change of Control. The Contractor shall not be required to submit any notice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the change of Control of the Contractor in the UK or other jurisdictions. The Authority's Representative shall consider the potential change of Control and advise the Contractor in writing of any concerns that the Authority may have.

b. Each notice of change of Control shall be taken to apply to all contracts with the Authority.

c. The Authority may, acting reasonably, terminate the Contract by giving written notice to the Contractor within six (6) months of the Authority being notified or becoming aware that the Contractor has undergone a change of Control where the Contractor has failed to address the Authority's concerns to the Authority's satisfaction in accordance with clause A18.a, or has failed to supply or withheld the Information required under clause A18.a.

d. If the Authority exercises its right to terminate in accordance with clause F1.a. (4) the Contractor shall be entitled to request the Authority to consider making a payment to represent any commitments, liabilities or expenditure which are reasonable and properly chargeable by the Contractor in connection with the Contract and which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Any request for payment under this clause A18.d must be fully supported by documentary evidence. The decision whether to make such a payment shall be at the Authority's sole discretion.

A19. Termination for Insolvency or Corrupt Gifts

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

Insolvency:

a. where the Contractor is an individual:

(1) the application by the Contractor for an interim order pursuant to Section 252 of the Insolvency Act 1986 (the "IA 86") or the court making an interim order pursuant to Section 253 of the IA 86;

(2) any composition, compromise, assignment, assignation or arrangement is made with any of the Contractor's creditors (including, without limitation, an individual voluntary arrangement under IA 86 and a trust deed for the benefit of any of the Contractor's creditors) or a moratorium on any of the Contractor's indebtedness comes into force;

(3) a debt payment programme under the Debt Arrangement and Attachment (Scotland) Act 2002 (the "DAAS Act") is approved in respect of a Contractor, an application is made by a Contractor to the Debt Arrangement Scheme (DAS) Administrator under the DAAS Act for approval of a debt payment programme or a Contractor gives written intimation to the DAS Administrator of their intention to make such an application;

- (4) the presentation of a petition or other application for the appointment of any liquidator (whether provisional, interim or otherwise), administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets, unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of it;
 - (5) the appointment of any liquidator (whether provisional, interim or otherwise) administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets;
 - (6) where the Contractor is either unable to pay its debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay its debts if:
 - (a) it has failed to comply with or to set aside a statutory demand under section 268 of the Insolvency Act 1986 or section 7 of the Bankruptcy (Scotland) Act 1985 within twenty-one (21) Business Days of service of the statutory demand on it;
 - (b) an execution or other process to enforce a debt due under a judgment or order of the court has been returned unsatisfied in whole or in part;
 - (c) a charge for payment of a debt has been served on the Contractor and has not been satisfied, returned or avoided within fourteen (14) Business Days of service; or
 - (d) it is apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985; or
 - (7) any analogous procedure or step is taken in any jurisdiction;
- b. where the Contractor is a firm:
- (1) the Contractor preparing and submitting documents to a nominee or filing or lodging documents in court, in each case in respect of a moratorium on creditor action under schedule A1 of IA 86 in respect of the Contractor;
 - (2) any composition, compromise, assignment, assignation or arrangement is made with any of the Contractor's creditors (including, without limitation, an individual voluntary arrangement under IA 86 and a trust deed for the benefit of any of the Contractor's creditors) or a moratorium on any of the Contractor's indebtedness comes into force;
 - (3) any event listed in clause A19.a occurs in respect of any partner of the Contractor who is an individual in connection with a liability or debt of the Contractor;
 - (4) any event listed in clause A19.c occurs in respect of any partner of the Contractor which is a company or limited liability partnership registered in England and Wales or Scotland in connection with a liability or debt of the Contractor;
 - (5) an event listed in clause A19.e in respect of any partner of the Contractor which is a company or similar entity (including any incorporated entity) registered other than in England and Wales or Scotland in connection with a liability or debt of the Contractor;
 - (6) any event listed in this clause A19.b occurs in respect of any partner of the Contractor which is itself a firm in connection with a liability or debt of the Contractor;
 - (7) the presentation of a petition or other application for the appointment of any liquidator (whether provisional, interim or otherwise), administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets, unless it is withdrawn within three (3) Business Days from the date on which the

Contractor is notified of it;

(8) the appointment of any liquidator (whether provisional, interim or otherwise) administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets;

(9) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of (or the institution of any other insolvency proceedings or procedure in relation to) the Contractor;

(10) where the Contractor is either unable to pay its debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay its debts if:

(a) it is apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985; or

(b) it is unable to pay its debts in terms of section 221 of IA 86; or

(11) any analogous procedure or step is taken in any jurisdiction;

c. where the Contractor is a company or limited liability partnership registered in England and Wales or Scotland:

(1) the Contractor preparing and submitting documents to a nominee or filing or lodging documents in court in each case in respect of a moratorium on creditor action under schedule A1 of IA 86;

(2) any composition, compromise, assignment, assignation or arrangement is made with any of its creditors (including, without limitation, a company voluntary arrangement under IA 86) or a moratorium on any of the Contractors indebtedness comes into force;

(3) the presentation of a petition or other application for the appointment of any liquidator (whether provisional, interim or otherwise), administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets, unless it is withdrawn within three (3) Business Days from the date on which the Contractor is notified of it;

(4) the appointment of any liquidator (whether provisional, interim or otherwise) administrator, receiver, administrative receiver, compulsory manager, trustee (in sequestration or otherwise), insolvency official or other similar officer in respect of the Contractor or any of its assets;

(5) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of (or the institution of any other insolvency proceedings or procedure in relation to) the Contractor;

(6) where the Contractor is either unable to pay its debts as they fall due or has no reasonable prospect of being able to pay debts which are not immediately payable. The Authority shall regard the Contractor as being unable to pay its debts if the Contractor is unable to pay its debts in terms of section 123 of IA 86; or

(7) any analogous procedure or step is taken in any jurisdiction;

d. where the Contractor is unable or admits inability to pay its debts as they fall due or is deemed to be or declared to be unable to pay its debts, suspends or threatens to suspend making payments or any of its debts or, by reason of actual or anticipated financial difficulties, or commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;

e. where the Contractor is a company or similar entity (including any incorporated entity) registered other than in England and Wales or Scotland, events occur or are carried out which, within the jurisdiction to which it is subject, are similar in nature or effect to those specified above;

Corrupt Gifts

f. where the Authority becomes aware that the Contractor, its employees, agents or any Subcontractor (or anyone acting on its behalf or any of its or their employees):

(1) has offered, promised or given to any Crown servant any gift or financial or other advantage of any kind as an inducement or reward:

(a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this Contract or any other contract with the Crown; or

(b) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Crown;

(2) commits or has committed any prohibited act or any offence under the Prevention of Corruption Acts 1889 – 1916, under sub sections 108 – 109 of the Anti-Terrorism or Crime and Security Act 2001 before these Acts or sub sections are revoked or an offence under the Bribery Act 2010 with or without the knowledge or authority of the Contractor in relation to this Contract or any other contract with the Crown;

(3) has entered 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 it or on its behalf, or to its knowledge, unless before the Contract is made particulars of any such commission and of the conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority.

g. In exercising its rights or remedies to terminate the Contract under A19 f. the Authority shall:

(1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person committing the prohibited act;

(2) give due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):

(a) requiring the Contractor to procure the termination of a subcontract where the prohibited act is that of a Subcontractor or anyone acting on its or their behalf;

(b) requiring the Contractor to procure the dismissal of an employee (whether its own or that of a Subcontractor or anyone acting on its behalf) where the prohibited act is that of such employee.

h. Where the Contract has been terminated under clause A19 f. of this Condition, the Authority shall be entitled to purchase substitute Contractor Deliverables from elsewhere and recover from the Contractor any costs and expenses incurred by the Authority in obtaining the Contractor Deliverables in substitution from another supplier.

A20. Consequences of Termination

The termination of the Contract, however arising, shall be without prejudice to the rights and duties of either Party accrued prior to termination. The Conditions that expressly or by implication have effect after termination shall continue to be enforceable even after termination.

A21. Dispute Resolution

a. The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the Contract through negotiations between the respective representatives of the

Parties having authority to settle the matter, which attempts may include the use of any alternative dispute resolution procedure on which the Parties may agree.

b. In the event that the dispute or claim is not resolved pursuant to clause A21.a the dispute shall be referred to arbitration. Unless otherwise agreed in writing by the Parties, the arbitration and this clause A21.b shall be governed by the Arbitration Act 1996. For the purposes of the arbitration, the arbitrator shall have the power to make provisional awards pursuant to Section 39 of the Arbitration Act 1996.

c. For the avoidance of doubt, anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the Parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise.

A22. Termination for Convenience

a. The Authority shall have the right at any time to terminate the Contract in whole or in part by giving the Contractor written Notice to expire at the end of the period specified in Schedule 3 (Contract Data Sheet) or if no such period is specified at the end of twenty (20) Business Days.

b. In the event that the Authority exercises its rights in accordance with clause A22.a, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Contractor in connection with the Contract and which would otherwise represent an unavoidable loss by the Contractor by reason of termination of the Contract or the relevant part thereof.

c. The Authority's total liability under clause A22.b shall be limited to the total price of the Contractor Deliverables payable under the Contract or the relevant part thereof, including any sums paid, due or becoming due to the Contractor at the date of termination.

A23. Contractor's Records

The Contractor shall maintain all records in connection with the Contract (expressly or otherwise), and without prejudice to condition A11 (Disclosure of Information), make them available to be examined or copied, by or on behalf of the Authority, as the Authority may require. These records shall be retained for a period of at least six (6) years from:

- (1) the end of the Contract term;
- (2) termination of the Contract; or
- (3) the final payment,

whichever occurs latest.

A24. Duration of Contract

This Contract comes into effect on the Effective Date of Contract and will expire automatically on the date identified in Schedule 3 (Contract Data Sheet) unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.

A25. Contractor's Warranties

a. The Contractor warrants and represents, that:

- (1) it has the full capacity and authority to enter into, and to exercise its rights and perform its obligations under, the Contract;
- (2) from the Effective Date of Contract and for so long as the Contract remains in force it shall give the Authority Notice of any litigation, arbitration (unless expressly prohibited from doing so in accordance with the terms of the arbitration), administrative or adjudication or mediation proceedings before any court, tribunal, arbitrator, administrator

or adjudicator or mediator or relevant authority against itself or a Subcontractor which would adversely affect the Contractor's ability to perform its obligations under the Contract;

(3) as at the Effective Date of Contract no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, 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;

(4) for so long as the Contract remains in force it shall give the Authority Notice of any proceedings or other steps that have been taken but not discharged (nor to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues.

B The Contractor Deliverables

B1. Supply of Contractor Deliverables and Quality Assurance

a. The Contractor shall provide the Contractor Deliverables to the Authority, in accordance with the Schedule of Requirements and the Specification, and shall allocate sufficient resource to the provision of the Contractor Deliverables to enable it to comply with this obligation.

b. The Contractor shall:

(1) comply with any applicable quality assurance requirements specified in Schedule 3 (Contract Data Sheet) in providing the Contractor Deliverables;

(2) comply with all applicable Legislation; and

(3) discharge its obligations under the Contract with all due skill, care, diligence and operating practice by appropriately experienced, qualified and trained personnel.

c. The provisions of clause B1.b. shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any remedial services provided by the Contractor.

d. The Contractor shall:

(1) observe, and ensure that the Contractor's Team observe, all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises;

(2) notify the Authority as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Contractor Deliverables; and

(3) before the date on which the Contractor Deliverables are to start, obtain, and at all times maintain, all necessary licences and consents in relation to the Contractor Deliverables.

B2. Environmental Requirements

The Contractor shall in all its operations to perform the Contract, adopt a sound proactive environmental approach that identifies, considers, and where possible, mitigates the environmental impacts of its supply chain. The Contractor shall provide evidence of so doing to the Authority on demand.

B3. Disruption

- a. The Contractor shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- b. The Contractor shall inform the Authority of any actual or potential industrial action which affects or might affect its ability at any time to perform its obligations under the Contract as soon as it becomes aware of the actual or potential industrial action and certainly no later than seven (7) Business Days before the action is due to take place, whether such action be by its own employees or others.
- c. The Contractor shall have robust contingency plans in place to ensure that, in the event of industrial action by the Contractor's Team, provision of the Contractor Deliverables is maintained and such contingency plans shall be available for the Authority to inspect and / or comment on at any reasonable time and shall be updated and revised as necessary by the Contractor throughout the contract period.

C Price

C1. Contract Price

- a. The Contractor shall provide the Contractor Deliverables to the Authority at the Contract Price. The Contract Price shall be a Firm Price unless otherwise stated in Schedule 3 (Contract Data Sheet).
- b. Subject to condition G2 the Contract Price shall be inclusive of any UK custom and excise or other duty payable. The Contractor shall not make any claim for drawback of UK import duty on any part of the Contract Deliverables supplied which may be for shipment outside of the UK.

D Intellectual Property

D1. Third Party Intellectual Property – Rights and Restrictions

- a. The Contractor shall promptly notify the Authority as soon as they become aware of:
 - (1) any invention or design the subject of patent or registered Design Rights (or application thereof) owned by a third party which appears to be relevant to the performance of the Contract or to use by the Authority of anything required to be done or delivered under the Contract;
 - (2) any restriction as to disclosure or use, or obligation to make payments in respect of any other intellectual property (including technical Information) required for the purposes of the Contract or subsequent use by the Authority of anything Delivered under the Contract and, where appropriate, the notification shall include such Information as is required by Section 2 of the Defence Contracts Act 1958;
 - (3) any allegation of infringement of intellectual property rights made against the Contractor and which pertains to the performance of the Contract or subsequent use by the Authority of anything required to be done or delivered under the Contract.

Clause D1.a does not apply in respect of Contractor Deliverables normally available from the Contractor as a commercial off the shelf (COTS) item or service.

- b. If the Information required under clause D1.a has been notified previously, the Contractor may meet its obligations by giving details of the previous notification.
- c. For COTS Contractor Deliverables patents and registered designs in the UK, in respect of any question arising (by way of an allegation made to the Authority or Contractor, or otherwise) that the manufacture or provision under the Contract of Contractor Deliverables normally available from the Contractor as a COTS item or service is an infringement of a UK patent or registered design not owned or controlled by the Contractor or the Authority, the

Contractor shall, subject to the agreement of the third party owning such patent or registered design, be given exclusive conduct of any and all negotiations for the settlement of any claim or the conduct of any litigation arising out of such question. The Contractor shall indemnify the Authority, its officers, agents and employees against any liability and cost arising from such allegation. This clause shall not apply if:

- (1) the Authority has made or makes an admission of any sort relevant to such question;
 - (2) the Authority has entered or enters into any discussions on such question with any third party without the prior written agreement of the Contractor;
 - (3) the Authority has entered or enters into negotiations in respect of any relevant claim for compensation in respect of Crown Use under Section 55 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1977;
 - (4) legal proceedings have been commenced against the Authority or the Contractor in respect of Crown Use, but only to the extent of such Crown Use that has been properly authorised.
- d. The indemnity in clause D1.c does not extend to use by the Authority of anything supplied under the Contract where that use was not reasonably foreseeable at the time of the Contract.
- e. In the event that the Authority has entered into negotiation in respect of a claim for compensation, or legal proceedings in respect of the Crown Use have commenced, the Authority shall forthwith authorise the Contractor for the purposes of performing the Contract (but not otherwise) to utilise a relevant invention or design in accordance with Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949 and to use any model, document or information relating to any such invention or design which may be required for that purpose.
- f. For all other Contractor Deliverables patents and registered designs in the UK, if a relevant invention or design has been notified to the Authority by the Contractor prior to the Effective Date of the Contract, then unless it has been otherwise agreed, under the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, the Contractor is hereby authorised to utilise that invention or design, notwithstanding the fact that it is the subject of a UK Patent or UK Registered Design, for the purpose of performing the Contract.
- g. If, under clause D.1a, a relevant invention or design is notified to the Authority by the Contractor after the Effective Date of Contract, then:
- (1) if the owner (or its exclusive licensee) takes or threatens in writing to take any relevant action against the Contractor, the Authority shall issue to the Contractor a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949, and
 - (2) in any event, unless the Contractor and the Authority can agree an alternative course of action, the Authority shall not unreasonably delay the issue of a written authorisation in accordance with the provisions of Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949.
- h. The Authority shall assume all liability and shall indemnify the Contractor, its officers, agents and employees against liability, including the Contractor's costs, as a result of infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the United Kingdom in the performance of the Contract when such infringement arises from or is incurred by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.
- i. The Contractor shall assume all liability and shall indemnify the Authority, its officers, agents and employees against liability, including the Authority's costs, as a result of

infringement by the Contractor or their suppliers of any patent, utility model, registered design or like protection outside the UK in the performance of the Contract when such infringement arises from or is incurred otherwise than by reason of the Contractor following any specification, statement of work or instruction in the Contract or using, keeping or disposing of any item given by the Authority for the purpose of the Contract in accordance with the Contract.

j. The Contractor shall not be entitled to any reimbursement of any royalty, licence fee or similar expense incurred in respect of anything to be done under the Contract, where:

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

(2) any obligation to make payments for intellectual property has not been promptly notified to the Authority under clause D1.a.

k. Where authorisation is given by the Authority under clause D1.e, D1.f or D1.g, to the extent permitted by Section 57 of the Patents Act 1977, Section 12 of the Registered Designs Act 1949 or Section 240 of the Copyright, Designs and Patents Act 1988, the Contractor shall also be:

(1) released from payment whether by way of royalties, licence fees or similar expenses in respect of the Contractor's use of the relevant invention or design, or the use of any relevant model, document or information for the purpose of performing the Contract; and

(2) authorised to use any model, document or information relating to any such invention or design which may be required for that purpose.

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

(1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item to be supplied under the Contract or otherwise in the performance of the Contract;

(2) misuse of any confidential information, trade secret or the like by the Contractor in performing the Contract;

(3) provision to the Authority of any information or material which the Contractor does not have the right to provide for the purpose of the Contract.

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

(1) infringement or alleged infringement by the Contractor or their suppliers of any copyright, database right, Design Right or the like protection in any part of the world in respect of any item provided by the Authority for the purpose of the Contract but only to the extent that the item is used for the purpose of the Contract;

(2) alleged misuse of any confidential Information, trade secret or the like by the Contractor as a result of use of information provided by the Authority for the purposes of the Contract, but only to the extent that Contractor's use of that Information is for the purposes intended when it was disclosed by the Authority.

n. The general authorisation and indemnity is:

(1) Clauses D1.a – D1.m represents the total liability of each Party to the other under the Contract in respect of any infringement or alleged infringement of patent or other Intellectual Property Right (IPR) owned by a third party;

(2) Neither Party shall be liable, one to the other, for any consequential loss or damage arising as a result, directly or indirectly, of a claim for infringement or alleged infringement of any patent or other IPR owned by a third party;

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

(4) The Party benefiting from the indemnity or authorisation shall allow the other Party, at its own expense, to conduct any negotiations for the settlement of the same, and any litigation that may arise therefrom and shall provide such information as the other Party may reasonably require;

(5) Following a notification under clause D1.n.(3), the Party notified shall advise the other Party in writing within thirty (30) Business Days whether or not it is assuming conduct of the negotiations or litigation. In that case the Party against whom a claim is made or action brought shall not make any statement which might be prejudicial to the settlement or defence of such a claim without the written consent of the other Party;

(6) The Party conducting negotiations for the settlement of a claim or any related litigation shall, if requested, keep the other Party fully informed of the conduct and progress of such negotiations.

o. If at any time a claim or allegation of infringement arises in respect of copyright, database right, Design Right or breach of confidence as a result of the provision of any Contractor Deliverable by the Contractor to the Authority, the Contractor may at its own expense replace the item with an item of equivalent functionality and performance so as to avoid infringement or breach. The Parties will co-operate with one another to mitigate any claim or damage which may arise from use of third party IPR.

p. Nothing in condition D1 shall be taken as an authorisation or promise of an authorisation under Section 240 of the Copyright, Designs and Patents Act 1988.

E Facilities And Assets

E1. Access to Contractor's Premises

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

F Delivery

F1. Authority's Remedies for Breach of Contract

a. If the Contractor:

(1) fails to provide the Contractor Deliverables (or any part thereof) by the relevant date specified in Schedule of Requirements and / or the Specification;

(2) provides Contractor Deliverables (or any part thereof) that are not in accordance with, or the Contractor fails to comply with, any terms of the Contract;

(3) supplies Contractor Deliverables that do not comply with clause B1.b;

(4) fails to address the Authority's concerns to the Authority's satisfaction in accordance with condition A18, or fails to supply or withholds the Information required under clause A18.a;

(5) commits a persistent failure by failing to meet either:

OFFICIAL SENSITIVE - COMMERCIAL

- (a) a single Key Performance Indicator (KPI) on [N/A] or more occasions in a rolling [N/A] month period; or
- (b) [N/A] or more KPIs on a rolling [N/A] month period,

where this Contract includes Core+ condition "Key Performance Indicators and Performance Management"; or

- (6) otherwise commits a material breach of its obligations under the Contract,

the Authority shall have the right to exercise one or more of the following remedies:

- (7) where the Contractor commits a persistent failure in accordance with clause F1.a.(5) or where the breach is material in accordance with clause F1.a.(6), to terminate the Contract or the relevant part thereof, with immediate effect and without liability to the Authority, by giving written Notice to the Contractor;
- (8) refuse to accept the provision of any further Contractor Deliverables by the Contractor and the Contractor shall refund to the Authority any sums paid in respect of the Contractor Deliverables that fail to comply with the terms of the Contract;
- (9) give the Contractor the opportunity at the Contractor's expense to carry out such remedial services as is necessary to correct the Contractor's failure or otherwise to rectify the breach within the Authority-specified time limits;
- (10) purchase substitute services from elsewhere;
- (11) claim such damages as may have been sustained as a result of the Contractor's breach or breaches of the Contract, including but not limited to any costs and expenses incurred by the Authority in:
 - (a) carrying out any work that may be required to make the Contractor Deliverables comply with the Contract; or
 - (b) obtaining the Contractor Deliverables in substitution from another supplier.

b. In addition to the Authority's rights in clause F1.a., if the Authority reasonably believes at any time before the Contract Implementation Date that the Contractor will not be able to achieve Full Service Provision by the Contract Implementation Date then the Authority shall be entitled to terminate the Contract in whole or in part with immediate effect and without liability by giving written Notice to the Contractor.

c. In the event that the Authority terminates the Contract in whole or in part pursuant to clause F1.a. (7) or F1.b. or for any other lawful reason, the Authority shall also have the right to require the Contractor to transfer any or all of the Assets to the Authority, wherever they are located, upon the payment of a sum representing the market value of those Assets which the Contractor has purchased but not recovered the cost of from the Authority.

d. This condition F1 shall also apply to any remedial services carried out by the Contractor in accordance with clause F1.a. (9).

e. The Authority's rights and remedies under this condition F1 are in addition to its rights and remedies implied by statute and common law.

G Payment And Receipts

G1. Payment

- a. Schedule 3 (Contract Data Sheet) specifies whether payment is to be enabled by CP+F, by MOD Form 640, or by AG173. Payment may only be made using CP+F where the Contractor has agreed a DEFFORM 30 with the Authority prior to the Effective Date of Contract

and the DEFFORM 30 agreement is referenced in Schedule 3 (Contract Data Sheet).

b. Payment will be made by electronic transfer and prior to submitting any claims for payment under clause G1.e the Contractor shall provide to DBS Finance the name and address of the bank, the sort code and account number to which payment should be made and, if requested by DBS Finance, any further Information where payment is to be made outside of the UK.

c. In order to obtain approval for payment, the Contractor shall, upon completion of the Contract (or any part of the Contract for which the Contractor is entitled to payment):

(1) where payment is to be made using CP+F, submit a properly completed DEFFORM 129J, in accordance with the instructions shown therein and in the explanatory notes;

(2) where payment is to be made using a MOD Form 640, submit the appropriate coloured copy of the MOD Form 640 to the Consignee or as otherwise directed in Schedule 3 (Contract Data Sheet) and complete and dispatch the other appropriate coloured copies of the MOD Form 640 in accordance with the instructions shown therein; or

(3) where payment is to be made using an AG173, submit a properly completed AG173 (or AG210, as appropriate) to the Consignee or as otherwise directed in Schedule 3 (Contract Data Sheet).

d. Upon receipt of the AG173 (or AG210, as appropriate), the Authority shall:

(1) approve payment by entering the relevant details into CP+F to indicate receipt of the applicable Contractor Deliverables, or completing and signing the AG173/AG210, and returning it to the Contractor; or

(2) notify the Contractor in writing, giving reasons why it considers approval of payment may be withheld.

e. The Contractor shall submit a claim for payment to DBS Finance by either:

(1) using a properly prepared message structure and format for invoice payment using CP+F in accordance with the arrangements set out, or referenced in DEFFORM 30; or

(2) forwarding the completed AG173 / AG210 signed by the Authority, together with a properly completed DAB Form 10.

f. The Authority shall pay all valid, properly completed claims for payment submitted by the Contractor to DBS Finance in accordance with clause G1.e on or before the day which is thirty (30) days after the later of:

(1) the day upon which a valid request for approval of payment is received by the Authority in accordance with clause G1.c; and

(2) the date of completion of the part of the Contract to which the request for approval of payment relates.

g. Where using the AG173 (or AG210), the period of thirty (30) days referred to in clause G1.f shall be exclusive of the number of days that elapse between the date the Contractor receives a MOD Form 640 or AG173 (or AG210) from the Authority showing payment approval in accordance with clause G1.d and the date DBS Finance receives a valid, properly completed claim for payment in accordance with clause G1.e.

h. The approval of payment by the Authority under clause G1.d shall not be construed as acceptance by the Authority of the performance of the Contractor's obligations nor as a waiver of its rights and remedies under condition F1 or otherwise.

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

G2. Value Added Tax

- a. The Contract Price excludes any UK output Value Added Tax (VAT) and any similar EU (or non-EU) taxes chargeable on the provision of any Contractor Deliverables by the Contractor to the Authority.
- b. If the Contractor is required by UK VAT law to be registered for UK VAT (or has registered voluntarily) in respect of its business activities at the time of any supply, the Contractor shall include separately in any claim for payment a sum equal to any VAT chargeable at the prevailing rate on the Contract Price claimed and the Authority shall pay it. 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 HM Revenue and Customs (HMRC).
- c. The Contractor is responsible for the determination of VAT liability. In cases of doubt, the Contractor shall consult HMRC and not the Authority's Representative. The Contractor shall notify the Authority's Representative (Commercial) of the Authority's VAT liability under this Contract, when the liability is other than at the standard rate of VAT, and any changes to it.
- d. Where the provision of any Contractor Deliverables comes within the scope of UK VAT, but the Contractor is not required by UK VAT law to be registered for UK VAT (and has not registered voluntarily), the Authority shall be responsible for assessing and paying over directly to HMRC any UK output VAT due in respect of the Contractor Deliverables.
- e. Where Contractor Deliverables 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 Contract Price (and any other sum due to the Contractor under the Contract) a sum equal to the tax the Contractor is liable to pay to the tax authorities of the country in question in relation to the Contractor Deliverables.

G3. Debt Factoring

- a. Subject to the Contractor obtaining the prior written consent of the Authority in accordance with condition A6 (Assignment of Contract), the Contractor may assign to a third Party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including interest which the Authority incurred through late payment under the Late Payment of Commercial Debts (Interest) Act 1998 ('the Act')). Any assignment of the right to receive payment of the Contract Price (or any part thereof) under this condition G3 shall be subject to:
 - (1) reduction of any sums in respect of which the Authority exercises its right of recovery under clause G1.i;
 - (2) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
 - (3) the Authority receiving notification under both clauses G3.b and G3.c. (2).
- b. In the event that the Contractor obtains from the Authority the consent to assign the right to receive the Contract Price (or any part thereof) under clause G3.a, the Contractor shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- c. The Contractor shall ensure that the Assignee:
 - (1) is made aware of the Authority's continuing rights under clauses G3.a.1 and

G3.a.2; and

(2) notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment, subject to any reduction made by the Authority in accordance with sub-clauses G3.a.(1) and G3.a.(2).

d. The provisions of condition G1 (Payment) shall continue to apply in all other respects after the assignment and shall not be amended without the prior approval of the Authority.

H Contract Administration

H1. Progress Monitoring, Meetings and Reports

a. The Contractor shall attend progress meetings at the frequency or times (if any) specified in Schedule 3 (Contract Data Sheet) and shall ensure that its Contractor's Representatives are suitably qualified to attend such meetings.

b. The Contractor shall submit progress reports to the Authority's Representatives at the times and in the format (if any) specified in Schedule 3 (Contract Data Sheet). The reports shall detail as a minimum:

- (1) performance/Delivery of the Contractor Deliverables;
- (2) risks and opportunities;
- (3) any other information specified in Schedule 3 (Contract Data Sheet); and
- (4) any other information reasonably requested by the Authority.

H2. Authority Representatives

a. Any reference to the Authority in respect of:

- (1) the giving of consent;
- (2) the delivering of any Notices; or
- (3) the doing of any other thing that may reasonably be undertaken by an individual acting on behalf of the Authority,

shall be deemed to be references to the Authority's Representatives in accordance with this condition H2.

b. The Authority's Representatives detailed in Schedule 3 (Contract Data Sheet) (or their nominated deputy) shall have full authority to act on behalf of the Authority for all purposes of the Contract. Unless notified in writing before such act or instruction, the Contractor shall be entitled to treat any act of the Authority's Representatives which is authorised by the Contract as being expressly authorised by the Authority and the Contractor shall not be required to determine whether authority has in fact been given.

c. In the event of any change to the identity of the Authority's Representatives, the Authority shall provide written confirmation to the Contractor, and shall update Schedule 3 (Contract Data Sheet) in accordance with condition A2 (Amendments to Contract).

H3. Notices

a. A Notice served under the Contract shall be:

- (1) in writing in the English Language;
- (2) authenticated by signature or such other method as may be agreed between the

Parties;

(3) sent for the attention of the other Party's representative, and to the address set out in Schedule 3 (Contract Data Sheet);

(4) marked with the number of the Contract; and

(5) delivered by hand, prepaid post (or airmail), facsimile transmission or, if agreed in Schedule 3 (Contract Data Sheet), by electronic mail.

b. Notices shall be deemed to have been received:

(1) if delivered by hand, on the day of delivery if it is a Business Day in the place of receipt, and otherwise on the first Business Day in the place of receipt following the day of delivery;

(2) if sent by prepaid post, on the fourth Business Day (or the tenth Business Day in the case of airmail) after the day of posting;

(3) if sent by facsimile or electronic means:

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

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

J. The project specific DEFCONS and DEFCON SC variants that apply to this Contract are:

DEFCON 76(SC3) Edn. 12/14 (Contractor's Personnel at Government Establishments)
DEFCON 127 Edn. 12/14 (Price Fixing Condition For Contracts of Lesser Value)
DEFCON 611(SC3) 02/16 (Issued Property)
DEFCON 625 Edn. 10/98 (Co-operation On Expiry of Contract)
DEFCON 660 Edn. 12/15 (Official-Sensitive Security Requirements)

K. The special conditions that apply to this Contract are:

K1 to K12 Not Used

K13. Key Performance Indicators and Performance Management

The Contractor's performance of the Contract shall be monitored and measured using the agreed Key Performance Indicators (KPIs) within Schedule 5, Annex C of this Contract.

K14 to K16 Not Used

L. The processes that apply to this Contract are:

L1. Duration of Contract

With reference to clause A24, the Authority shall have the option to extend the Contract for a further 2 year period or part thereof in accordance with the Firm Option prices shown in the Annex to Schedule 2 (Schedule of Requirements), provided that any option period is taken up no later than 3 months prior to the Contract expiry date applicable at the time. It is emphasised that whilst the Authority has the ability to exercise its options, it is under no obligation to do so.

L2. Payment

- a. With reference to condition C1 and G1, the Firm total annual prices shall be paid in 12 equal monthly instalments of the annual price in arrears.
- b. An initial payment covering the Lead-In costs detailed in Schedule 2A shall be made on 1 March 2017, subject to satisfactory completion of all relevant tasks.

L3. Contract Reference

To avoid delays the Contract Number shall be quoted on all correspondence, claims etc. relating to this Contract.

L4. Compliance with the Electronic Transaction Agreement

The Authority and the Contractor shall comply with the Electronic Transactions Agreement comprised in the completed DEFFORM 30, reference ACT/04482 dated 15 August 2016. The meaning of Purchase Order and Order Acknowledgement messages shall be as defined in the Contract and the terms and conditions of the Contract shall take precedence in all circumstances.

L5. Designated Officer

- a. In respect of H2, the Designated Officer (DO) for the Contract will be appointed by the Authority. The appointment is detailed at Annex A to Schedule 3 (DEFFORM 111 Appendix to Contract). The DO will be responsible for liaison between the Contractor and the Authority, maintaining a register of bills authorised for payment and advising the Authority on the Contractor's standards of performance for the purpose of bill certification. The DO will work closely with the Contractor to identify problems before they seriously affect performance, but will not assume responsibility for management of the Contractor's tasks.
- b. The Contractor's personnel will have an administrative responsibility to the Contractor's Contract Manager who, in turn, will be contractually responsible through the Designated Officer's Representative (DOR) to the DO. However, in accordance with the requirements of the relevant mandatory regulations, the Contractor's Contract Manager will also be functionally responsible, in each area of the contract, to the appropriate service Officer Commanding.

L6. Compliance with RAF and MOD Regulations etc.

In addition to clause B1, the Contractor shall discharge the task as specified in the Contract in accordance with the extant RAF statutory regulations, MOD regulations, Air publications, RAF technical instructions, RAF security regulations and local orders/instructions.

L7. Continuity of Staff

In addition to the obligations detailed with DEFCON 76, the Contractor shall ensure the continuity in post, as far as lies within his control, of skilled and supervisory staff and give one month's notice to the DO of any proposed reduction in the manning or qualification levels of managerial and technical posts.

L8. Lead-In Milestones

- a. After the Contract Award Date and prior to the Contract Start Date the Contractor shall take all steps necessary so as to be in a position to take over the responsibility for the provision of the Services on the Contract Start Date and in particular comply with any agreed milestones, examples of which are illustrated below:

<u>Item</u>	<u>Milestones</u>	<u>Due Date</u>
1	Purchase of New Diesel Vehicles x 3	1st March 2017
2	Wrapping of Vehicles	1st March 2017
3	Vehicle Modification and Equipment Fitting	1st March 2017
4	Head Office Visits	1st March 2017
5	Gun Cabinets + Fitting	1st March 2017

b. The attainment by the Contractor of the Lead-In programme he has proposed is an essential pre-requisite to the satisfactory fulfilment of the Contract and time is of the essence in respect thereof.

c. The Contractor shall submit to the Authority within 5 working days of the due date, evidence that the Milestone has been achieved. Failure to produce satisfactory evidence of the completion of any of the agreed Milestones, save as a direct result of any act or omission of the Authority, shall entitle the Authority, without further notice, to terminate the Contract. Such termination shall be without liability to the Authority, and without prejudice to all other rights of the Authority under this Contract

d. During the Lead-In Period, all the provisions of the Contract shall apply, save that the Contractor shall not be required to provide the Services until the Contract Start Date.

L9. Authority's Quality Monitoring

The Contractor shall give the DO or his authorised representative ready access to all work in progress and completed work together with the associated documentation and records of Quality Control checks for the purpose of carrying out the Authority's own QA monitoring of the Contractor's work and procedures. The Contractor shall also provide copies of his QA audit reports, relating to the Contractor's on-site organisation and contract operations, to the DO.

L10. Witnesses at Boards of Inquiry

The Contractor shall facilitate the attendance as witnesses at Boards of Enquiry of such of his staff as may be invited by the Commanding Officer to give evidence.

L11. Allotment, use and maintenance of buildings, equipment and facilities

a. The Authority shall allot Buildings for the Contractor's use at RAF Brize Norton, RAF Northolt and RAF Benson and the Contractor shall be entitled to use the said buildings on ordinary loan for the purpose of the Contract and for no other purpose whatsoever, unless the prior written approval of the Authority has been obtained. The Authority reserves the right to vary the numbers and types of buildings allotted to the Contractor.

b. Immediately prior to occupation, the Contractor shall agree separately with the DO a Schedule of State and Condition of Fixtures and Fittings in respect of the allotted buildings. The Contractor shall ensure that all defects to buildings are reported for rectification promptly.

c. The Contractor shall ensure that fire precautions and other security measures are taken in the allotted buildings in accordance with the Authority's current instructions. Fire Services and training will be provided by the Authority.

d. The Contractor shall not alter or modify any buildings, electrical services or the connection of machinery etc., nor construct any new buildings or structures without the prior approval of the DO. Where such approval is given, the work shall be carried out to the satisfaction of the DO.

e. The Contractor shall be responsible for the cleanliness of all offices, buildings, facilities and their surrounds allotted to him under this contract, but not the repair of drains, gullies and manholes.

- f. The Authority shall provide water, gas, electricity, steam, fuel as appropriate, free of charge to the Contractor for the purpose of carrying out the Contract, and for staff accommodation at the Unit, and the Contractor shall take all reasonable precautions to ensure due economy consistent with efficiency in the use of such services. The Authority shall also be responsible for maintenance of the accommodation fabric, including such services as cleaning, removal of waste and window cleaning.
- g. The Authority shall provide telephone facilities necessary for the performance of the Contract.
- h. Copies of all certificates etc. required within the support of this contract are to be openly displayed within the AWCU accommodation and available for scrutiny by the Authority or his representative as required.

L12. Security measures

- a. The Contractor shall ensure that all the appropriate and necessary Security measures are taken in the allotted buildings and facilities which are to include physical security and control of energy, in accordance with the Authority's current instruction. He will ensure that all staff will comply with the various Security States periodically imposed by the Authority. The Authority will be responsible for training the Contractor's staff in order to develop an understanding of the purpose of security and the need for personal responsibility towards security.
- b. All personnel employed under the contract will be required to hold an appropriate MOD security clearance, which must be achieved prior to the Contract start date. A consolidated list of all such personnel holding security clearances employed under this Contract will be provided to the Authority prior to Contract start.
- c. In accordance with the provisions of DEFCON 76, responsibility for Security vetting Contractors' personnel rests with the Authority. Where Contractors' personnel are required to complete a MOD Security clearance form, the Contractor will be responsible for ensuring that such forms are completed in full and returned to the relevant Security Authorities without undue delay.

L13. Movements of Vehicles and Equipment on MOD Airfields

- a. The Contractor shall obtain prior permission from Air Traffic Control before moving vehicles, plant and material into Movement Areas. The Contractor shall adhere strictly to the instructions of the Air Traffic Control Officer regarding such movements.
- b. The level of currency and familiarity required prior to a Contractor operating solo on the Movement Area at any aerodrome is at the discretion of SATCO.
- c. The Contractor shall obtain and confirm full Airside Insurance cover prior to operating any vehicle on the Movement Area.

L14. Re-fuelling on Station.

The BCU may draw fuel at the Stations covered by this Contract if necessary to ensure continuity of cover. The Contractor will be billed direct by the MOD for the value of the fuel drawn on the Stations.

L15. Transfer of responsibility

In the event of a transfer of responsibility of the Contract task from the Contractor at the expiry or termination of the Contract, the Contractor shall co-operate in the transfer under arrangements to be notified to him by the Authority. Transfer of responsibility for buildings, aircraft, equipment, petrol oil and lubricant (POL), stores and other items shall be subject to a mutually agreed inventory between the interested parties at the time of transfer.

L16. Transfer of undertakings (protection of employment) regulations 2006 (TUPE)

a. Definitions

In this clause unless the context otherwise requires and without prejudice to the provisions of Schedule 1 (Definitions of Contract), the following expressions shall have the following meanings:

“Business Day” means any day excluding:

- Saturdays and Sundays;
- any public and statutory holidays in the UK; and
- privilege days;

“Contract Award Date” means the date of this Contract;

“Employee Liability Information” has the same meaning as in regulation 11(2) of the Transfer Regulations.

“Expiry Date” means the date of expiry of this Contract by whatever means;

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

“Previous Contractor” means Safeskys;

“Previous Contractor Employee” means an employee who immediately prior to 0001 hours on the Relevant Transfer Date is an employee of the Previous Contractor and assigned to carry out the services which will be performed by the Contractor under this Contract;

“Previous Contractor Third Party Employee” means an employee of any third party employer contracted to provide services to the Previous Contractor the same as or similar to any of the Services who immediately before the Relevant Transfer to the Contractor or any Sub-Contractor is employed or engaged to carry out those services;

“Relevant Employee” means the Previous Contractor Employees, the Previous Contractor Third Party Employees and Previous Contractor Sub-contractor Employees;

“Relevant Statutory Scheme” has the same meaning as in regulation 8 of the Transfer Regulations;

“Relevant Transfer” means a transfer to the Contractor or Sub-Contractor of the Relevant Employees pursuant to this Contract and the Transfer Regulations;

“Relevant Transfer Date” means the date on which the Relevant Transfer is affected;

“Services” means Schedules 2 and 5 (Schedule of Requirements and Specification) of this Contract in conjunction with Schedule 1 (Definitions of Contract);

“Service Commencement Date” means the date of commencement of the Services on 1 April 2017;

“Sub-Contractor” means any person who enters into a Sub-Contract with the Contractor;

“Subsequent Transferring Employee” means an employee assigned, engaged or employed in the provision of the Services who is transferred under the Transfer Regulations to a New Provider on expiry or termination of this Contract;

“Subsequent Contract” means the contract for Services with the New Provider;

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

“Subsequent Relevant Transfer” means a transfer of employees assigned, engaged or employed in the provision of the Services from the Contractor or any Sub-Contractor to a New Provider under the Transfer Regulations;

“Subsequent Transfer Date” means the date on which the transfer of a Subsequent Transferring Employee takes place under the Transfer Regulations;

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

“Transfer Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

b. Employees

(1) Within four (4) weeks of Service Commencement Date, the Authority shall provide the Contractor with the information listed in Annex B and C to Schedule 3 in respect of Relevant Employees together with any Employee Liability Information in respect of such Relevant Employees to the extent that such information and Employee Liability Information has been provided to the Authority by the Previous Contractor.

(2) The Authority shall provide the Contractor with any update to the information and Employee Liability Information provided under clause as soon as is reasonably practicable.

(3) The Authority does not warrant the accuracy of the information provided under clauses L15.b (1) and L15.b (2) above.

(4) The Contractor and the Authority acknowledge that the provision of the Services under this Contract will constitute a Relevant Transfer.

(5) The Contractor agrees that from the Relevant Transfer Date the contracts of employment of any Relevant Employees together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme) will take effect as if originally made between the Contractor and the Relevant Employees (or the relevant trade union, as the case may be) subject to any variations to such contracts of employment made pursuant to regulation 9 of the Transfer Regulations, where applicable.

(6) Save for any liabilities in respect of Relevant Employees under a Relevant Statutory Scheme or Schemes, the Contractor or Sub-Contractor (as the case may be) shall have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, holiday entitlement accrued up to the Relevant Transfer Date, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to the Relevant Employees with effect from and including the Relevant Transfer Date until the Expiry Date.

c. Post Transfer Reporting

(1) The Contractor shall provide the Authority with the following information as part of the normal reporting regime of this Contract on an [annual] basis (to include information relating to employees transferred under the Transfer Regulations to Sub-Contractors as a result of this Contract):

a. any proposed, agreed or imposed changes to terms and conditions of service in respect of persons wholly or mainly employed or engaged in provision of the Services under this Contract;

- b. disputes relating to compliance with the Transfer Regulations which are regarded as unresolved by a recognised Trade Union;
- c. any court action or tribunal proceedings relating to compliance with the Transfer Regulations;
- d. completed court action or tribunal proceedings relating to compliance with the Transfer Regulations; and
- e. out of court settlements relating to compliance with the Transfer Regulations if possible having regard to the wording of the settlement and the Contractor acknowledges that the information referred to in this Clause 0 may also be used in considering the Contractor's bid to re-let, or in considering the Contractor's bid(s) for other contracts let by the Authority.

d. Information on Re-tender, Expiry or Termination

(1) No earlier than two years preceding the Expiry Date or at any time after the service of a notice to terminate or other expiry of this Contract and on receipt of a written request by the Authority, the Contractor shall (and shall procure that any Sub-Contractor shall):

- a. supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Annex B to Schedule 3 to this Contract relating to the employees who are wholly or mainly employed, assigned or engaged in providing the Services under this Contract, separately identifying former employees of the Authority who transferred to the Contractor and indicating which are members of the Contractor's Scheme;
- b. provide the information promptly and in any event not later than three months from the date when a request for such information is made and at no cost to the Authority;
- c. permit the Authority to use the information for informing any prospective New Provider for any services which are substantially the same as the Services provided pursuant to this Contract; and
- d. enable and assist the Authority and a New Provider to communicate with and meet those employees and their trade union or other employee representatives.

(2) On notification to the Contractor by the Authority of a New Provider, or any time within 6 months of the Expiry Date or after the Authority has given notice to terminate or other expiry of this Contract, whichever is first, and on receipt of a written request by the Authority, the Contractor shall:

- a. fully and accurately disclose to the Authority such information listed in Annex C to Schedule 3 including any Employee Liability Information relating to his employees and relating to all employees of any third party who are employed, assigned or engaged in providing the Services under this Contract;
- b. provide the information promptly and in any event not later than three months from the date when a request for such information is made (save when the written request is received less than 3 months prior to the Expiry Date, in which case no later than 28 days from the date of that request) and at no cost to the Authority; and
- c. permit the Authority to use the information for informing any prospective New Provider for any services which are substantially the same as the Services provided pursuant to this Contract.

(3) Nothing in clause 1.10 shall affect the Contractor's obligations under regulation 11 of the Transfer Regulations to provide Employee Liability Information to the New Provider

(4) On notification to the Contractor by the Authority of a New Provider or within 6 months of the Expiry Date or after service of a notice to terminate or other expiry of this Contract, whichever is first, and on receipt of a written request by the Authority, the Contractor shall not:

- a. materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the Services;
- b. replace or re-deploy from the Services any person wholly or mainly employed or engaged in providing the Services, or materially increase the number of persons performing the Services;
- c. reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services any duties unconnected with the Services; or
- d. terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the Services save for genuine business reasons without the prior written agreement of the Authority, such agreement not to be unreasonably withheld or delayed, and the Contractor shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of clauses L15.d(2), L15.d(4), and L15.d(5) below.

(5) The Authority may at any time prior to the period set out in clause L15.d (2) request from the Contractor any of the information in paragraphs 1(a) to (d) of Annex B to Schedule 3 and the Contractor shall provide the information requested within three months of receipt of that request.

e. Indemnities on subsequent TUPE transfer on expiry or termination of the Contract

(1) In the event that on the expiry of the Contract there is a Subsequent Relevant Transfer, the Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with:

- a. any claim or claims by Subsequent Transferring Employees or by the New Provider or any sub-contractor of the New Provider at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the Contractor or any Sub-Contractor during the period from and including the Relevant Transfer Date and prior to the Subsequent Transfer Date;
- b. any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Contractor or any Sub-Contractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the Contractor or any Sub-Contractor.

(2) In the event that there is a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of, or in connection with:

- a. the employment or the termination of the employment of each of the Subsequent Transferring Employees by the New Provider or any Sub-Contractor of the New Provider at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the New Provider or any Sub-Contractor of the New Provider during the period from and including the Subsequent Transfer Date;

and

b. any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the New Provider or any Sub-Contractor of the New Provider to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the New Provider or any Sub-Contractor of the New Provider.

f. **Contracts (Rights of Third Parties) Act 1999**

(1) A New Provider may enforce the terms of clause L15.e (2) against the Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.

(2) The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.

(3) Nothing in clause L15.f (2) shall affect the accrued rights of the New Provider prior to the rescission, variation or termination of this Contract.

Schedule 1 - Definitions of Contract

Core Definitions

AG173	means the MOD invoice form AG173 that suppliers submit as an invoice to enable payment to be processed;
AG210	means the MOD invoice form AG210 that suppliers submit as an invoice to enable a stage or milestone payment to be processed;
Assets	means items / materials which the Contractor has acquired for the purposes of performing their obligations under the Contract;
Authority	means the Secretary of State for Defence acting on behalf of the Crown;
Authority's Representative(s)	shall be those person(s) defined in Schedule 3 (Contract Data Sheet) who will act as the Authority's Representative(s) in connection with the Contract. Where the term "Authority's Representative(s)" in the Conditions is immediately followed by a functional description in brackets, the appropriate Authority's Representative(s) shall be the designated person(s) for the purposes of clause H2.b;
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;
Central Government Body	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 Executive Agency.
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.
Conditions	means the terms and conditions set out in this document;
Consignee	means that part of the Authority identified in Schedule 3 (Contract Data Sheet) to whom the Contractor Deliverables are to be supplied;

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Contract	means the Contract including its Schedules and any amendments agreed by the Parties in accordance with condition A2 (Amendments);
Contract Implementation Date	means the day upon which the Contractor is fully responsible for the provision of all of the Contractor Deliverables required;
Contract Price	means the amount set out in Schedule 2 (Schedule of Requirements) to be paid (inclusive of packaging and exclusive of any applicable VAT) by the Authority to the Contractor, for the full and proper performance by the Contractor of its obligations under the Contract;
Contractor	means the person who, by the Contract, undertakes to provide the Contractor Deliverables, for the Authority as is provided by the Contract. Where the Contractor is an individual or a partnership, the expression shall include the personal representatives of the individual or of the partners, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of the Authority;
Contractor Commercially Sensitive Information	means the Information listed in the completed Schedule 6 - Contractor's Commercially Sensitive Information Form, which is Information notified by the Contractor to the Authority, which is acknowledged by the Authority as being commercially sensitive;
Contractor Deliverables	means the services and, where appropriate the documents, which the Contractor is required to provide under the Contract in accordance with the Schedule of Requirements and the Specification;
Contractor's Representative	means a person or persons employed by the Contractor in connection with the provision of the Contractor Deliverables and in connection with this Contract;
Contractor's Team	means all employees, consultants, agents and Subcontractors which the Contractor engages in relation to the Contract;
Control	means the power of a person to secure that the affairs of the Contractor are conducted in accordance with the wishes of that person: a. by means of the holding of shares, or the possession of voting powers in, or in relation to, the Contractor; or b. by virtue of any powers conferred by the constitutional or corporate documents, or 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;
Crown Use	in relation to a patent means the doing of anything by virtue of Sections 55 to 57 of the Patents Act 1977 which otherwise would be an infringement of the patent and in relation to a Registered Design has the meaning given in paragraph 2A(6) of the First Schedule to the Registered Designs Act 1949;

CP+F	means the MOD electronic ordering, receipting and payment system;
DAB Form 10	means the MOD invoice summary form;
DBS Finance	means Defence Business Services Finance, at the address stated at Annex A to Schedule 3 (Contract Data Sheet);
DEFFORM	means the MOD DEFFORM series which can be found at https://www.gov.uk/acquisition-operating-framework ;
DEF STAN	means Defence Standards which can be accessed at https://www.dstan.mod.uk ;
Deliver	means hand over the Contractor Deliverables to the Consignee. This shall include unloading, and any other specific arrangements, agreed in accordance with SC3 Condition "Delivery / Collection" and Delivered and Delivery shall be construed accordingly;
Delivery Date	means the date as specified in Schedule 2 (Schedule of Requirements) on which the Contractor Deliverables, or the relevant portion of them are to be Delivered or made available for Collection;
Design Right(s)	has the meaning ascribed to it by Section 213 of the Copyright, Designs and Patents Act 1988;
Effective Date of Contract	means the date specified on the Authority's acceptance letter. For example the DEFFORM 159, or where the standstill period applies, the relevant Notice of Entry into Contract letter;
Firm Price	means a price (Excl. VAT) which is not subject to variation;
Full Service Provision	means the provision by the Contractor of all of the Contractor Deliverables in accordance with the Conditions of this Contract;
Information	means any Information in any written or other tangible form disclosed to one Party by or on behalf of the other Party under or in connection with the Contract, including information provided in the tender or negotiations which preceded the award of the Contract;
Key Performance Indicators	means the agreed method of monitoring and measuring the Contractor's performance against the Contract as set out in Section L (Processes) where this Contract includes Core Plus condition "Key Performance Indicators and Performance Management";
Legislation	means in relation to the United Kingdom: a. any Act of Parliament; b. any subordinate Legislation within the meaning of section 21 of the Interpretation Act 1978; c. any exercise of the Royal Prerogative; or d. any enforceable community right within the meaning of section 2 of the European Communities Act 1972;
Minor Change	means any change that does not significantly/materially affect the nature of the Contractor Deliverables;

MOD Form 640	means the MOD form in 5 separate parts which may be obtained from the address specified for obtaining MOD forms and documentation in Schedule 3 (Contract Data Sheet);
Notices	shall mean all notices, orders, or other forms of communication required to be given in writing under or in connection with the Contract;
Overseas Contractor	shall mean a Contractor that is registered and/or based outside of the UK;
Parties	means the Contractor and the Authority, and Party shall be construed accordingly;
Schedule of Requirements	means Schedule 2 (Schedule of Requirements) and Annex A to Schedule 2, which identifies, either directly or by reference, Contractor Deliverables to be provided, the performance dates involved and the price or pricing terms in relation to each Contractor Deliverable;
Specification	means Schedule 5 (Specification) which provides the detailed description of the Contractor Deliverables and sets out any performance dates by which the Contractor shall provide such Contractor Deliverables;
Subcontractor	means any person engaged by the Contractor from time to time as may be permitted by the Contract to provide the Contractor Deliverables (or any part thereof);
Supported Businesses	means establishments or services where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market;
Transparency Information	means the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and details of any payments made by the Authority to the Contractor under the Contract.

Appendix A to Schedule 1 – Core+ Definitions of Contract

Articles	means the Contractor Deliverables (goods and / or the services), including packaging (and Certificate(s) of Conformity and supplied in accordance with any QA requirements if specified) which the Contractor is required to provide under the Contract in accordance with Schedule 2 (Schedule of Requirements), but excluding incidentals outside Schedule 2 (Schedule of Requirements) such as progress reports. (This definition only applies to Core Plus Schedule “Hazardous Articles, Materials or Substances supplied under the Contract” and any DEFCONs if either are included in this Contract);
Collect	means pick up the Contractor Deliverables from the Consignor. This shall include loading, and any other specific arrangements, agreed in accordance with clause K14.c and Collected and Collection shall be construed accordingly;
Consignor	means the name and address specified in Schedule 3 (Contract Data Sheet) from whom the Contractor Deliverables will be dispatched or Collected;
CPET	means the UK Government’s Central Point of Expertise on Timber, which provides a free telephone helpline and website to support implementation of the UK Government timber procurement policy
Denomination of Quantity (D of Q)	means the quantity or measure by which an item of material is managed;
Diversion Order	means the Authority’s written instruction (typically given by MOD Form 199) for urgent Delivery of specified quantities of Contractor Deliverables to a Consignee other than the Consignee stated in Schedule 3 (Contract Data Sheet);
Employee	shall include any person who is an employee or director of the Contractor or who occupies the position of a director of the Contractor, by whatever title given. (This definition only applies to the narrative condition “Security Measures”);
Evidence	means either: a. an invoice or delivery note from the timber supplier or subcontractor to the Contractor specifying that the product supplied to the Authority is FSC or PEFC certified; or b. other robust evidence of sustainability or FLEGT licensed origin, as advised by CPET;
FLEGT	means the Forest Law Enforcement, Governance and Trade initiative by the European Union to use the power of timber-consuming countries to reduce the extent of illegal logging;
Hazardous Contractor Deliverable	means a Contractor Deliverable or a component of a Contractor Deliverable that is itself a hazardous material or substance or that may in the course of its use, maintenance, disposal, or in the event of an accident, release one or more hazardous materials or substances and each material or substance that may be so released;
Independent Verification	means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures

	conform to “BS EN ISO / IEC 17065: 2012 Conformity assessment - Requirements for bodies certifying products, processes and services”, and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to “ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent”;
Legal and Sustainable	means production and process methods, also referred to as timber production standards, as defined by the document titled “UK Government Timber Production Policy: Definition of legal and sustainable for timber procurement”. The edition current on the day the contract documents are issued by the Authority shall apply;
Military Level Packaging	Packaging that by the nature of the packaged items nature, or envisaged transport / movement or handling within the military supply chain and requires enhanced protection beyond that which commercial Packaging normally provides;
Military Packaging Accreditation Scheme (MPAS)	is a MOD sponsored scheme to accredit military packaging designers capable of producing SPIS designs acceptable to the MOD by meeting its requirements and thereby assure good Military Level Packaging. MPAS supersedes MPCAS/DR14. MPAS detail is available from DESJSCSCM-EngTLS-Pkg@mod.uk ;
MPAS Registered Organisation	is a packaging organisation having one or more MPAS Certificated Designers capable of Military level designs. A company capable of both Military Level and commercial Packaging designs including MOD labelling requirements;
MPAS Certificated Designer	shall mean an experienced Packaging Designer trained and certified to MPAS requirements;
NATO	means the North Atlantic Treaty Organisation, which is an intergovernmental military alliance, based on the North Atlantic Treaty, which was signed on 4 April 1949;
Overseas	shall mean non UK or Foreign
Packaging	Verb. The operations involved in the preparation of materiel for: transportation, handling, storage and Delivery to the user; Noun. The materials and components used for the preparation of the Contractor Deliverables for transportation and storage in accordance with the Contract;
Packaging Design Authority (PDA)	shall mean the organisation that is responsible for the original design of the Packaging except where transferred by agreement. The PDA shall be identified in the Contract, see Annex A to Schedule 3 (Appendix – Addresses and Other Information), Box 3. The PDA should be MPAS registered or accepted as having an equivalent certification;
Primary Packaging Quantity (PPQ)	means the quantity of an item of material to be contained in an individual package, which has been selected as being the most suitable for issue(s) to the ultimate user;
Recycled Timber	means recovered wood that prior to being supplied to the Authority had an end use as a standalone object or as part of a structure. Recycled Timber covers: a. pre-consumer reclaimed wood and wood fibre and industrial by products but excluding sawmill co-products which fall within the

category of Virgin Timber;

b. post-consumer reclaimed wood and wood fibre, and driftwood;

c. reclaimed timber abandoned or confiscated at least ten years previously;

it excludes sawmill co-products;

Secret Matter

means any matter connected with the Contract, or its performance, which is designated by the Authority in the Security Aspects Letter annexed to the Contract or otherwise in writing as “Top Secret” or “Secret”, and shall include any information concerning the content of such matter and anything which contains or may reveal that matter. **(This definition only applies to the narrative condition “Security Measures”);**

Short-Rotation Coppice

means a specific management regime whereby the poles of trees are cut every one to two years and which is aimed at producing biomass for energy. It is exempt from the UK Government timber procurement policy. For avoidance of doubt, Short-Rotation Coppice is not conventional coppice, which is subject to the timber policy;

STANAG 4329

means the publication NATO Standard Bar Code Symbolologies which can be sourced from Information at www.dstan.mod.uk/fags.html;

Timber and Wood-Derived Products

means timber (including Recycled Timber and Virgin Timber but excluding Short-Rotation Coppice) and any products that contain wood or wood fibre derived from those timbers. Such products range from solid wood to those where the manufacturing processes obscure the wood element;

Virgin Timber

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

Schedule 2 – Schedule of Requirements

Name and Address of Tenderer Safeskys 	MINISTRY OF DEFENCE	Tender No ACT/04482
	Schedule of Requirements for Provision of Airfield Wildlife Control Services – Southern Region	
Issued With: DEFFORM 47	On: 15 th August 2016	Previous Contract No. ACT/03735

Requirements

<u>Item</u>	<u>Description</u>	<u>Firm Price (ex VAT)</u>
1 - 3	Provision of Airfield Wildlife Control Services at RAF Benson, RAF Brize Norton and RAF Northolt	In accordance with Schedule 2A

Annex A to Schedule 2 - Schedule of Requirements

For: Provision of Airfield Wildlife Control Services – Southern Region

Item Number	Station	Firm Price £ (ex-VAT)					
		Lead-in Costs	Year 1	Year 2	Year 3	Option Year 4	Option Year 5
		Firm Price £ excluding VAT (See clause L2b)	1 Mar 2017 to 28 Feb 2018 Annual Firm Price £ excluding VAT	1 Mar 2018 to 28 Feb 2019 Annual Firm Price £ excluding VAT	1 Mar 2019 to 29 Feb 2020 Annual Firm Price £ excluding VAT	1 Mar 2020 to 28 Feb 2021 Annual Firm Price £ excluding VAT	1 Mar 2021 to 28 Feb 2022 Annual Firm Price £ excluding VAT
1	RAF Benson	██████	██████	██████	██████	██████	██████
2	RAF Brize Norton	██████	██████	██████	██████	██████	██████
3	RAF Northolt	██████	██████	██████	██████	██████	██████
Total Firm Price		██████	██████	██████	██████	██████	██████

Schedule 3 - Contract Data Sheet

Condition A9 Governing Law	Contract to be governed and construed in accordance with: (one must be chosen) English Law ☒ Scots Law ☒ clause A9.d shall apply Solicitors or other persons based in England and Wales (or Scotland if Scots Law applies) irrevocably appointed for Contractors without a place of business in England (or Scotland, if Scots Law applies) in accordance with clause A9.g (if applicable) are as follows: TBC
Condition A22 Termination for Convenience	The Notice period for terminating the Contract shall be 3 months .
Condition A24 Contract Period	The Contract expiry date shall be: 29 Feb 2020. Subject to clause L1.
Clause B1.b.(1) Contractor's Obligations – Quality Assurance	Is a Deliverable Quality Plan required for this Contract? Yes ☒ No ☒ If Yes the Deliverable Quality Plan must be set out as defined in AQAP 2105 and delivered to the Authority (Quality) within N/A Business Days of Contract Award. Once agreed by the Authority the Quality Plan shall be incorporated into the Contract. The Contractor shall remain at all times, solely responsible for the accuracy, suitability and applicability of the Deliverable Quality Plan. Other Quality Assurance Requirements: ISO 9001-2008
Condition C1 Contract Price (Excl. Vat)	All Schedule 2 line items shall be Firm Price.
Clause G1.a Payment	DEFFORM 30 Agreement refers (if applicable) Reference: N/A Date: N/A
Clause G1.c.(2) and G1.c.(3) Payment (for Schedule 2 items)	Payment is to be enabled by: All Line Items CP+F Refers
Clause H1.a Progress Monitoring	The Contractor shall be required to attend the following meetings: Type: Progress Meetings

	Frequency: As required but not less than annually. Location: Air Command
Clause H1.b Progress Reports	The Contractor is required to submit the following Reports: Type: As per Statement of Requirements (SOR) Frequency: As per SOR Content: As per SOR Method of Delivery: As per SOR Delivery Address: As per SOR
Clause H2.b Authority's Representatives	The Authority's Representatives for the Contract are as follows: As detailed in Annex A to Schedule 3 (DEFFORM 111)
Clause H3.a.(3) Notices	Notices served under the Contract shall be sent to the following address: Authority: The Commercial Officer (as per DEFFORM 111) Contractor: Safeskys Ltd 
Clause H3.a.(5) Notices	Notices served under the Contract can be transmitted by electronic mail: Yes ☒ No ☒

Condition K1 Certificate of Conformity (Core+ Only)	Is a Certificate of Conformity Required for this Contract? Yes ☒ No ☒ Line Items: N/A If Yes, does the Contractor Deliverables require Traceability throughout the supply chain? N/A Line Items: N/A
Condition K2 Marking of Contractor Deliverables (Core+ Only)	Special Marking requirements: N/A
Condition K3 Supply of Data for Hazardous Contractor Deliverables, Materials and Substances (Core+ Only)	A completed SC3 Core Plus Schedule "Hazardous Articles, Materials or Substance Statement", and if applicable, Safety Data Sheet(s) are to be provided by e-mail with attachments in Adobe PDF or MS WORD format to: a) The Authority's Representative (Commercial) b) DSA-Land-MovTpt-DGHSIS@mod.uk or if only a hardcopy is available to: a) The Authority's Representative (Commercial) b) Hazardous Stores Information System (HSIS) Defence Safety Authority (DSA) Movement Transport Safety Regulator (MTSR) Hazel Building Level 1, #H019 MOD Abbey Wood (North) Bristol, BS34 8QW DSA-DLSR-MovTpt-DG HSIS (MULTIUSER) to be Delivered no later than one (1) month prior to the Delivery Date for the Contract Deliverable or by the following date: N/A
Clause K4.i Timber and Wood-Derived Products (Core+ Only)	A completed SC3 Core Plus Schedule "Timber and Wood-Derived Products Supplied under the Contract: Data Requirements", is to be provided by e-mail with attachments in Adobe PDF or MS WORD format to: The Authority's Representative (Commercial) or, if only a hardcopy is available to: The Authority's Representative (Commercial) to be Delivered by the following date: N/A

Clause K5.b Rejection (Core+ Only) (Note: If no period is inserted here the time period shall be 20 Business days)	Time limit for rejection of the Contractor Deliverables shall be N/A Business Days.
Clause K6.a Delivery (for Schedule 2, Appendix A items) (Core+ Only)	The transport requirements shown below are applicable: Line Items N/A To be Delivered by the Contractor (See box "Delivery by the Contractor" below) Line Items N/A To be Collected by the Authority (See box "Collection by the Authority" below)
Clause K6.b Delivery by the Contractor (for Schedule 2, Appendix A items) (Core+ Only)	(Where applicable, see box "Delivery" above.) Special Delivery Instructions: N/A Each consignment of the Contractor Deliverables to be accompanied by: N/A
Clause K6.c Collection by the Authority (for Schedule 2, Appendix A items) (Core+ Only)	(Where applicable, see Box "Delivery" above) Special Collection Instructions: N/A Each consignment of the Contractor Deliverables to be accompanied by: N/A Consignor Address: N/A Consignee Address Details: N/A
Condition K7 Self to Self Delivery (Core+ Only)	Is Self to Self Delivery required: Yes ☒ No ☒ If Yes, Delivery address applicable: N/A
Clause K16.a Limitation of Contractor's Liability	The Contractor's liability under, or in relation to, the contract shall be

	limited in respect of the following risks as set out below: a. [loss of, or damage to Issued Property - £N/A]; b. [loss of, or damage to, Contractor Deliverables - £N/A]; c. [Third Party claims - £N/A]; d. [death, personal injury, or damage to property arising from maritime claims - £N/A]; e. [Default - £N/A]; f. [negligence - £N/A]; [consequential/indirect costs - £N/A].
Other Addresses and Other Information (Covers forms and publications addresses and official use information)	See Annex A to Schedule 3 (DEFFORM 111)

Annex A to Schedule 3**DEFFORM 111**
(Edn 02/16)**Appendix - Addresses and Other Information****1. Commercial Officer**

Name: [REDACTED]

Address: [REDACTED]

Email: [REDACTED]@mod.uk

Tel: [REDACTED]

2. Project Manager, Equipment Support Manager, PT Leader or Designated Officer (from whom technical information is available)

Name: [REDACTED]

Address: [REDACTED]

Email: [REDACTED]@mod.gov.uk

Tel: [REDACTED]

3. Packaging Design Authority

Organisation & point of contact:

N/A

(Where no address is shown please contact the Project Team in Box 2)

4. (a) Supply / Support Management Branch or Order Manager:
Branch/Name: N/A

Tel No:

(b) U.I.N.

5. Drawings/Specifications are available from:

N/A

6. For contracts containing DEFCON 5, mauve Copies of MOD Form 640 are to be sent to:

N/A

(where no address is shown the mauve copy should be destroyed)

7. Quality Assurance Representative:

N/A

Commercial staff are reminded that all Quality Assurance requirements should be listed under the General Contract Conditions.

AQAPS and DEF STANs are available from UK Defence Standardization, for access to the documents and details of the helpdesk visit <http://dstan.uwh.diif.r.mil.uk/> [intranet] or <https://www.dstan.mod.uk/> [extranet, registration needed].**8. Public Accounting Authority**1. Returns under DEFCON 694 (or SC equivalent) should be sent to DBS Finance ADMT – Assets In Industry 1, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD
☎ 44 (0) 161 233 53972. For all other enquiries contact DES Fin FA-AMET Policy, Level 4 Piccadilly Gate, Store Street, Manchester, M1 2WD
☎ 44 (0) 161 233 5394**9. Consignment Instructions**

The items are to be consigned as follows:

N/A

10. Transport. The appropriate Ministry of Defence Transport Offices are:**A. DSCOM**, DE&S, DSCOM, MoD Abbey Wood, Cedar 3c, Mail Point 3351, BRISTOL BS34 8JHAir Freight Centre

IMPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

EXPORTS ☎ 030 679 81113 / 81114 Fax 0117 913 8943

Surface Freight Centre

IMPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

EXPORTS ☎ 030 679 81129 / 81133 / 81138 Fax 0117 913 8946

B. JSCS

JSCS Helpdesk No. 01869 256052 (select option 2, then option 3)

JSCS Fax No. 01869 256837

www.freightcollection.com**11. The Invoice Paying Authority (see Note 1)**

Ministry of Defence ☎ 0151-242-2000

DBS Finance

Walker House, Exchange Flags Fax: 0151-242-2809

Liverpool, L2 3YL

Website is:<https://www.gov.uk/government/organisations/ministry-of-defence/about/procurement#invoice-processing>**12. Forms and Documentation are available through *:**Ministry of Defence, Forms and Pubs Commodity Management
PO Box 2, Building C16, C Site

Lower Arncott

Bicester, OX25 1LP (Tel. 01869 256197 Fax: 01869 256824)

Applications via fax or email: DESLCSLS-OpsFormsandPubs@mod.uk**NOTES****1. Forms.** Hard copies, including MOD Form 640 are available from address in Box 12., All other invoicing forms e.g. AG Forms 169 and 173, are available from the website address shown at Box 11.**2.*** Many DEFCONs and DEFFORMs can be obtained from the MOD Internet Site:<https://www.aof.mod.uk/aofcontent/tactical/toolkit/index.htm>

Schedule 4 - Contract Change Process (i.a.w. clause A2.b)

1. Authority Changes

- a. Subject always to condition A2 (Amendments to Contract), the Authority shall be entitled, acting reasonably, to require changes to the Contractor Deliverables (a "Change") in accordance with this Schedule 4.

2. Notice of Change

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

3. Contractor Change Proposal

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

4. Contractor Change Proposal – Process and Implementation

- a. As soon as practicable after the Authority receives a Contractor Change Proposal, the Authority shall:
 - (1) evaluate the Contractor Change Proposal;
 - (2) where necessary, discuss with the Contractor any issues arising and, following such discussions, the Authority may modify the Authority Notice of Change and the Contractor shall, as soon as practicable, and in any event not more than ten (10) Business Days (or such other period as the Parties may agree) after receipt of such modification, submit an amended Contractor Change Proposal.
- b. As soon as practicable after the Authority has evaluated the Contractor Change Proposal (amended as necessary) the Authority shall:

- (1) indicate its acceptance of the Change Proposal by issuing an amendment to the Contract in accordance with condition A2 (Amendments to Contract); or
 - (2) serve a Notice on the Contractor rejecting the Contractor Change Proposal and withdrawing (where issued) the Authority Notice of Change.
- c. If the Authority rejects the Change Proposal, it shall not be obliged to give its reasons for such rejection.
- d. The Authority shall not be liable to the Contractor for any additional work undertaken or expense incurred unless a Contractor Change Proposal has been accepted in accordance with clause 4.b.(1).

5. Contractor Changes

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

Schedule 5 - Specification

See separate Statement of Requirements document attached.

Schedule 6 - Transfer Regulations

PART 1 - EMPLOYEE TRANSFER ARRANGEMENTS ON ENTRY

1 Definitions

a. In this Schedule 6 Part 1, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) of the Contract.

b. Without prejudice to Schedule 1 (Definitions) of the Contract, in this Schedule 6 Part 1 unless the context otherwise requires:

"DPA" means Data Protection Act 1998 as amended or replaced from time to time;

"Employing Sub-Contractor" means any sub-contractor of the Contractor providing any part of the Services who is or is to be the employer of an Authority Employee, a Previous Contractor Employee or an Unexpected Employee;

"New Provider" means any replacement service provider or providers engaged to provide the Services (or part thereof) or substantially similar services or the Authority itself where the Services or substantially similar services or part thereof continue to be provided by the Authority after partial termination, termination or expiry of this Contract;

"Previous Contractor" means Safeskys Ltd;

"Previous Contractor Employee" means an employee of a Previous Contractor who immediately before the Relevant Transfer Date is assigned to carry out the services to be carried out by the Contractor or Sub-Contractor under this Contract and who has not been dismissed, resigned, been reassigned or objected to the Relevant Transfer;

"Relevant Transfer" means a transfer to the Contractor or an Employing Sub-Contractor of a Previous Contractor Employee pursuant to this Contract and the Transfer Regulations;

"Relevant Transfer Date" means the date on which a Relevant Transfer is affected for Previous Contractor Employees;

"Relevant Statutory Scheme" has the same meaning as in Regulation 8 of the Transfer Regulations;

"Services" shall have the meaning specified in [project team to complete];

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate.

2 Previous Contractor Employees

a. Employee Information

(1) No later than three months prior to the Relevant Transfer Date the Authority shall provide to the Contractor the information listed in Appendix 1 of this Schedule 6 Part 1 in respect of Previous Contractor Employees to the extent that such information has been provided to the Authority by the Previous Contractor.

(2) The Authority shall provide the Contractor with any update to the information provided under Paragraph (1) as soon as is reasonably practicable, to the extent that such information has been provided to the Authority by the Previous Contractor.

(3) The Contractor shall provide any information provided to it by the Authority pursuant to Paragraph (1) to an Employing Sub-Contractor within seven Business Days of receipt to the extent that such Previous Contractor Employees are to transfer to an Employing Sub-Contractor under a Relevant Transfer on the Relevant Transfer Date.

(4) Paragraph (1) is subject to the Authority and any Previous Contractor's obligations in respect of the DPA and any data provided by the Authority in accordance with Paragraph (1) shall be provided in anonymous form in order to enable its disclosure. To the extent anonymous data has been provided by the Authority pursuant to its obligations under Paragraph (1) above, the Authority shall provide full data no later than 28 days prior to the Relevant Transfer.

(5) The Authority does not warrant the accuracy of the information provided under Paragraph (1).

b. Obligations in respect of Previous Contractor Employees

(1) The Contractor and the Authority acknowledge (and the Contractor shall procure that the Employing Sub-Contractor acknowledges) that the provision of the Services under this Contract will constitute a Relevant Transfer.

(2) The Contractor agrees (and will procure that the Employing Sub-Contractor agrees) that from the Relevant Transfer Date the contracts of employment of any Previous Contractor Employees together with any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme or otherwise do not transfer pursuant to regulation 4A of the Transfer Regulations) will take effect as if originally made between the Contractor or an Employing Sub-Contractor and the Previous Contractor Employees (or the relevant trade union, as the case may be) subject to any variations to such contracts of employment made pursuant to Regulation 9 of the Transfer Regulations, where applicable.

(3) The Contractor agrees that it will comply with its obligations under sections 257 and 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005.

(4) Save for any liabilities in respect of Previous Contractor Employees under a Relevant Statutory Scheme or Schemes, the Contractor or Employing Sub-Contractor (as the case may be) shall have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, payments in respect of holiday taken after the Relevant Transfer Date as appropriate, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to the Previous Contractor Employees with effect from and including the Relevant Transfer Date and shall indemnify the Authority and the Previous Contractor in respect of the same.

c. Indemnities

(1) The Contractor shall indemnify and hold harmless the Authority and any Previous Contractor against all demands, claims, liabilities, losses and damages, costs and expenses (including all interest, penalties, legal and other costs and expenses) together with any applicable Value Added and similar taxes or liability for deduction of PAYE tax properly incurred by the Authority or any Previous Contractor arising out of or in connection with:

(a) any breach by the Contractor and/or any Employing Sub-Contractor of their obligations under Regulation 13 of the Transfer Regulations;

(b) any act or proposal by the Contractor or any Employing Sub-Contractor prior to or following the Relevant Transfer Date which amounts to a repudiatory breach of contract as referred to in Regulation 4(11) of the Transfer Regulations and/or to make a substantial change in working conditions of any Previous Contractor

Employee to the material detriment of that employee. For the purposes of this sub-clause the expressions “repudiatory breach”, “substantial change” and “material detriment” shall have the same meanings as for the purposes of Regulation 4(9) and 4(11) of the Transfer Regulations; and

(c) any collective agreement or any arrangement with any trade union or staff association after the Relevant Transfer Date.

(d) Any variations or proposed variations to any Previous Contractor Employee’s terms and conditions of employment pursuant to regulations 4(5) and 4(5B).

3 General Provisions Applicable To Previous Contractor Employees And Contractor Personnel

a. Contractor Indemnity

(1) The Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with the employment or termination of employment by the Contractor or any Employing Sub-Contractor of any person (including the Previous Contractor Employees) engaged in connection with the provision of the Services during the term of this Agreement.

b. Post Transfer Reporting

(1) The Contractor shall upon request by the Authority provide (or shall procure that an Employing Sub-Contractor shall provide) the Authority with the following information in respect of the employees who are wholly or mainly employed, assigned or engaged in providing the Services:

(a) any proposed, agreed or imposed changes to terms and conditions of service;

(b) disputes relating to compliance with the Transfer Regulations which are regarded as unresolved by a recognised Trade Union;

(c) any court action or tribunal proceedings relating to compliance with the Transfer Regulations;

(d) completed court action or tribunal proceedings relating to compliance with the Transfer Regulations; and

(e) out of court settlements relating to compliance with the Transfer Regulations if possible having regard to the wording of the settlement.

Appendix 1 to Schedule 6 Part 1 - Personnel Information To Be Released Pursuant To This Agreement

PART A

1. Pursuant to Paragraph (1) of this Schedule 6 Part 1, the written statement of employment particulars as required by section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) will be provided to the extent it is not included within the written statement of employment particulars:

1.1 Personal, Employment and Career

- a) Age;
- b) Security Vetting Clearance;
- c) Job title;
- d) Work location;
- e) Conditioned hours of work;
- f) Employment Status;
- g) Details of training and operating licensing required for Statutory and Health and Safety reasons;
- h) Details of training or sponsorship commitments;
- i) Standard Annual leave entitlement and current leave year entitlement and record;
- j) Annual leave reckonable service date;
- k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
- l) Information of any legal proceedings between employees and their employer within the previous two years or any such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
- m) Issue of Uniform/Protective Clothing;
- n) Working Time Directive opt-out forms; and
- o) Date from which the latest period of continuous employment began.

1.2 Performance Appraisal

- a) The current year's Performance Appraisal;
- b) Current year's training plan (if it exists); and
- c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements;

1.3 Superannuation and Pay

- a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken within the last two years;
- b) Annual salary and rates of pay band/grade;
- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period;

OFFICIAL SENSITIVE - COMMERCIAL

- f) Details of outstanding loan, advances on salary or debts;
- g) Cumulative pay for tax and pension purposes;
- h) Cumulative tax paid;
- i) National Insurance Number;
- j) National Insurance contribution rate;
- k) Other payments or deductions being made for statutory reasons;
- l) Any other voluntary deductions from pay;
- m) Pension Scheme Membership;
- n) For pension purposes, the notional reckonable service date;
- o) Pensionable pay history for three years to date of transfer;
- p) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- q) Percentage of pay currently contributed under any added years arrangements.

1.4 Medical

- a) Sickness and absence records for the immediately preceding four-year period; and
- b) Details of any active restoring efficiency case for health purposes.

1.5 Disciplinary

- a) Details of any active restoring efficiency case for reasons of performance; and
- b) Details of any active disciplinary cases where corrective action is on going.

1.6 Further information

- a) Information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995 or the Equality Act 2010;
- b) Short term variations to attendance hours to accommodate a domestic situation;
- c) Individuals that are members of the Reserves, or staff may have been granted special leave as a School Governor; and
- d) Information about any maternity or other statutory leave or other absence from work.

PART B

1.7 Information to be provided 28 days prior to the Relevant Transfer Date:

- a) Employee's full name;
- b) Date of Birth
- c) Home address;
- d) Bank/building society account details for payroll purposes Tax Code.

PART 2 – STAFF TRANSFER ARRANGEMENTS ON EXIT

1. **Definitions**

a. In this Schedule 6 Part 2, save where otherwise provided, words and terms defined in Schedule 1 (Definitions) or Schedule 6 Part 1 of the Contract shall have the meaning ascribed to them in Schedule 1 (Definitions) or Schedule 6 Part 1 of the Contract.

b. Without prejudice to Schedule 1 (Definitions) of the Contract or Schedule 6, Part 1, in this Schedule 6 Part 2 unless the context otherwise requires:

"Employee Liability Information" has the same meaning as in Regulation 11(2) of the Transfer Regulations;

"Employing Sub-Contractor" means any sub-contractor of the Contractor providing all or any part of the Services who employs or engages any person in providing the Services;

"Subsequent Relevant Transfer" means a transfer of the employment of Subsequent Transferring Employees from the Contractor or any Employing Sub-Contractor to a New Provider or the Authority under the Transfer Regulations;

"Subsequent Transfer Date" means the date on which the transfer of a Subsequent Transferring Employee takes place under the Transfer Regulations;

"Subsequent Transferring Employee" means an employee wholly or mainly employed or otherwise assigned to the Services (or in respect of partial termination, the relevant part of the Services) whose employment transfers under the Transfer Regulations from the Contractor or any Employing Sub-Contractor to a New Provider;

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (as amended from time to time), as appropriate.

2. **Employment**

a. Information on Re-tender, Partial Termination, Termination or Expiry

(1) No earlier than [two] years preceding the termination, partial termination or Expiry of this Contract or a potential Subsequent Transfer Date or at any time after the service of a notice to terminate this Contract or the provision of any of the Services (whether in whole or part) or on receipt of a written request by the Authority, the Contractor shall (and shall procure that any Employing Sub-Contractor shall):

(a) supply to the Authority such information as the Authority may reasonably require in order to consider the application of the Transfer Regulations on the termination, partial termination or expiry of this Contract;

(b) supply to the Authority such full and accurate and up-to-date information as may be requested by the Authority including the information listed in Appendix 1 to this Schedule 6 Part 2 relating to the employees who are wholly or mainly employed, assigned or engaged in providing the Services or part of the Services under this Contract who may be subject to a Subsequent Relevant Transfer;

(c) provide the information promptly and in any event not later than three months from the date when a request for such information is made and at no cost to the Authority;

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(d) acknowledge that the Authority will use the information for informing any prospective New Provider for any services which are substantially the same as the Services or part of the Services provided pursuant to this Contract;

(e) inform the Authority of any changes to the information provided under Paragraph 2.a (1) (a)2(a) or 2.a (1) (b) up to the Subsequent Transfer Date as soon as reasonably practicable.

(2) Three months preceding the termination, partial termination or expiry of this Contract or on receipt of a written request from the Authority the Contractor shall:

(a) ensure that Employee Liability Information and such information listed in Part A of Appendix 2 of Part 2 of this Schedule 6 (Personnel Information) relating to the Subsequent Transferring Employees is provided to the Authority and/or any New Provider;

(b) inform the Authority and/or any New Provider of any changes to the information provided under this Paragraph 2.a(2) up to any Subsequent Transfer Date as soon as reasonably practicable;

(c) enable and assist the Authority and/or any New Provider or any sub-contractor of a New Provider to communicate with and meet those employees and their trade union or other employee representatives.

(3) No later than 28 days prior to the Subsequent Transfer Date the Contractor shall provide the Authority and/or any New Provider with a final list of the Subsequent Transferring Employees together with the information listed in Part B of Appendix 2 of Part 2 of this Schedule 6 (Personnel Information) relating to the Subsequent Transferring Employees. The Contractor shall inform the Authority and/or New Provider of any changes to this list or information up to the Subsequent Transfer Date.

(4) Paragraphs 2.a(1) and 2.a(2) of this Appendix are subject to the Contractor's obligations in respect of the DPA and the Contractor shall use its best endeavours to obtain the consent of its employees (and shall procure that its Sub-Contractors use their best endeavours to obtain the consent of their employees) to the extent necessary under the DPA or provide the data in an anonymous form in order to enable disclosure of the information required under Paragraphs 2.a(1) and 2.a(2). Notwithstanding this Paragraph 2.a (4), the Contractor acknowledges (and shall procure that its Sub-Contractors acknowledge) that they are required to provide sufficient information to the Authority to enable the Authority to determine the nature of the activities being undertaken by employees engaged in providing the Services, to assess whether there is an organised grouping for the purposes of the Transfer Regulations and to assess who is assigned to such organised grouping. To the extent that anonymous data has been provided by the Contractor pursuant to its obligations under Paragraph 2.a(1) and 2.a(2) above, the Contractor shall provide full data to the Authority no later than 28 days prior to the Subsequent Transfer Date.

(5) On notification to the Contractor by the Authority of a New Provider or within the period of six months prior to the Termination Date or after service of a notice to terminate this Contract (whether in whole or in part), whichever is earlier and in any event on receipt of a written request by the Authority, the Contractor shall not and shall procure that an Employing Sub-Contractor shall not:

(a) materially amend or promise to amend the rates of remuneration or other terms and conditions of employment of any person wholly or mainly employed or engaged in providing the Services under this Contract; or

(b) replace or re-deploy from the Services any person wholly or mainly employed or engaged in providing the Services, or materially increase or decrease the number of persons performing the Services under this Contract or the working time spent on the Services (or any part thereof); or

(c) reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services (or any part thereof) any duties unconnected with the Services (or any part thereof) under this Contract; or

(d) terminate or give notice to terminate the employment of any person wholly or mainly employed or engaged in providing the Services (or any part thereof) under this Contract other than in the case of serious misconduct or for poor performance,

save in the ordinary course of business and with the prior written consent of the Authority (not to be unreasonably withheld or delayed) and the Contractor shall indemnify and keep indemnified the Authority in respect of any reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any breach of Paragraphs 2.a (1), 2.a (2), 2.a (3), 2.a (5) of this Schedule 6 Part 2.

(6) The Authority may at any time prior to the period set out in paragraph 2.a (5) of this Schedule 6 Part 2 request from the Contractor any of the information in Sections 1(a) to (d) of Appendix 1 and the Contractor shall and shall procure any Sub-Contractor will provide the information requested within 28 days of receipt of that request.

b. Obligations in Respect of Subsequent Transferring Employees

(1) To the extent that the Transfer Regulations apply on expiry, termination or partial termination of this contract, the Contractor shall and shall procure any Employing Sub-Contractor shall and the Authority shall and shall procure that a New Provider shall in such circumstances:

(a) before and in relation to the Subsequent Transfer Date liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of the Subsequent Transferring Employees to the Authority and/or a New Provider; and

(b) comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13 of the Transfer Regulations.

c. Unexpected Subsequent Transferring Employees

(1) If a claim or allegation is made by an employee or former employee of the Contractor or any Employing Sub-Contractor who is not named on the list of Subsequent Transferring Employees provided under Paragraph 2.a(3) (an "**Unexpected Subsequent Transferring Employee**") that he has or should have transferred to the Authority and/or New Provider by virtue of the Transfer Regulations, the Party receiving the claim or allegation shall notify the other Party (or the Contractor shall notify the Authority on the Sub-Contractor's behalf and the Authority shall notify the Contractor on the New Provider's behalf) in writing as soon as reasonably practicable and no later than ten Business Days after receiving notification of the Unexpected Subsequent Transferring Employee's claim or allegation, whereupon:

(a) the Contractor shall (or shall procure that the Employing Sub-Contractor shall), as soon as reasonably practicable, offer and/or confirm continued employment to the Unexpected Subsequent Transferring Employee or take such other steps so as to effect a written withdrawal of the claim or allegation; and

(b) if the Unexpected Subsequent Transferring Employee's claim or allegation is not withdrawn or resolved the Contractor shall notify the Authority (who will notify any New Provider who is a party to such claim or allegation), and the Authority (insofar as it is permitted) and/or New Provider (as appropriate) shall employ the Unexpected Subsequent Transferring Employee or as soon as reasonably practicable, (subject to compliance with its obligations at Paragraph 2.c(1)(c)(iii)),

serve notice to terminate the Unexpected Subsequent Transferring Employee's employment in accordance with his contract of employment; and

(c) the Contractor shall indemnify the Authority against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any of the following liabilities incurred by the Authority or New Provider in dealing with or disposing of the Unexpected Subsequent Transferring Employee's claim or allegation:

- (i) any additional costs of employing the Unexpected Subsequent Transferring Employee up to the date of dismissal where the Unexpected Subsequent Transferring Employee has been dismissed in accordance with Paragraph 2.c(1)(b);
- (ii) any liabilities acquired by virtue of the Transfer Regulations in relation to the Unexpected Subsequent Transferring Employee;
- (iii) any liabilities relating to the termination of the Unexpected Subsequent Transferring Employee's employment but excluding such proportion or amount of any liability for unfair dismissal, breach of contract or discrimination attributable:
 - (A) to a failure by the Authority or a New Provider to act reasonably to mitigate the costs of dismissing such person);
 - (B) directly or indirectly to the procedure followed by the Authority or a New Provider in dismissing the Unexpected Transferee; or
 - (C) to the acts/omissions of the Authority or a New Provider not wholly connected to the dismissal of that person;
- (iv) any liabilities incurred under a settlement of the Unexpected Subsequent Transferring Employee's claim which was reached with the express permission of the Contractor (not to be unreasonably withheld or delayed);
- (v) reasonable administrative costs incurred by the Authority or New Provider in dealing with the Unexpected Subsequent Transferring Employee's claim or allegation, subject to a cap per Unexpected Subsequent Transferring Employee of £5,000; and
- (vi) legal and other professional costs reasonably incurred;

(2) Authority shall be deemed to have waived its right to an indemnity under Paragraph 2.c(1)(c) if it fails without reasonable cause to take, or fails to procure any New Provider takes, any action in accordance with any of the timescales referred to in this Paragraph 2.c.

d. Indemnities on Subsequent transfer under the Transfer Regulations on Partial Termination, Termination or Expiry of the Contract

(1) If on the expiry, termination or partial termination of the Contract there is a Subsequent Relevant Transfer, the Contractor shall indemnify the Authority and any New Provider against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Contractor or any Sub-Contractor to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring

Employee or any other employee of the Contractor or any Sub-Contractor affected by the Subsequent Relevant Transfer (as defined by Regulation 13 of the Transfer Regulations), save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Authority or the New Provider.

(2) If there is a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of, or in connection with:

(a) any claim or claims by a Subsequent Transferring Employee at any time on or after the Subsequent Transfer Date which arise as a result of an act or omission of the Authority or a New Provider or a sub-contractor of a New Provider during the period from and including the Subsequent Transfer Date;

(b) subject to Paragraph 2.d(1) any claim by any employee or trade union representative or employee representative arising whether before or after the Subsequent Transfer Date out of any failure by the Authority or a New Provider or a sub-contractor of a New Provider to comply with their obligations under Regulation 13 of the Transfer Regulations in relation to any Subsequent Transferring Employee or any other employee engaged wholly or mainly in connection with the Services by the New Provider or any other employee of the Authority or any New Provider affected by the Subsequent Relevant Transfer effected by this Contract (as defined by Regulation 13 of the Transfer Regulations),

save to the extent that all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities are a result of the act or omission of the Contractor or any Employing Sub-Contractor.

(3) In the event of a Subsequent Relevant Transfer, the Authority shall indemnify the Contractor in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of a substantial change by the Authority [or a New Provider or any sub-contractor of a New Provider] on or after the Subsequent Transfer Date to the working conditions of any Subsequent Transferring Employee to the material detriment of any such Subsequent Transferring Employee. For the purposes of this Paragraph 2.d(3), the expressions "substantial change" and "material detriment" shall have the meanings as are ascribed to them for the purposes of Regulation 4(9) of the Transfer Regulations.

e. Contracts (Rights of Third Parties) Act 1999

(1) A New Provider may enforce the terms of Paragraphs 2.c and 2.d against the Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.

(2) The consent of a New Provider (save where the New Provider is the Authority) is not required to rescind, vary or terminate this Contract.

(3) Nothing in this paragraph 2.e shall affect the accrued rights of the New Provider prior to the rescission, variation, expiry or termination of this Contract.

f. General

(1) The Contractor shall not recover any Costs and/or other losses under this Schedule 6 where such Costs and/or losses are recoverable by the Contractor elsewhere in this Contract and/or are recoverable under the Transfer Regulations or otherwise.

Appendix 2 to Schedule 6 Part 1 - Contractor Personnel-Related Information To Be Released Upon Re-Tendering Where The Transfer Regulations Applies

1. Pursuant to Paragraph 2.a (1) (b) of Part 2 of this Schedule 6, the following information will be provided:
 - a) The total number of individual employees (including any employees of Sub-Contractors) that are currently engaged, assigned or employed in providing the Services and who may therefore be transferred. Alternatively, the Contractor should provide information why any of their employees or those of their Sub-Contractors will not transfer;
 - b) The total number of posts or proportion of posts expressed as a full-time equivalent value that currently undertakes the work that is to transfer;
 - c) The preceding 12 months total pay costs – (Pay, benefits employee/employer ERNIC and Overtime);
 - d) Total redundancy liability including any enhanced contractual payments;
2. In respect of those employees included in the total at 1(a), the following information:
 - a) Age (not date of Birth);
 - b) Employment Status (i.e. Fixed Term, Casual, Permanent);
 - c) Length of current period of continuous employment (in years, months) and notice entitlement;
 - d) Weekly conditioned hours of attendance (gross);
 - e) Standard Annual Holiday Entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years);
 - f) Pension Scheme Membership;
 - g) Pension and redundancy liability information;
 - h) Annual Salary;
 - i) Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);
 - j) Details of attendance patterns that attract enhanced rates of pay or allowances;
 - k) Regular/recurring allowances;
 - l) Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants);
3. The information to be provided under this Appendix 1 should not identify an individual employee by name or other unique personal identifier unless such information is being provided 28 days prior to the Subsequent Transfer Date.
4. The Contractor will provide (and will procure that the Sub-Contractors provide) the Authority/tenderers with access to the Contractor's and Sub-Contractor's general employment terms and conditions applicable to those employees identified at paragraph 1(a) of this Appendix 1.

Appendix 2 to Schedule 6 Part 2 - Personnel Information To Be Released Pursuant To This Contract

PART A

1. Pursuant to Paragraph 2.a(2) of this Schedule 6, part 2, the written statement of employment particulars as required by Section 1 of the Employment Rights Act 1996 together with the following information (save where that information is included within that statement) which will be provided to the extent it is not included within the written statement of employment particulars:

1.1 Personal, Employment and Career

- a) Age;
- b) Security Vetting Clearance;
- c) Job title;
- d) Work location;
- e) Conditioned hours of work;
- f) Employment Status;
- g) Details of training and operating licensing required for Statutory and Health and Safety reasons;
- h) Details of training or sponsorship commitments;
- i) Standard Annual leave entitlement and current leave year entitlement and record;
- j) Annual leave reckonable service date;
- k) Details of disciplinary or grievance proceedings taken by or against transferring employees in the last two years;
- l) Information of any legal proceedings between employees and their employer within the previous two years or such proceedings that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of their employment with the transferor;
- m) Issue of Uniform/Protective Clothing;
- n) Working Time Directive opt-out forms; and
- o) Date from which the latest period of continuous employment began.

1.2 Performance Appraisal

- a) The current year's Performance Appraisal;
- b) Current year's training plan (if it exists); and
- c) Performance Pay Recommendations (PPR) forms completed in the current reporting year, or where relevant, any bonus entitlements.

1.3 Superannuation and Pay

- a) Maternity leave or other long-term leave of absence (meaning more than 4 weeks) planned or taken during the last two years;
- b) Annual salary and rates of pay band/grade;
- c) Shifts, unsociable hours or other premium rates of pay;
- d) Overtime history for the preceding twelve-month period;
- e) Allowances and bonuses for the preceding twelve-month period;
- f) Details of outstanding loan, advances on salary or debts;

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- g) Cumulative pay for tax and pension purposes;
- h) Cumulative tax paid;
- i) National Insurance Number;
- j) National Insurance contribution rate;
- k) Other payments or deductions being made for statutory reasons;
- l) Any other voluntary deductions from pay;
- m) Pension Scheme Membership;
- n) For pension purposes, the notional reckonable service date;
- o) Pensionable pay history for three years to date of transfer;
- p) Percentage of any pay currently contributed under additional voluntary contribution arrangements; and
- q) Percentage of pay currently contributed under any added years arrangements.

1.4 Medical

- a) Sickness and absence records for the immediately preceding four-year period; and
- b) Details of any active restoring efficiency case for health purposes.

1.5 Disciplinary

- a) Details of any active restoring efficiency case for reasons of performance; and
- b) Details of any active disciplinary cases where corrective action is on going.

1.6 Further information

- a) Information about specific adjustments that have been made for an individual under the Disability Discrimination Act 1995 or the Equality Act 2010;
- b) Short term variations to attendance hours to accommodate a domestic situation;
- c) Individuals that are members of the Reserves, or staff that may have been granted special leave as a School Governor; and
- d) Information about any maternity or other statutory leave or other absence from work.

PART B

1.7 Information to be provided 28 days prior to the Subsequent Transfer Date:

- a) Employee's full name;
- b) Date of Birth
- c) Home address;
- d) Bank/building society account details for payroll purposes Tax Code.

**Schedule 7 - Contractor's Commercially Sensitive Information Form
(i.a.w Condition A14)**

Contract No: ACT/04482
Description of Contractor's Commercially Sensitive Information: [REDACTED]
Cross Reference(s) to location of sensitive information: [REDACTED]
Explanation of Sensitivity: [REDACTED]
Details of potential harm resulting from disclosure: [REDACTED]
Period of Confidence (if applicable): [REDACTED] [REDACTED]
Contact Details for Transparency / Freedom of Information matters: Name: [REDACTED] [REDACTED] Position: [REDACTED] [REDACTED] Address: [REDACTED] Telephone Number: [REDACTED] [REDACTED] Email Address: [REDACTED]@safeskys.co.uk