

Our Ref: [REDACTED]  
Your Ref: [REDACTED]  
Date: 15<sup>th</sup> December 2020

FAO [REDACTED]  
Teledyne Optech  
300 Interchange Way  
Vaughan ON  
Canada  
L4K 5Z8

Dear [REDACTED],

### **[REDACTED] Replacement of LIDAR Equipment**

I am pleased to offer you the Contract to perform the replacement & ongoing warranty of our LIDAR equipment in accordance with your quotation referenced above.

Both Environment Agency Galaxy T500 systems will be replaced with Galaxy T2000 systems for the total price of £1,006,020. This price shall be paid and the Environment Agency T500 systems shipped back to Teledyne Optech following successful confirmation of Acceptance Testing as described in Appendix 1 to this letter. Environment Agency will seek to ship the T500 systems as soon as possible following Acceptance Testing.

Both instruments shall be supplied with three years CSP warranty, encompassing existing T500 warranties for year 1 and at a total price of £213,892 for years 2 and 3. The Environment Agency shall retain an option to purchase two further years warranty at any point up until 31<sup>st</sup> December 2024 for the same price.

Teledyne Optech shall be responsible for all documentation, shipping and insurances up to the point of delivery to an Environment Agency authorised officer. Teledyne Optech must deliver the upgraded systems to East Midlands Airport before 20<sup>th</sup> January 2021

Acceptance testing as described in Appendix 1 to this letter shall be completed ASAP following delivery. The Contract shall be performed according to the Environment Agency terms & conditions of contract as attached to this letter and not those referenced on the Teledyne Optech quotation.

Please sign and return the attached copy of this letter to indicate your acceptance of this offer of Contract.

Yours faithfully

[REDACTED]

[REDACTED]  
Commercial Manager

Our Ref: [REDACTED]  
Your Ref: [REDACTED]  
Date: 15<sup>th</sup> December 2020

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Yours faithfully

[REDACTED]

[REDACTED]  
Commercial Manager

I/we.....accept the offer of Contract described above  
Signed.....  
Designation.....

Date.....

## **Section 6**

### **Conditions of Contract – Goods & Services**

Ref: XXXXXXXXXX

**Title: Replacement of LIDAR Equipment**

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## **1. DEFINITIONS**

1.1 In the Contract, unless the context otherwise requires the following words and expressions shall have the following meanings assigned to them.

1.1.2 Agency The Environment Agency, its successors and assigns.

1.1.3 Agency Property  
All property issued or made available for use by the Agency to the Contractor in connection with the Contract.

1.1.4 The Appendix The Appendix to these Conditions.

1.1.5 The Contract  
These Conditions including the Appendix, any Special Conditions, Specification, Pricing Schedule, Contractor's tender, Contract Award letter, drawings, maps or other diagrams, and any relevant documents agreeing to modifications to any of the foregoing exchanged before the Contract is awarded, and any subsequent amendments or variations agreed in writing.

1.1.6 The Contractor  
The person, firm, company or body who undertakes to supply the Goods & Services to the Agency as defined in the Contract.

1.1.7 Contract Period  
The time period stated in the Appendix or otherwise provided in the Contract, for the delivery and performance of the Goods & Services.

1.1.8 Contract Price  
The price exclusive of VAT set out in the Contract for which the Contractor has agreed to supply the Goods & Services.

1.1.9 Contract Supervisor  
Any duly authorised representative of the Agency notified in writing to the Contractor for all purposes connected with the Contract. Any Notice or other written instruction given by or made to the Contract Supervisor, shall be taken as given by or made to the Agency.

1.1.10 Intellectual Property Rights  
All Intellectual Property Rights including without limitation, patents, patent applications, design rights, registered designs, utility models, trade and service marks and applications for same, copyright know-how, rights in semi-conductor chip topography, and in each case whether protectable at law or not, and if protectable, whether an application has been made for such protection or not, and all similar industrial, commercial, monopoly or other intellectual property rights whether present or future, vested or contingent wherever protected.

1.1.11 Notice

Any written instruction or notice given to the Contractor by the Contract Supervisor, delivered by:

- a) fax, or hand delivery to the Contractor's registered office or other address notified for the purposes of the Contract and deemed to have been served at the date and time of delivery;
- b) first class post to the Contractor's registered office. Such Notices are deemed to have been served 48 hours after posting.

1.1.12 Permission Express permission given in writing before the act being permitted.

1.1.13 Goods & Services

All Goods & Services detailed in the Specification, including any additions or substitutions as may be requested by the Contract Supervisor and agreed to by the Contractor.

1.2 Except as set out above, the Contract shall be interpreted in accordance with the Interpretation Act 1988.

1.3 All headings in these Conditions are for ease of reference only, and shall not affect the construction of the Contract.

1.4 Any reference in these Conditions to a statutory provision will include all subsequent modifications.

1.5 All undefined words and expressions are to be given their normal English meaning within the context of this Contract. Any dispute as to the interpretation of such undefined words and expressions shall be settled by reference to the definition in the Shorter Oxford English Dictionary.

## **2. PRECEDENCE**

To the extent that the following documents form the Contract, in the case of conflict of content, they shall have the following order of precedence:

Letter of Contract Award;  
Conditions of Contract, including Appendix and any Special Conditions;  
Specification;  
Pricing Schedule;  
Drawings, maps or other diagrams; and  
Contractor's tender.

## **3. CONTRACT SUPERVISOR**

The Contractor shall strictly comply with any instruction given by the Contract Supervisor concerning or about, the Contract. All such instructions shall be in writing. The Contractor is not obliged to comply with any verbal instruction

from the Contract Supervisor that is not confirmed in writing within 7 working days.

#### **4. THE GOODS & SERVICES**

- 4.1 The Contractor shall provide all goods, staff, equipment, materials and any other requirements necessary for the performance of the Contract using all skill, care and diligence, and to the satisfaction of the Contract Supervisor.
- 4.2 The Contractor shall only employ in the execution and superintendence of the Contract persons who are suitable and appropriately skilled and experienced. The Contract Supervisor shall be at liberty to object to and require the Contractor to remove any person employed in or about the Contract who is unsuitable, misconducts himself, is incompetent or negligent in the performance of his duties or persists in conduct which could endanger the health or safety of others. Such persons shall not be employed again on the Contract without the Permission of the Contract Supervisor.

#### **5. ASSIGNMENT**

- 5.1 The Contractor shall not assign, transfer or sub-contract the Contract, or any part of it, without the Permission of the Contract Supervisor.
- 5.2 Any assignment, transfer or sub-contract entered into, shall not relieve the Contractor of any of his obligations or duties under the Contract.
- 5.3 Nothing in this Contract confers or purports to confer on any third party any benefit or any right to enforce any term of the Contract

#### **6. CONTRACT PERIOD**

The Contractor shall deliver the Goods and perform the Services within the time stated in the Appendix, subject to any changes arising from Condition 10 (Variations) and/or Condition 11 (Extensions of time.)

#### **7. PROPERTY**

- 7.1 All property issued by the Agency to the Contractor in connection with the Contract shall remain the property of the Agency, and shall be used in the execution of the Contract, and for no other purpose whatsoever without the prior approval of the Contract Supervisor.
- 7.2 The Contractor shall keep all Agency Property in safe custody and good condition, set aside and clearly marked as the property of the Agency.
- 7.3 On expiry or earlier termination of the Contract, the Contractor shall, if so required, either surrender such property to the Agency or otherwise dispose of it as instructed by the Contract Supervisor in writing.

#### **8. MATERIALS**

8.1 The Contractor shall be responsible for establishing his own sources of supply for goods and materials and will be responsible for ensuring the reasonable and proper conduct by his suppliers and staff whilst on the Agency's premises.

8.2 The Contractor shall not place, or cause to be placed, any orders with suppliers or otherwise incur liabilities in the name of the Agency or any representative of the Agency.

## **9. SECURITY**

9.1 The Contractor shall be responsible for the security of all goods and equipment belonging to the Agency and used by the Contractor in the provision of the Goods & Services, belonging to the Contractor, or Contractor's staff, or sub-contractors whilst on Agency premises.

9.2 This Condition shall not prejudice the Agency's rights under Condition 15.

## **10. VARIATIONS**

10.1 The Contract Supervisor may vary the Contract by adding to, deleting or otherwise modifying the Goods & Services to be supplied, by written order to the Contractor, and subject to the written agreement of the Contractor.

10.2 The value of any such variation, other than any variation arising out of Condition 10.3, shall be determined by reference to the rates contained in the Pricing Schedule. Where the Goods & Services so ordered are not covered in the Pricing Schedule, they shall be valued at a fair and reasonable rate agreed between the Contract Supervisor and the Contractor.

10.3 Where a variation is the result of some default or breach of the Contract by the Contractor or some other cause for which he is solely responsible, any additional cost attributable to the variation shall be borne by the Contractor.

10.4 The Contractor may also propose a variation to the Goods & Services but no such variation shall take effect unless agreed and confirmed in writing by the Contract Supervisor.

10.5 No variation shall have the effect of invalidating the Contract, or placing the Contract at large, if that variation is reasonably consistent with the nature, scope and value of the Contract.

## **11. EXTENSIONS OF TIME**

11.1 Should the performance of the Contract be directly delayed by any cause beyond the reasonable control of the Contractor, and provided that the Contractor shall first have given the Contract Supervisor written notice within five working days after becoming aware that such delay was likely to occur, then the Contract Supervisor, if satisfied that this Condition applies:

11.1.1 in the case of any delay of which the Agency is not the cause, may grant the Contractor such extension of time, as in his opinion is reasonable, having regard without limitation, to any other delays or extensions of



time that may have occurred or been granted under the Contract. The Contract Price shall not increase as a result of such an extension of time.

11.1.2 in the case of any delay of which the Agency is the cause, shall grant the Contractor a reasonable extension of time to take account of the delay.

11.2 No extension of time shall be granted where in the opinion of the Agency the Contractor has failed to use best endeavours to avoid or reduce the cause and/or effects of the delay.

11.3 Any extension of time granted under this Condition shall not affect the Agency's rights to terminate or determine the Contract under Conditions 13 and 14.

## **12. DEFAULT**

12.1 The Contractor shall be in default if he:

12.1.1 fails to perform the Contract with due skill, care, diligence and timeliness;

12.1.2 refuses or neglects to comply with any reasonable written instruction given by the Contract Supervisor;

12.1.3 is in breach of the Contract.

12.2 Where, in the opinion of the Contract Supervisor, the Contractor has failed to perform the Contract with due skill, care, diligence and timeliness or is in breach of the Contract, the Contract Supervisor may serve a Notice giving at least thirty days in which to remedy the default.

12.3 If the Contractor fails to comply with such a Notice, the Contract Supervisor may, without prejudice to any other rights or remedies under the Contract, take over for as such a period as is necessary the performance of the relevant part of the Contract and make other arrangements for its completion. Any extra costs arising from this action, will be paid by the Contractor or deducted from any monies owing to him.

## **13 TERMINATION**

13.1 The Agency may immediately, without prejudice to any other rights and remedies under the Contract, terminate all or any part of the Contract by Notice in writing to the Contractor, Receiver, Liquidator or to any other person in whom the Contract may become vested, if the Contractor:

13.1.1 fails in the opinion of the Contract Supervisor to comply with (or take reasonable steps to comply with) a Notice under Condition 12.2.

13.1.2 becomes bankrupt or insolvent, or has a receiving order made against him, or makes an arrangement with his creditors or (being a corporation) commences to be wound up, not being a voluntary winding up for the purpose of reconstruction or amalgamation, or has a receiver, administrator, or administrative receiver appointed by a Court.

## **14 DETERMINATION**

- 14.1 Without prejudice to any other rights or remedies under the Contract, the Agency reserves the right to determine the Contract at any time by giving not less than one month's Notice, (or such other time period as may be appropriate).
- 14.2 The Agency shall pay the Contractor such amounts as may be necessary to cover his reasonable costs and outstanding and unavoidable commitments necessarily and solely incurred in properly performing the Contract prior to determination.
- 14.3 The Agency will not pay for any costs or commitments that the Contractor is able to mitigate and shall only pay those costs that the Agency has validated to its satisfaction. The Agency's total liability under this Condition shall not in any circumstances exceed the Contract Price that would have been payable for the Goods & Services if the Contract had not been determined.

## **15 INDEMNITY**

- 15.1 Without prejudice to the Agency's remedies for breach of Contract, the Contractor shall fully indemnify the Agency and its staff against any liability, loss, costs, expenses, claims or proceedings in respect of:
- 15.1.1 death or injury to any person; or
- 15.1.2 loss or damage to any property excluding indirect and consequential loss;
- which might arise as a direct consequence of the actions or negligence of the Contractor, his staff or agents in the execution of the Contract.
- 15.2 This Condition shall not apply where the damage, injury or death is a direct result of the actions, or negligence of the Agency or its staff.

## **16 LIMIT OF CONTRACTOR'S LIABILITY**

- 16.1 The limit of the Contractor's liability for each and every claim by the Agency, other than for death or personal injury, whether by way of indemnity or by reason of breach of contract, or statutory duty, or by reason of any tort shall be:
- 16.1.1 the sum stated in the Appendix;
- 16.1.2 if no sum is stated, the Contract Price or five million pounds whichever is the greater.

## **17 INSURANCE**

- 17.1 The Contractor shall insure and maintain insurance against liabilities under Condition 15 (Indemnity) in the manner and to the values listed in the Appendix to these Conditions. If no sum is stated, the value insured shall be £5M (five million pounds.)
- 17.2

- 17.3 The Contractor shall, upon request, produce to the Contract Supervisor documentary evidence that the insurances required are fully paid up and valid for the duration of the Contract.

## **18 INDUCEMENTS**

The Contractor shall not, directly or indirectly through intermediaries commit any offence under the Corruption Acts 1906 to 1916 in any of his dealings with the Agency.

## **19 MONITORING AND AUDIT**

The Contract Supervisor may inspect and examine the Goods & Services being carried out on the Agency's premises, or elsewhere at any reasonable time. Reasonable notice to inspect shall be given to the Contractor. The Contractor shall give all such facilities as the Contract Supervisor may reasonably require for such inspection and examination.

## **20 CONTRACT PRICE**

- 20.1 The Contract Price will be paid by the Agency to the Contractor as amended by any Variations ordered under Condition 10 (Variations).
- 20.2 In addition to the Contract Price, the Agency will pay to the Contractor such Value Added Tax (if any) as may properly be chargeable at rates ruling at the time of invoice.

## **21 INVOICING AND PAYMENT**

- 21.1 Invoices shall only be submitted for work already satisfactorily completed, and accompanied by such information as the Contract Supervisor may reasonably require to verify the Contractor's entitlement to payment. Such invoices will be paid in 30 days from receipt by the Agency.
- 21.2 If any sum is payable under the Contract by the Contractor to the Agency, whether by deduction from the Contract or otherwise, it will be deducted from the next available invoice.

## **22 INTELLECTUAL PROPERTY RIGHTS**

- 22.1 The Contractor warrants to the Agency that the performance of the Contract, shall not in any way infringe any Intellectual Property Rights belonging to any third party ("Third Party IP Rights") and shall fully indemnify the Agency against all actions, claims, costs, charges, expenses and liabilities of whatsoever nature arising from or incurred by reason of any infringement, or alleged infringement, provided that (i) the Contractor is notified promptly in writing of the commencement or threat of any such claim for infringement, and is given full authority, at its option, to settle or conduct the defence thereof and reasonable assistance and cooperation of the Agency in such defence.
- 22.2 The Contractor shall not be liable under this Condition if such infringement arises from (i) the use of any design, technique or method of working provided

by or specified by the Agency, (ii) the combination of the Goods & Services supplied by the Contractor under the Contract with other components not supplied by the Contractor where such other components were not accepted, approved or recommended by the Contractor, (iii) modifications made by a party other than the Contractor to the Goods & Services where such modifications were not accepted, approved or recommended by the Contractor; the use or installation of Goods & Services in an environment for which Goods & Services were not intended, (iv) the Agency's failure to use updated or modified versions of Goods or Software provided by the Contractor; or (v) the negligent acts or omissions or willful misconduct of the Agency, its employees, representatives, or affiliates.

22.3 To the extent that any Goods or Software are held by a court of competent jurisdiction or are believed by the Contractor to infringe or otherwise violate a third party's proprietary rights, the Contractor may, at its option and expense, either (i) modify the affected Goods or Software to be non-infringing; or (ii) obtain for the Agency a license to continue using such Goods or Software on substantially the same terms set forth herein; or (iii) if neither of the foregoing alternatives are reasonably available to the Contractor, the Contractor may require the Agency to return the infringing Goods or Software and all rights thereto, and refund to the Agency the price paid to the Contractor by the Agency for the infringing Goods or Software.

22.4 THE FOREGOING CONSTITUTES THE ENTIRE LIABILITY OF CONTRACTOR AND THE AGENCY'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

## **23 WARRANTY**

The Contractor warrants that the Goods & Services supplied by him will meet or exceed the Agency's requirements as called out in the Tender document.

## **24 STATUTORY REQUIREMENTS**

The Contractor shall fully comply with all relevant statutory requirements in the performance of the Contract, including, but not limited to the giving of all necessary notices and the paying of all fees.

## **25 ENVIRONMENT**

The Contractor shall in all his operations, including purchase of materials goods and services, adopt a sound proactive environmental approach, designed to minimise harm to the environment and be able to provide proof of so doing to the Contract Supervisor on demand.

## **26 PUBLICITY**

The Contractor shall not advertise or publicly announce that he is supplying the Goods & Services or undertaking work for the Agency without the Permission of the Contract Supervisor.

## **27 LAW**

This Contract shall be governed and construed in accordance with English Law, and subject to the jurisdiction of the courts of England and Wales.

## **28 WAIVER**

- 28.1 No delay, neglect or forbearance by the Agency in enforcing any provision of the Contract shall be deemed to be a waiver, or in any other way prejudice the rights of the Agency under the Contract.
- 28.2 No waiver by the Agency shall be effective unless made in writing.
- 28.3 No waiver by the Agency of a breach of the Contract shall constitute a waiver of any subsequent breach.

## **29. ENFORCEABILITY**

If any part of the Contract is found by a court of competent jurisdiction or other competent authority to be invalid or legally unenforceable, that part will be severed from the remainder of the Contract which will continue to be valid and enforceable to the fullest extent permitted by law.

## **30 DISPUTE RESOLUTION**

- 30.1 All disputes under or in connection with the Contract shall be referred first to negotiators nominated at a suitable and appropriate working level by the Agency and the Contractor.
- 30.2 If the parties' negotiators are unable to resolve the dispute within a period of forty five days from its being referred to them, the dispute shall be referred at the instance of either party to the parties' respective senior managers or directors (supported as necessary by their advisers).
- 30.3 If the parties' respective senior managers or directors are unable to resolve the dispute within forty five days the dispute shall be referred to the Centre for Dispute Resolution who shall appoint a mediator and the parties shall then submit to the mediator's supervision of the resolution of the dispute.
- 30.4 Recourse to this dispute resolution procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until forty five days after the appointment of the mediator.
- 30.5 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be put in writing and, once signed by a duly authorised representative of each of the parties, shall remain binding on the parties.

- 30.6 The parties shall bear their own legal costs of this dispute resolution procedure, but the costs and expenses of mediation shall be borne by the parties equally.
- 30.7 Any of the time limits in Conditions 30 may be extended by mutual agreement. Such agreed extension shall not prejudice the right of either party to proceed to the next stage of resolution.

## **31 GENERAL**

- 31.1 Neither party to the Contract will be liable to the other for any delay in performing or failing to perform its obligations (other than a payment obligation) under the Contract because of any cause outside its reasonable control. Such delay or failure will not constitute a breach of the Contract and the time for performance of the affected obligation will be extended by a reasonable period.
- 31.2 The Contract contains the whole agreement between the parties and supersedes all previous communications, representations and arrangements, written or oral. It is accepted that the Contract has not been entered into on the basis of any representations that are not expressly contained in the Contract.

## **Section 7 Appendix to Conditions – Goods & Services**

Ref: 31495

Title: Replacement of LIDAR Equipment

Condition

**1 Contract Supervisor**

3

Representative:-

[REDACTED]

Address:-

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Tel:

**2 Contractor**

Address:

**3 Completion**

6

Start Date

Contract Period

**4 Insurance**

17

Third Party Minimum Cover

£~~x~~ million

Public Liability Min. Cover

£~~x~~ million

**5 Limit on Liability**

16

The Contractor's total liability to the Agency under this Agreement, and arising from the use of the Goods & Services (including Software) by the Agency or others shall be limited to, in the aggregate, two (2) times the amount paid by the Agency for the Goods & Services (including Software) under this Agreement. In no event shall either Party, their suppliers, or licensors be liable for any indirect, special, incidental, exemplary or consequential damages of any kind or nature whatsoever, even if advised of the possibility of such damages.